CITY COUNCIL REGULAR MEETING AGENDA

REGULAR COUNCIL MEETING
TUESDAY
JANUARY 17, 2023

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.

---

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 DAGGETT
VICE MAYOR ASLAN
COUNCILMEMBER HARRIS
COUNCILMEMBER HOUSE
COUNCILMEMBER MATTHEWS
COUNCILMEMBER MCCARTHY
COUNCILMEMBER SWEET

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. COUNCIL LIAISON REPORTS

6. 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:** Tourism Commission.

STAFF RECOMMENDED ACTION:

Make three appointments to terms expiring January 2026.

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

STAFF RECOMMENDED ACTION:

Make one appointment to a term expiring December 2025.

7. LIQUOR LICENSE PUBLIC HEARINGS

A. **Consideration and Action on Liquor License Application:** Jeffrey Craig Miller, "B66 Brunch Brew BBQ," 409 S. San Francisco St., Series 12 (restaurant), New License.

STAFF RECOMMENDED ACTION:

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

The City Council has the option to:
(1) Forward the application to the State with a recommendation for approval;
(2) Forward the application to the State with a recommendation for denial based on information from staff, the testimony received at the public hearing and/or other factors.

8. 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 the Design-Build Agreement:** Design-Build Services Agreement with Hunter Contracting Co. for the Inner Basin Waterline Restoration Project and a Design Phase Services GMP1 in the amount of $189,694.00.

STAFF RECOMMENDED ACTION:

1. Approve Design-Build Services Agreement with Hunter Contracting Co.;
2. Approve the Design Phase Services GMP1 with Hunter Contracting Co. in the amount of $189,694.00 and a contract duration of 150-calendar days; and
3. Authorize the City Manager to execute the necessary documents.

B. **Consideration and Approval of Contract:** Cooperative Purchase Contract with Deere & Company of a John Deere Compact Utility Tractor in the amount of $66,071.40.

STAFF RECOMMENDED ACTION:

1. Approve the Cooperative Purchase Contract with Deere & Company of a John Deere Compact Utility Tractor in the amount of $66,071.40; and
2. Authorize the City Manager to execute all the necessary documents.

C. **Consideration and Approval of Contract:** Approve the Cooperative Purchase Contract for a Velocity Aerial Bucket Quint Unit with Hughes Fire Equipment, Inc. in the total amount of $1,960,222.66.

STAFF RECOMMENDED ACTION:

1. Approve the Cooperative Purchase Contract with Hughes Fire Equipment, Inc. through the Sourcewell Agency Cooperative Contract for a new Velocity Aerial Bucket Quint Unit in the total amount of $1,960,222.66; and
2. Authorize the City Manager to execute the necessary documents.

9. ROUTINE ITEMS

A. **Consideration and Approval of Grant Agreement:** Grant Agreement between the City of Flagstaff and the Arizona Department of Forestry and Fire Management for Invasive Plant Grant (State) - Observatory Mesa Invasive Plant Prevention and Control.

STAFF RECOMMENDED ACTION:

Approve the Grant Agreement #IPG 22S-702 with the Arizona Department of Forestry and Fire Management, for Observatory Mesa Invasive Plant Prevention and Control Grant in the amount of $97,000, with a city match of $11,260 to support the maintenance of the Observatory Mesa Natural Area open space.

B. **Consideration and Approval of Parking Demand Study:** Request by the Holy Trinity Catholic Newman Center to approve a Parking Demand Study for a new place of worship building at 520 W. Riordan Rd., subject to the issuance of a Conditional Use Permit.

STAFF RECOMMENDED ACTION:

Approve the parking demand study with the following conditions:

1. The Newman Center shall work with NAU to secure additional parking spaces on NAU property to account for increases in the size of the congregation in the larger Newman Center building and associated increases in parking demand.
2. The Newman Center shall provide a pedestrian path per City of Flagstaff Zoning Code section 10-30.60.080.A. that connects to the existing pedestrian path located on the adjacent property to the west at 910 S. Milton Rd. (APN 103-04-005B).
3. The Newman Center shall provide a minimum of 12 bicycle parking spaces, as shown on the Concept Plan that city staff deemed Complete with Conditions on November 17, 2022.

10. REGULAR AGENDA (Items 10C and 10D will not start before 7:00 p.m.)

A. **Consideration and Adoption of Resolution No. 2023-02:** A resolution approving Binding Waivers of Enforcement for five parcels of land located in the City of Flagstaff.

STAFF RECOMMENDED ACTION:

1) Read Resolution No. 2023-02 by title only
2) City Clerk reads Resolution No. 2023-02 by title only (if approved above)
3) Adopt Resolution No. 2023-02

B. **Consideration and Adoption of Resolution No. 2023-01:** A resolution for consideration and approval of Intergovernmental Agreement (IGA) between the City of Flagstaff and the Greater Flagstaff Region (GFR) partnering agencies (Summit Fire District, Highlands Fire District, Ponderosa Fire Department, and Pinewood Fire Department)

STAFF RECOMMENDED ACTION:

1) Read Resolution No. 2023-01 by title only
2) City Clerk reads Resolution No. 2023-01 by title only (if approved above)
3) Adopt Resolution No.2023-01

C. Ratification of a previous City Council's instruction to City Attorney to initiate litigation against Desert Mountain Energy.

STAFF RECOMMENDED ACTION:

Ratify a previous City Council's instruction to the City Attorney to initiate litigation against Desert Mountain Energy based on information provided in executive session.

D. Ratification of a previous City Council's instruction to City Attorney to initiate litigation against the Arizona Department of Administration et. al.

STAFF RECOMMENDED ACTION:

Ratify a previous City Council's instruction to the City Attorney to initiate litigation against the Arizona Department of Administration et. al. based on information provided in executive session.

11. DISCUSSION ITEMS

A. Community Development Block Grant (CDBG) Introduction and Overview; Establishment of CDBG Council Priorities for Program Years 2023 and 2024

Receive Council direction on CDBG priorities for the next two program years (2023 and 2024).

B. Wildland Fire Management Program Update

STAFF RECOMMENDED ACTION:

Wildland Fire Management staff will present a program update.
No direct action is needed.

12. PUBLIC PARTICIPATION

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

14. 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 _____, 2023.

_____
Stacy Saltzburg, MMC, City Clerk

6. A.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Fobar, Deputy City Clerk
Date:	01/12/2023
Meeting Date:	01/17/2023

TITLE:

Consideration of Appointments: Tourism Commission.

STAFF RECOMMENDED ACTION:

Make three appointments to terms expiring January 2026.

Executive Summary:

The mission of the Tourism Commission is to develop, promote, and maintain Flagstaff as a year-round visitor destination with professional visitor services that will benefit the community economically, environmentally, and socially. The Tourism Commission makes recommendations to the Council concerning expenditure of the tourism portion of the Bed, Board and Booze ("BBB") tax, a 2% local transaction privilege tax. The Tourism Commission consists of seven citizens serving three-year terms. There are currently four seats available. It is important to fill vacancies on Boards and Commissions quickly to allow the Commission to continue meeting on a regular basis.

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

- Ali Applin (new applicant)
- Jennifer Grogan (current commissioner)
- Karen Laflen (new applicant)
- Michael Marquess (new applicant)
- Caleb Schiff (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: Mayor Daggett, Councilmember McCarthy, and Councilmember Harris

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:

Inclusive and Engaged Community

- 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 three Commissioners: By appointing four members at this time, the Tourism Commission will be at full membership, 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 opening by Commission members and City staff has occurred, informing others of this vacancy through word of mouth.

Attachments: Tourism Commission Authority

CHAPTER 2-13
TOURISM COMMISSION

SECTIONS:

2-13-001-0001 CREATION OF THE COMMISSION:
2-13-001-0002 COMPOSITION AND TERM OF OFFICE:
2-13-001-0003 COMPENSATION OF COMMISSION MEMBERS:
2-13-001-0004 ORGANIZATION:
2-13-001-0005 MEETINGS:
2-13-001-0006 DUTIES:

2-13-001-0001 CREATION OF THE COMMISSION:

There is hereby established a City Tourism Commission. There shall be seven (7) voting members of said Commission who shall meet as hereinafter provided to consider and recommend programs for the expenditure of the tourism portion of the Bed, Board and Booze Tax allocated under Chapter 3-06, Hospitality Industry Tax Revenues.

“Tourism” means the guidance, management, marketing, accommodation, promotion and encouragement of tourists (same meaning as set forth in Section 3-06-001-0001). (Ord. No. 1579, Enacted, 08/02/88; Ord. 2001-27, Amended, 11/20/2001; Ord. 2014-28, Amended, 11/18/2014; Ord. 2015-22, Amended, 01/05/2016)

2-13-001-0002 COMPOSITION AND TERM OF OFFICE:

The composition of the membership shall consist of:

A. Seven (7) members to be appointed by the City Council. Each member shall serve for three (3) years, on a staggered term basis.

B. The City Manager or the Manager’s designee shall be an ex officio member of the Commission. The member shall have no voting privileges.

The City Manager shall be responsible for staff support of the Tourism Commission.

The Council shall fill vacancies for the unexpired term of any of the members of the Commission.

A member’s term in office shall commence with the first regular Commission meeting following the appointment and terminate with the regular Commission meeting at which the successor takes office. No voting member of the Commission may be appointed to more than two (2) consecutive full terms. (Ord. No. 1579, Enacted, 08/02/88; Ord. No. 1674, Amended, 09/18/90; Ord. 2001-27, Amended, 11/20/2001; Ord. No. 2006-09, Amended 04/10/2006; Ord. 2014-28, Amended, 11/18/2014; Ord. 2015-22, Amended, 01/05/2016)

2-13-001-0003 COMPENSATION OF COMMISSION MEMBERS:

Members of the Commission shall serve without compensation.

(Ord. No. 1579, Enacted, 08/02/88)

2-13-001-0004 ORGANIZATION:

The Commission shall elect a Chairperson from among its members. The term of the Chairperson shall be one year with eligibility for reelection. Commission members may not serve more than two (2) consecutive terms as Chairperson. The Council representative shall not be eligible for the Chair.

(Ord. No. 1579, Enacted, 08/02/88)

2-13-001-0005 MEETINGS:

A. The Commission shall hold at least one (1) regular meeting per month, which shall at all times be open to the public. The time and place of said meeting shall be posted in accordance with the applicable Arizona State Statutes.

A quorum consisting of a minimum of four (4) voting members shall be required to conduct business.

B. The Chairperson of the Commission shall meet with the Chairpersons of the Economic Development Commission and the Beautification Commission at least once per month. The purpose of the meeting is for coordination of the three (3) commissions only. The intent is not to create another commission. The meeting shall at all times be open to the public. The time and place of said meeting shall be posted in accordance with applicable Arizona State Statutes.

C. If a member is absent for three (3) meetings within a twelve (12) month period, excused or unexcused, that member may be replaced by the City Council. (Ord. No. 1579, Enacted, 08/02/88; Ord. 2001-27, Amended, 11/20/2001; Ord. 2014-28, Amended, 11/18/2014)

2-13-001-0006 DUTIES:

The duties of the Commission shall be to:

A. Prepare a Five (5) Year Master Plan. The Five (5) Year Plan shall be used as a guideline for future programs. Said Plan shall be presented to the Council prior to April 1st of each year.

B. Develop and present to City Council an Annual Plan outlining the Commission’s program recommendations for the upcoming fiscal year. Said plan shall be presented to the Council prior to April 1st of each year.

C. Make recommendations to the City Council concerning the annual budgetary allocation of the tourism portion of the Bed, Board and Booze Tax to include, but not be limited to:

1. Providing funding to the qualified, established public or private agency to administer, on a contract basis, tourism programs as required.

2. Developing and implementing a marketing plan. Major elements of the marketing plan will include, but not be limited to, developing a specific image for Flagstaff, identifying target market segments, and implementing a promotional plan directed to target market segments.

3. Establishing visitor information center(s) to include, but not be limited to, a high profile location, easy visitor access, adequate staffing, a toll-free telephone number for visitor information, and develop other facilities as needed to benefit visitors and the community.

4. Establishing an educational program to include, but not be limited to, scholarships for hospitality education at Northern Arizona University.

5. Promoting activities that enhance the community's image and the overall quality of life.

6. Retaining of appropriate staff to implement approved programs.

D. Perform any additional duties as determined by the City Council related to tourism activities. (Ord. No. 1579, Enacted, 08/02/88; Ord. 2015-22, Amended, 01/05/2016)

6. B.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Fobar, Deputy City Clerk
Date:	01/09/2023
Meeting Date:	01/17/2023

TITLE:

Consideration of Appointments: Planning and Zoning Commission.

STAFF RECOMMENDED ACTION:

Make one appointment to a term expiring December 2025.

Executive Summary:

The Flagstaff City Council vote to allow for more time for staff to accept applications to the Planning and Zoning Commission at the January 3, 2023 meeting and to have an appointment brought forward at the January 07, 2023 meeting. The Planning and Zoning Commission consists of seven citizen members and serves as an advisory board to the Council on matters relating to the growth and physical development of the City. The commission also conducts hearings on amendments to the Zoning Map, tentative subdivision plats, and Development Review Board appeals. There is currently one seat available. It is important to fill vacancies on Boards and Commissions quickly so as to allow the Commission to continue meeting on a regular basis.

There are four applications currently on file, they are as follows:

- James Maloney (new applicant)
- Chris Reed (new applicant)
- Ian Sharp (new applicant)
- Susan Slasor (new applicant)

Staff recommends filling the vacant seat as soon as possible to ensure that a quorum of members will be available to conduct hearings on amendments to the Zoning Map, tentative subdivision plats, and Development Review Board appeals. 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: Vice Mayor Aslan

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:

Inclusive and Engaged Community

- 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:

One appointment was made to the Commission on January 3, 2023.

Options and Alternatives:

1) Appoint one Commissioner; by appointing a Commissioner at this time, the Planning and Zoning Commission will be at full membership.
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 opening by Board members and City staff has occurred, informing others of these vacancies through word of mouth.

Attachments: P&Z Authority

CHAPTER 2-01
PLANNING AND ZONING COMMISSION

SECTIONS:

2-01-001-0001 CREATION OF COMMISSION
2-01-001-0002 INTENT AND PURPOSE
2-01-001-0003 MEMBERSHIP
2-01-001-0004 MEETINGS
2-01-001-0005 DUTIES AND FUNCTIONS

Prior legislation: Ords. 339, 859, 1427, 1826 and 2007-09.

2-01-001-0001 CREATION OF COMMISSION

There is hereby established a Planning and Zoning Commission for the City of Flagstaff under the provisions of A.R.S. § 9-461.02. (Ord. 339, 10-8-45; Ord. 2010-35, Amended, 11/16/2010)

2-01-001-0002 INTENT AND PURPOSE

The purpose of the Planning and Zoning Commission is to direct the growth and physical development of the City in a sound and orderly fashion for the prosperity, health, safety, convenience, and general welfare of the citizens of Flagstaff. (Ord. 2010-35, 11/16/2010)

2-01-001-0003 MEMBERSHIP

The Planning and Zoning Commission shall consist of seven (7) members appointed by the Mayor and Council.

The term of each citizen member shall be three (3) years or until his successor takes office. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired portion of the term.

A. A Chairperson and Vice-Chairperson shall be elected from and by the voting membership of the Commission to serve one (1) year terms. A Chairperson may serve no more than two (2) 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.

B. In addition to the causes for removal set out in the Board and Commission Members' Rules and Operations Manual, a member accumulating eight (8) absences from regularly scheduled meetings in any given calendar year will be automatically removed from the Commission and a replacement appointed by the City Council. An unexcused absence is defined as the failure of the member to notify the Planning and Development Services Section of his or her inability to attend a regularly scheduled meeting. (Ord. 2010-35, 11/16/2010; Ord. 2014-28, Amended, 11/18/2014)

2-01-001-0004 MEETINGS

Unless there are no matters to be considered, the Commission shall hold at least one meeting each month and may schedule additional special meetings as needed. A special meeting may serve as the minimum one meeting per month. (Ord. 2010-35, 11/16/2010)

2-01-001-0005 DUTIES AND FUNCTIONS

The Planning and Zoning Commission created in this chapter shall be and act as the Zoning Commission of the City, and all duties and powers granted to zoning commissions under State law shall be exercised by the Planning and Zoning Commission. In addition to any authority granted to the Planning and Zoning Commission by State law or other ordinances of the City, the Planning and Zoning Commission shall have the following duties and functions under the provisions of these regulations:

A. To review and recommend to the City Council adoption of a comprehensive general plan adopted in compliance with the authority provided in A.R.S. Section 9-461.05 for the orderly growth and development of the City and for any land outside the City which, in the opinion of the Planning and Zoning Commission, bears a relation to the planning of the City.

B. To hear, review, and make recommendations to the City Council regarding applications for amendments to the General Plan or any other plan in accordance with the provisions of Chapter 11-10 (General Plans).

C. To serve as an advisory body to the City Council and furnish the Council through the Planning Director the facts concerning the adoption of any report or recommendation.

D. To make its special knowledge and expertise available upon reasonable written request and authorization of the City Council to any official, department, board, commission or agency of the State or Federal governments.

E. To hear and review amendments to the Zoning Map and to the text of the Zoning Code in accordance with the provisions of Title 10, Zoning Code, Division 10-20.50 (Amendments to the Zoning Code Text and the Zoning Map).

F. To confer with and advise other similar City or County commissions.

G. To make investigations, maps, reports, and recommendations to the City Council in regard to the physical development of the City.

H. To hear, review and make recommendations to the City Council regarding preliminary subdivision plats after recommendation from the Planning Director and City Engineer in accordance with Chapter 11-20, Subdivision and Land Split Regulations.

I. To take such other action as authorized in Title 10 (Zoning Code) and Title 11 (General Plan and Subdivisions) as necessary to implement the provisions of those titles and the General Plan.

J. To consider, review and approve Conditional Use Permits, pursuant to the provisions of Section 10-

20.40.050 (Conditional Use Permits).

K. The Commission shall carry out other such duties as determined by the City Council and present other recommendations the City Council deems pertinent. (Ord. 859, 10-24-72; Ord. 2010-35, Amended, 11/16/2010; Ord. 2014-28, Amended, 11/18/2014)

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Fobar, Deputy City Clerk
Date:	01/12/2023
Meeting Date:	01/17/2023

TITLE:

Consideration and Action on Liquor License Application: Jeffrey Craig Miller, "B66 Brunch Brew BBQ," 409 S. San Francisco St., Series 12 (restaurant), New License.

STAFF RECOMMENDED ACTION:

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

The City Council has the option to:
(1) Forward the application to the State with a recommendation for approval;
(2) Forward the application to the State with 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. B66 Brunch, Brew, BBQ is a new business in Flagstaff and will be operating under an interim license soon. If approved, it will be the 90th 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 January 20, 2023.

Community Benefits and Considerations:

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

Community Involvement:

The application was properly posted on December 27, 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

1/3/2023

Jeffrey Craig Miller
PO Box 2502
Chandler, AZ 85244

Dear Mr. Miller,

Your application for a Series 12 Liquor License for B66 Brunch Brew BBQ located at 409 S. San Francisco, Flagstaff, AZ was posted on December 27, 2022. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, January 17, 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. 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 January 16, 2023, 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 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.

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

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.

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 #22-101

TO: **Chief Musselman**

FROM: **Sgt. Kevin Sapp**

DATE: **December 19, 2022**

RE: **New Application –Series 12 Liquor License Application– B66 Brunch Brew BBQ**

On December 19, 2022, I initiated an investigation into the new application for a series 12 (Restaurant) liquor license filed by Jeffrey Miller (Agent) and Donald Hulen (Controlling Person). This is a new application, and the application number is 219277. It is for B66 Brunch Brew BBQ located at 409 S San Francisco Street, Flagstaff, AZ.

I conducted a query through local systems and public access on Jeffrey and Donald. I 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 remotely for the council meeting on January 17, 2023.

Planning and Development Services Memorandum

To: Stacy Fobar, Deputy City Clerk

From: Reggie Eccleston, Code Compliance Manager

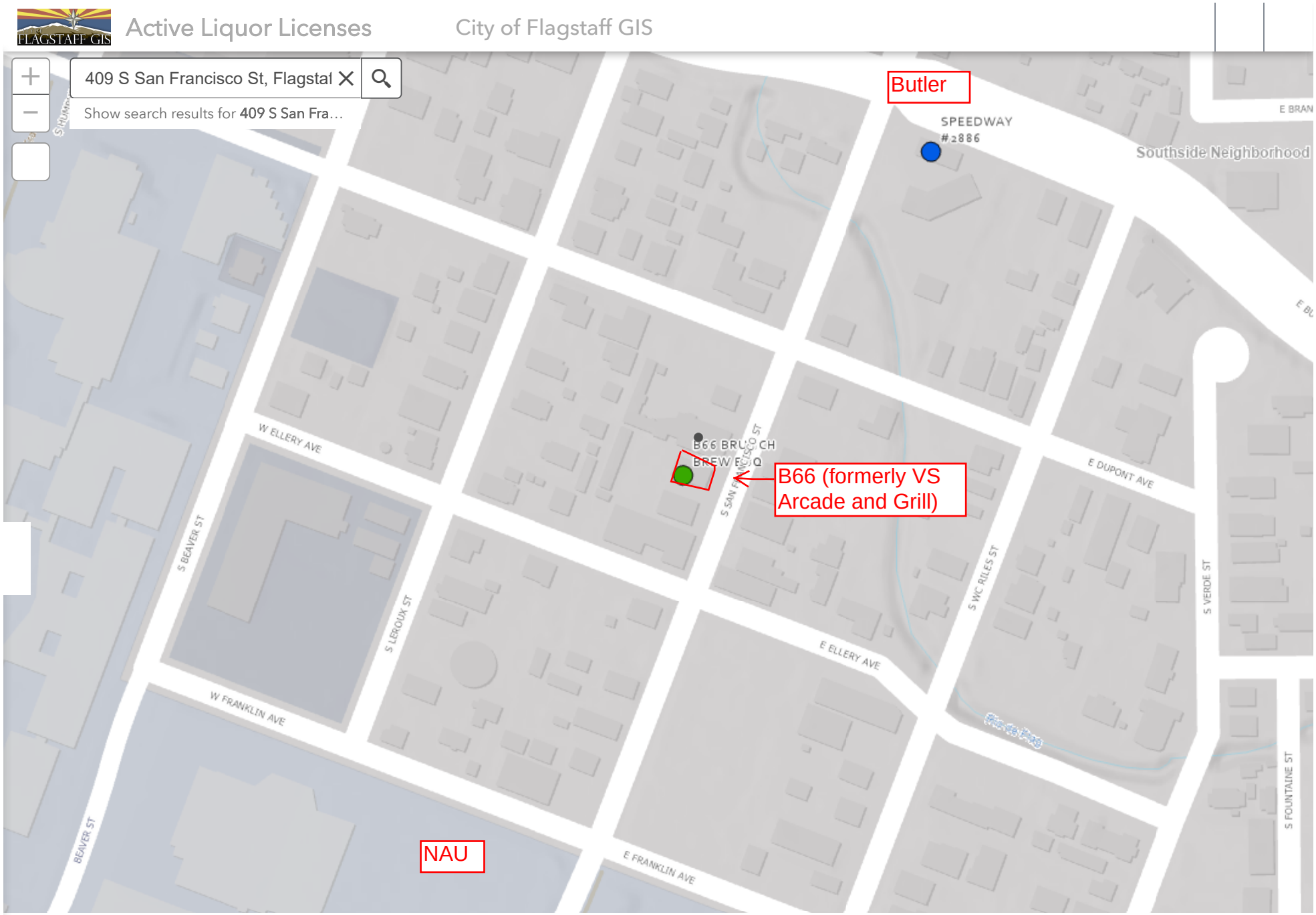
CC: Michelle McNulty, Planning Director

Date: December 19, 2022

Re: Application for Liquor License #219277
409 S San Francisco Street, Flagstaff, AZ 86001
Assessor's Parcel Number 103-15-025
Jeffrey Craig Miller behalf of B66 Brunch Brew BBQ

This application is a request for a new Series 12 Restaurant liquor license by Jeffrey Craig Miller on behalf of B66 Brunch Brew BBQ. This business is located within the Community 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
409 S San Francisco St, Flagstaf
Show search results for 409 S San Fra…
Butler
SPEEDWAY
#2886
Southside Neighborhood
B66 (formerly VS Arcade and Grill)
NAU
W ELLERY AVE
S BEAVER ST
S LEROUX ST
S SAN FRANCISCO ST
E DUPONT AVE
S WC RILES ST
S VERDE ST
E ELLERY AVE
W FRANKLIN AVE
BEAVER ST
E FRANKLIN AVE
S FOUNTAINE ST

8. A.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: David Pedersen, Capital Improvements Project Manager

Co-Submitter: Stacey Brechler-Knaggs

Date: 01/12/2023

Meeting Date: 01/17/2023

TITLE:

Consideration and Approval of the Design-Build Agreement: Design-Build Services Agreement with Hunter Contracting Co. for the Inner Basin Waterline Restoration Project and a Design Phase Services GMP1 in the amount of $189,694.00.

STAFF RECOMMENDED ACTION:

1. Approve Design-Build Services Agreement with Hunter Contracting Co.;
2. Approve the Design Phase Services GMP1 with Hunter Contracting Co. in the amount of $189,694.00 and a contract duration of 150-calendar days; and
3. Authorize the City Manager to execute the necessary documents.

Executive Summary:

The Pipeline Fire (June 2022) burned 26,532 acres, including portions of the Schultz Creek and Chimney watersheds. The post-fire flooding impacted the City of Flagstaff during the 2022 monsoon season, and caused catastrophic damage, including damage to the City's Inner Basin pipeline and Waterline Road. The City needs to repair the waterline and corresponding roadway to have it operational by the fall of 2023. This Design Phase Services work will allow the Project to move forward to construction to mitigate the immediate threat to the health of citizens resulting from the instability of water supply spring water from the Inner Basin. Overall, Inner Basin water can account for 20% of Flagstaff's daily potable water demand during peak consumption weeks of summer. This critical water supply also provides water for fire-fighting operations. Repair and reinforcement of the Inner Basin pipeline, along with repair of both Waterline and Schultz Pass roads, are urgently needed to ensure the health and safety of the community.

The Design Phase Services GMP1 will allow Hunter Contracting Co. to begin design phase services for the Inner Basin Waterline Restoration Project. GMP 2 is anticipated to come before Council for consideration in spring of 2023. GMP2 will provide funding to complete the design portion of the project. GMP 2 will cover the costs of design from 30% through final design. Along with aerial imagery which can only be flown when the snowpack has melted off.

Financial Impact:

The funding for the Inner Basin Waterline Restoration Project is being funding initially by account 202-08-370-3519-0-4421 in Water Services for the engineering design. At this time the initial estimate is approximately $10 million; however, this number will be further refined as part of GMP 1 when a 30-percent engineer's opinion of probable construction cost is developed.

Funding sources for this Project may come from the U.S. Department of Homeland Security, Federal Emergency Management Agency, Arizona Department of Emergency Management and/or Military Affairs, Arizona Department of Forestry and Fire Management.

Policy Impact:

No Impact

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

Carbon Neutrality Strategies

Water Security (WS-1) – Improve water infrastructure and expand water reuse.
Water Security (WS-2) – Improve ecosystem management for protection of water resources.
Healthy Forests and Open Spaces (HF-2) – Restore and maintain the natural fire-adapted structure and pattern of the forests of the greater Flagstaff region through collaboration with partners.
Health and Safety (HS-4) – Improve the resilience of public infrastructure and City facilities.

Priority-Based Budgeting Priorities and Objectives

Safe and Healthy Community – Ensure the built environment is safe through the use of consistent standards, rules and regulations, and land use practices
Sustainable, Innovative Infrastructure – Deliver outstanding services to residents through a healthy, well-maintained infrastructure system

Regional Plan – Goal E&C.7 – Environmentally Sensitive Lands Goals and Policies

Give special consideration to environmentally sensitive lands in the development design and review process

Regional Plan – Goal WR.5 – Stormwater and Watershed Management Goals and Policies

Manage watersheds and stormwater to address flooding concerns, water quality, environmental protections, and rainwater harvesting.

Regional Plan – Goal WR.3 – Water Demand Goals and Policies

Satisfy current and future human water demands and the needs of the natural environment through sustainable and renewable water resources and strategic conservation measures.

Team Flagstaff Strategic Plan – Priority 3

Deliver outstanding services through a healthy environment, resources, and infrastructure

Has There Been Previous Council Decision on This:

This is the second time this item has been discussed before City Council. The Inner Basin Waterline Restoration Project was presented by Staff and US Forest Service personnel on January 10, 2023 with project details.

Options and Alternatives:

1. Approve Design-Build Services Agreement with Hunter Contracting Co. and approve the Design Phase Services GMP1 with Hunter Contracting Co. in the amount of $189,694.00 and a contract duration of 150-calendar days; or
2. Reject approval of the award as recommended. This action would delay or cancel the Project.

Background/History:

The Pipeline Fire was reported on June 12, 2022, approximately 6 miles north of Flagstaff within the Coconino National Forest. The fire 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.

The post-fire flooding impacted the City of Flagstaff during the 2022 monsoon season, and caused catastrophic damage, including damage to the city's Inner Basin pipeline and Waterline Road. The City needs to repair the waterline and corresponding roadway to have it ready for use by the fall of 2023. City Staff and partnering stakeholders feel there is an immediate threat to the health of citizens resulting from the instability of water supply. Spring water from the Inner Basin can peak as high as 2 million gallons per day (MGD) in summer months. Well water from the three wells (IB9, IB11 & IB14) in the Inner Basin has a similar peak capacity of about 2MGD. The design capacity of the North Reservoir Filtration Plant (NRFP), where Inner Basin water is treated, is 4MGD. Overall, Inner Basin water can account for at least 20% of Flagstaff's daily potable water demand during peak consumption weeks of summer. In summary, spring and well water from the Inner Basin, flowing through the Inner Basin waterline and within both the Waterline and Schultz Pass roads is a significant supply of both potable water to the residents in and around Flagstaff, as well as fire-fighting purposes. Repair and reinforcement of the Inner Basin pipeline, along with repair of both Waterline and Schultz Pass roads, are urgently needed to ensure the health and safety of the community.

The City estimates, based on experience, that awarding a contract using a sealed bidding process would require at least 90+ days, and the City's Engineering Division estimates the repair work would last another 60+ days. This would likely extend the Project beyond fall of 2023, further delaying access to this critical water supply. Due to the urgent and critical nature to repair the line and time being of the essence, Purchasing has determined this to be an Emergency Procurement. Rather than conducting a sealed bidding process and due to the exigent situation, the City – in compliance with State and local law – sourced the Design-Build Team that we previously contracted with, through a competitive public procurement process, for repair of the Inner Basin pipeline that resulted from the 2010 Schultz Fire.

The City seeks to enter into a contract with the Design-Build team of Hunter Contracting, Co. to design and repair the Inner Basin pipeline and roadway and will issue several Guaranteed Maximum Price (GMPs) for the cost of design and construction.

Key Considerations:

The scope of this proposed project includes the engineering design, project management, contracting, and environmental clearance work necessary to prepare for construction. The work will focus on repair and rebuilding both Waterline Road and Inner Basin pipeline at flood-impacted points where drainages cross Waterline Road. Construction will involve replacing flood-impacted sections of ductile iron and concrete pipe with ductile iron pipe. Design, contracting, environmental clearance, and project management costs will be approximately $2 million. Construction costs are initially estimated at $8 million.

Several points have been mapped where drainage channels cross Waterline Road (see attached map). Mitigation measures have been prioritized for these points. Points 1 through 28 were initially impacted by

the Schultz Fire (2010) and were addressed by earlier mitigation measures. Some of these points were further impacted by the Pipeline Fire (2022). Points A through L were affected by the Pipeline Fire. Proposed mitigation sites include points 7, 9, 17A, 32, and I. Point I is the most heavily impacted site and includes a break in the ductile iron pipe.

The intention of the proposed design work is to stabilize the drainages and Waterline Road cross-sections to reduce incision, erosion, and sediment deposition. By stabilizing the drainage crossings and roadway and strengthening the pipeline, the team will protect the reliability of both a significant portion of the City's water supply and a critical interagency roadway used to service this infrastructure and to access the Inner Basin of the San Francisco Peaks. Much of the roadway and pipeline infrastructure that was damaged by post-Schultz Fire flooding has been repaired and remains greatly intact. However, some of these previous repairs must be modified to accommodate the larger burn-impacted drainage areas caused the Pipeline Fire. The Project will right-size and improve the integrity of the existing flood mitigation infrastructure (at points 7, 9, and 17A). The project will also add mitigation structures north and south of the existing post-Schultz Fire structures (at points 32 and I) to include impacted drainages from the Pipeline Fire.

The level of protection will be calculated by design engineers to encompass the newly burned watersheds and a determined storm event. The design will ensure critical protection of Waterline Road and the Inner Basin Water Pipeline.

The desired outcome is to ensure a reliable conveyance of well and spring water to the City of Flagstaff without any compromise to our water supply. Outcomes would also include a passable, stable road with drainage crossings that can safely and effectively pass water and debris while not compromising infrastructure integrity. Although the roadway will require some ongoing maintenance in terms of clearing debris from the road surface, this maintenance would not involve more construction or repairs.

The mitigation methods for the infrastructure system repair would be the creation of structures that are anchored and secured to protect the integrity of the road and waterline. Improvements will not stop the passage of water or debris, but rather they will allow the passage of water and debris while the watershed is in the process of being restored. By creating sound structures and systems, the road and new waterline will be able to function effectively and reliably even during flood events.

Community Benefits and Considerations:

- Repairs to allow for continued use of critical, summertime, water supply
- Repairs to allow for water supply for fire-fighting operations
- When US Forest Service forest closure restrictions lift, use of Waterline Road for recreational, non-vehicular, use

Community Involvement:

- Project plans were shared at the January 10, 2023 City Council meeting
- City Staff has worked with US Forest Service, AZDEMA, Coconino County to share project details and obtain permits and clearances during the pre-design phase
- Time-sensitive, emergency project

Expanded Options and Alternatives:

1. Approve the award for the Contract as recommended. Approval will allow work to proceed; or,
2. Reject approval of the award as recommended. This action would delay the Project.
    a. If rejection occurs, possible options include:
        i. Ask staff to re-evaluate the recommendation; or
        ii. Suspend or cancel the Project completely

Attachments: Design-Build Agreement
Project Extent Map
Exhibit C - Fee Schedule
Exhibit E - Grant Provisions

HUNTER CONTRACTING CO.

CITY OF FLAGSTAFF
PIPELINE WEST POST-FIRE FLOODING
INNER BASIN WATERLINE PROJECT

PROJECT NUMBER: 3519/PSPipline

AZ Department of Emergency Management
and Military Affairs (AZDEMA)
Declaration #SD2302

CONTRACT NO.: 2023-74

DESIGN-BUILD SERVICES AGREEMENT

Mayor
Becky Daggett

Council

Austin Aslan
Deborah Harris
Khara House
Lori Matthews
Jim McCarthy
Miranda Sweet

City Manager
Greg Clifton

Interim Utilities Director
Brad Hill

Community Development Director
Dan Folke

Interim Public Works Director
Scott Overton

City Engineer
Paul A. Mood

TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS 1

ARTICLE 2 - DESIGN-BUILDER'S SERVICES AND RESPONSIBILITIES 5

ARTICLE 3 - CITY'S SERVICES AND RESPONSIBILITIES 18

ARTICLE 4 - CONTRACT TIME 21

ARTICLE 5 - CONTRACT PRICE 23

ARTICLE 6 - CHANGES TO CONTRACT PRICE AND TIME 26

ARTICLE 7 - PROCEDURE FOR PAYMENT 29

ARTICLE 8 - CLAIMS AND DISPUTES 32

ARTICLE 9 - SUSPENSION AND TERMINATION 34

ARTICLE 10 - INSURANCE AND BONDS 36

ARTICLE 11 - INDEMNIFICATION 40

ARTICLE 12 - GENERAL PROVISIONS 41

EXHIBIT A - PROJECT DESCRIPTION 47

EXHIBIT B - SCOPE OF SERVICES 48

EXHIBIT C - FEE SCHEDULE (Attached)

EXHIBIT D - MONTHLY ANTICIPATED ADVERSE WEATHER DAYS 50

EXHIBIT E - GRANT PROVISIONS (Attached)

CITY OF FLAGSTAFF
PIPELINE WEST POST-FIRE FLOODING
INNER BASIN WATERLINE

DESIGN-BUILD SERVICES AGREEMENT
PROJECT NO. 3519/PSPIPLINE

CONTRACT NO. 2023-74

THIS AGREEMENT, made and entered by and between the CITY OF FLAGSTAFF, an Arizona municipal corporation, hereinafter designated the "CITY" and HUNTER CONTRACTING CO., an Arizona corporation, hereinafter designated the "DESIGN-BUILDER."

RECITALS

A. The City Manager of the City of Flagstaff, Arizona, is authorized and empowered by Article VIII, Section 2 of the City Charter to execute contracts for professional services and construction services.

B. The City intends to construct the **City of Flagstaff Pipeline West Post-Fire Flooding - Inner Basin Waterline** as more fully described in *Exhibit A* attached hereto ("Project).

C. The City anticipates receiving grant funding from the U.S. Department of Homeland Security, Federal Emergency Management Agency and Arizona Department of Emergency Management and Military Affairs.

D. The Design-Builder has represented to the City its ability to design and construct the Project in compliance with the state and federal grant requirements, and based on this representation the City has engaged Hunter Contracting Co., to design and construct the Project.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and Design-Builder as follows:

ARTICLE 1 - DEFINITIONS

"Addenda" written or graphic instruments issued prior to the submittal of the GMP proposal(s), which clarify, correct or change the GMP proposal(s) requirements.

"Agreement" or "Contract" means this written document signed by the City and Design-Builder covering the design and construction of the Project, and including other documents itemized and referenced in or attached to and made part of this Agreement. This term shall also include all Attachments and Exhibits, and all Appendices.

"Change Order" (Amendment) means a written instrument issued after execution of this Agreement signed by the City and Design-Builder, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; the extent of the adjustment to the Contract Time(s) or modifications of other contract terms.

"City" (Owner) means the City of Flagstaff, a municipal corporation, with whom Design-Builder has entered into this Agreement and for whom the services are to be provided pursuant to said Agreement. Regulatory activities handled by the City of Flagstaff Community Development Department, Utilities Department or any other City Department are not subject to the responsibilities of the City under this Agreement.

"City's Representative" means the person designated in this Agreement.

"City's Senior Representative" means the person designated in this Agreement.

"Commissioning" means the process prescribed in section 2.21 for achieving, validating and documenting the performance of the total Project and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Design-Build team and include documents as prescribed in this Agreement.

"Construction Drawings" means the detailed drawings, corrected for permit requirements, approved as part of the Construction Documents.

"Construction Fee" means the Design-Builder's administrative costs, home office overhead, and profit.

"Contract Documents" means the following items and documents in descending order of precedence executed by the City and the Design-Builder: (i) all written modifications, amendments and Change Orders (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) Design-Builder's GMP proposal

"Contract Price" means the amount or amounts set forth in this Agreement, subject to adjustment in accordance with this Agreement.

"Contract Time" means the period of time, as set forth in this Agreement, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

"Cost of the Work" means the direct costs necessarily incurred by the Design-Builder in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees (if not paid for by City), materials testing, and related items. The Cost of the Work shall not include the Design-Builder's Construction Fee, General Conditions Costs, or taxes.

"Critical Path" means the sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will extend the Substantial Completion date.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Design-Builder in performing the scope of work described in this Agreement. Some of the major Deliverables to be prepared and provided by the Design-Builder during the design phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP proposals, Subcontractor procurement plan, Statement of Proposed MBE/WBE Utilization as may be required or appropriate, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Agreement or required by the Project Team.

"Design Services" means all professional services to be performed or procured by the Design-Builder to provide required Project design under this Agreement and any subsequent amendments.

“Design-Builder” means the firm, corporation, or other approved legal entity with whom the City has entered into this Agreement to provide services as detailed in this Agreement.

"Design-Builder’s Contingency” means a fund to cover cost growth during the Project used at the discretion of the Design-Builder, usually for costs that result from Project circumstances. The amount of the Design-Builder’s Contingency will be negotiated as a separate line item in each GMP package. Use and management of the Design-Builder’s Contingency is described in this Agreement.

"Design-Builder’s Senior Representative" means the person designated in this Agreement.

“Design-Builder’s Representative” means the person designated in this Agreement.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ or are not reasonably inferable from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Fee Schedule” means fees associated with the performance of the Design Phase Services, in the amount set forth to properly complete the Project in accordance with this Agreement.

“Final Completion” means the completion of the Project as prescribed in this Agreement.

”Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“General Conditions Costs” includes, but is not limited to the following types of costs for Design-Builder during the construction phase: (i) payroll costs for project manager or construction manager for work conducted at the Site; (ii) payroll costs for the superintendent and full-time general foremen; (iii) payroll costs for other management personnel resident and working at the Site; (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.); (v) administrative office personnel; (vi) costs of offices and temporary facilities set up solely for this Project including office materials, office supplies, office equipment, and minor expenses; (vii) utilities, fuel, sanitary facilities and telephone services at the Site; (viii) costs of liability and other applicable insurance premiums not included in labor burdens for direct labor costs; (ix) costs of bond premiums; and (x) cost of consultants not in the direct employ of Design-Builder or Subcontractors.

“Guaranteed Maximum Price” or “GMP” means the sum of the cost for design, permitting and maximum cost of the construction including Design-Builder’s Construction Fee, General Conditions Costs; sales tax, and Design-Builders Contingency.

“GMP Plans and Specifications” means the plans and specifications upon which the Guaranteed Maximum Price proposal is based.

“Grant Provisions” means the contractual requirements of the U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA) and Arizona Department of Emergency Management and Military Affairs (ADEMA) – FEMA/ADEMA Public Assistance Grant: SD#2302 – Project Number: 3519/PSPipline.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project, Site or Work.

“Notice to Proceed” or “NTP” means the directive issued by the City authorizing Design-Builder to start Work.

"Owner's Contingency" means a fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from the City's directed changes or Differing Site Conditions, or as the City may otherwise elect. The amount of the Owner's Contingency will be set solely by the City and will be in addition to the Project costs included in Design-Builder's GMP packages. Use and management of the Owner's Contingency is described in this Agreement.

"Payment Request" means the City form used by the Design-Builder to request payment for Work in accordance with this Agreement.

"Performance Period" means the period of time allotted in the Contract Documents to complete the construction comprised within a GMP. The Performance Period shall be stated with each GMP and shown on the Project Schedule.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Design-Builder to illustrate materials or equipment for some portion of the construction.

"Project" means the Work to be completed in the execution of this Agreement and as amended and as described in the Recital above and in ***Exhibit A***.

"Project Schedule" means a schedule as prescribed in this Agreement.

"Record Documents" means the documents created pursuant to this Agreement.

"Recovery Schedule" means a schedule created pursuant to this Agreement, which clearly and realistically identifies adjustments proposed to bring the Project back to the initial project Substantial Completion date.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the construction will be judged.

"Scheduled Substantial Completion Date" means the date on which the Work, or an agreed upon portion of the Work, is anticipated to be sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes.

"Schedule of Values (SOV)" means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Project Schedule depending on if the Project Schedule is cost-loaded or not.

"Shop Drawings" means drawings, diagrams, schedules and other data specially prepared for the construction by the Design-Builder or a Subcontractor, Sub-subcontractor, manufacturer, Supplier or distributor to illustrate some portion of the construction.

"Site" means the land or premises on which the Project is located.

"Subcontractor" or "Subconsultant*"* means an individual or firm having a direct contract with the Design-Builder or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the Work for which the Design-Builder is responsible.

"Substantial Completion" means the established date when the Work or designated portion thereof is sufficiently complete, in accordance with the Contract Documents so that the City may occupy the Work, or designated portion thereof, for the use for which it is intended. This may include, but is not limited to: (i) Approval by the City or State Fire Marshall and/or other state or local authorities having jurisdiction over the Work or a portion thereof (Certificate of Occupancy); (ii) all systems in place, functional, and displayed to, and accepted by, the City or it's representative; (iii) City operation and maintenance training complete; (iv) HVAC

test and balance completed with reports provided to the Design Professional for review; (v) Operational and Maintenance manuals and final Project Record Documents delivered to the City or Design Professional for review; (vi) landscaping and site work complete; and (vii) final cleaning complete.

"Supplier" means a manufacturer, fabricator, supplier, distributor, material manager or vendor having a direct contract with Design-Builder or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by Design-Builder or any Subcontractor.

"Work" means all design, construction, and Commissioning services, including procuring and furnishing materials, equipment, services, and labor reasonably inferable from the Contract Documents

ARTICLE 2 – DESIGN-BUILDER'S SERVICES AND RESPONSIBILITIES

2.0 The following sections prescribe the services and responsibilities required for the proper execution and completion of the Work by the Design-Builder. They are not organized in any specific order and may pertain to all phases of the Work.

2.1 General Services

2.1.1 Design-Builder shall, through personnel employed by Design-Builder, or procured from qualified Subconsultants or Subcontractors, perform all Work, and provide all material, equipment, tools and labor necessary to complete the Work described in and reasonably inferable from this Agreement.

2.1.1.1 This Agreement shall be executed and signed by City and Design-Builder, stating their agreement to proceed with design in accordance with all codes, standards and requirements as adopted by ordinance or as may be referenced in the Scope of Services attached as *Exhibit B*.

2.1.1.2 An amendment to this Agreement may be executed and signed by City and Design-Builder, stating their agreement to a GMP, or multiple GMP's, and to proceed with the completion of the design and construction of the Project.

2.1.2 The City hereby acknowledges its acceptance of the key personnel of the design-build team as submitted by the Design-Builder or as amended subsequently during the selection process. At any time hereafter that the Design-Builder desires to reassign or change key personnel while performing under this Agreement, the Design-Builder shall submit a request to reassign or change key personnel and the qualifications of the proposed new key personnel to the City for prior approval.

2.1.3 The Design-Builder will maintain an adequate and competent staff of qualified persons, as may be determined by the City, throughout the performance of this Agreement. If the City objects, with reasonable cause, to any of the Design-Builder's design professionals, the Design-Builder shall take prompt corrective action acceptable to the City and, if required, remove such persons from the Project and replace with new design professionals agreed to by the City.

2.1.4 Design-Builder's Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with City and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced as described in this Agreement.

2.1.5 The parties will meet within seven (7) Days after execution of this Agreement to discuss issues affecting the administration of the Work, the Project Schedule, and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under this Agreement. The NTP date prescribed in this Agreement will be established.

2.2 Professional Services

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed design consultants, the necessary Design Services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. The Design-Builder's design professionals shall seal with an Arizona registered professional seal all plans, works, and Deliverables prepared by them for this Agreement as required by state law.

2.2.2 The Design-Builder understands and agrees that the City's Senior City Representative or City Representative, shall be the sole contacts for administering this Agreement. The Design-Builder is not precluded from discussing the Project, or its requirements with the tenants or other entities which will ultimately use the facility, but all specific directions to or requests of the Design-Builder must be authorized by the Senior City Representative or the City Representative.

2.3 Standard of Care for Design Professional Services and Corrections

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the services, which standards are to be set forth in an exhibit to this Agreement entitled "Performance Standard Requirements," the design professional services shall be performed to achieve such standards.

2.3.2 The Design-Builder shall be responsible for the completeness and accuracy of the plans, specifications, supporting data, and other work prepared or compiled under its obligation for this Project and shall correct, at its expense, all errors, omissions and negligent acts therein which may be discovered. Correction of errors, omissions and negligent acts discovered on architectural or engineering plans and specifications shall be the responsibility of the Design-Builder. The cost of the design necessary to correct those errors attributable to the Design-Builder shall not be reimbursable costs to the Design-Builder. Any damage incurred by the City as a result of additional construction cost caused by such errors, omissions or negligent acts shall not be reimbursed to the Design-Builder to the extent that such errors, omissions and negligent acts fall below the standard of care and skill that a registered professional in Arizona would exercise under similar conditions. The fact that the City has accepted or approved the Design-Builder's product shall in no way relieve the Design-Builder of any of its responsibilities.

2.4 Project Schedule

2.4.1 The Project Schedule shall be established within seven (7) Days of the NTP and, updated and maintained throughout the Work. An updated Project Schedule shall be part of any GMP amendment.

2.4.2 The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents.

2.4.3 An updated Project Schedule shall be submitted monthly to the City five (5) working Days prior to the Design-Builder's monthly Payment Request as prescribed in this Agreement.

2.4.3.1 Design-Builder shall provide City with a monthly status report with each Project Schedule detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, and (iii) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price(s) and within the Contract Time(s).

2.4.3.2 With each Project Schedule submitted, the Design-Builder shall include a transmittal letter including the following.

- Description of problem tasks (referenced to field instructions, requests for information (RFIs), change order or claim numbers) as appropriate.
- Current and anticipated delays not resolved by approved change order, including:
  - Cause of the delay
  - Corrective action and schedule adjustments to correct the delay
  - Known or potential impact of the delay on other activities, milestones, and the date of Substantial Completion
  - Changes in construction sequence
- Pending items and status thereof including but not limited to:
  - Pending change orders
  - Time extension requests
  - Other items
- Substantial Completion date status:
  - If ahead of schedule, the number of Days ahead
  - If behind schedule, the number of Days behind
- Other Project or scheduling concerns

2.4.4 City's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the Design-Builder from compliance with the requirements of the Contract Documents or be construed as relieving the Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.4.4.1 Upon the City's request, the Design-Builder shall participate in the review of the Design-Builder's Project Schedule submissions. The City may request the participation of Subconsultants and/or Subcontractors in these reviews, as determined necessary by the City.

2.4.5 The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the path of critical activities.

2.4.5.1 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates, and total Float times for all activities except critical activities. The CMP diagram shall be presented in a time scaled graphical format for the Project as a whole.

2.4.5.2 The CPM diagram schedule shall indicate all relationships between activities.

2.4.5.3 The activities making up the schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

2.4.5.4 The CPM diagram construction schedule shall be based upon activities, which would coincide with the Schedule of Values.

2.4.5.5 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.

2.4.5.6 The schedule shall show milestones, including milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture when those activities are interrelated with the Design-Builder's activities.

2.4.5.7 The schedule shall include a Critical Path activity that reflects anticipated weather delay during the performance of the Agreement. The duration shall reflect the average climatic range and usual industrial Conditions prevailing in the locality of the Site. Weather data shall be based on the information set forth on the City of Flagstaff's Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto.

2.4.5.8 The Project Schedule shall consider the City's occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.

2.4.5.9 In the event of significant delays, lags or changes in the planned sequence of activities, as determined by Owner, Contractor shall provide to Owner a Recovery Schedule indicating proposed rescheduling of activities to achieve completion of the Project by the Scheduled Substantial Completion Date.

2.4.6 Float time shall be as prescribed below:

2.4.6.1 The total Float within the overall schedule, is not for the exclusive use of either the City or the Design-Builder, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Agreement milestones and the Project completion date.

2.4.6.2 The Design-Builder shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date, and then only if such extensions or damages are shown to be justified under the Contract Documents.

2.4.6.3 Since Float time within the construction schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., Critical Path submittals returned in less time than allowed by this Agreement, approval of substitution requests and credit changes which result in a savings of time to the Design-Builder, etc.). In such an event, the Design-Builder shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

2.5 Cost Estimates

2.5.1 The Project budget available for the Work will be communicated to the Design-Builder through separate correspondence. The Design-Builder is responsible for the delivery of the Project covered by the Contract Documents within the Project budget.

2.5.2 With each Project Schedule submittal pursuant to this Agreement, the Design-Builder shall provide a detailed cost estimate and a written review of the documents.

2.8.1.4 If any estimate submitted to the City exceeds previously accepted estimates or the City's Project budget, the Design-Builder shall make at its sole expense appropriate recommendations on methods and materials to the City that it believes will bring the Project back into the Project budget.

2.5.2.2 In between these milestone estimates, the Design-Builder shall periodically provide a tracking report which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of the Design-Builder to keep the City informed as to the major trend changes in costs relative to the City's budget.

2.8.1.5 If requested by the City, the Design-Builder shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the City in the financing process.

2.8.1.6 **Not Used**

2.8.1.7 **Construction Management Plan**

2.8.1.8 The Design-Builder will prepare a Construction Management Plan (CMP).

2.7.2 The CMP shall include:

- Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project,
- Investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities,
- Alternate strategies for fast-tracking and/or phasing the construction,
- Goal compliance strategy,
- The number of separate sub-agreements to be awarded to Subcontractors and Suppliers for the Project construction,
- Permitting strategy,
- Safety and training programs,
- Construction quality control,
- Commissioning program,
- Cost estimate and basis of the model, and
- Matrix summarizing each Project Team member's responsibilities and roles.

2.7.3 The Design-Builder shall add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of construction.

2.8.1.9 **Design Services**

2.8.1.10 Design-Builder shall provide all interim design submissions and Deliverables as prescribed in the Performance Standards Requirements provided by the City, and as shown on the Project Schedule.

2.8.1.1 Within seven (7) Days after a scheduled submission, the Design-Builder and City shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or previously submitted design submissions.

2.8.1.11 The Design-Builder, with each required submittal, shall submit and distribute ten, or as otherwise identified in the Performance Standards Requirements, hard copy sets of plans and specifications.

2.8.1.12 Minutes of the meetings will be maintained by Design-Builder and provided within five Days following the design review meeting to all attendees for review.

2.8.1.13 The City shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's City approved Project Schedule.

2.8.1.14 Design-Builder shall not cause the design to proceed until City approves the interim design submissions as prescribed in this section. If the Design-Builder allows the design to proceed without City approval, the cost of any resultant redesign is not a reimbursable cost.

2.8.1.15 City's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Project. Neither City's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability to the City.

2.8.2 The Project design must meet all applicable (i) Maricopa Association of Governments (MAG) Uniform Standard Technical Specifications and Uniform Standard Details and Drawings, latest revision; (ii) the City of Flagstaff Supplements and Amendments to the latest revision of the MAG Uniform Standard Technical Specifications and Uniform Details and Drawings; (iii) the City of Flagstaff Engineering Design and Construction Standards and Specifications, latest edition; (iv) all City building standards; and (v) shall include any general provisions provided by the City.

2.8.3 The Project design criteria and specifications shall be in accordance with all codes, standards and requirements as adopted by ordinance or as may be referenced in the this Agreement. Variances from the standards and guidelines must be identified in writing by the Design-Builder and approved by the City. The Design Builder shall identify conflicts between the design standards and guidelines and the requirements in this Agreement or Legal Requirements and shall obtain concurrence with resolution of the conflict. The design standards and guidelines or approval of variances or resolution of conflicts shall not be deemed to transfer any design liability to the City.

2.8.4 The Design-Builder shall not specify any construction materials known to be hazardous or potentially hazardous, including asbestos, lead or any derivative thereof unless specifically approved in writing by the City.

2.8.5 The Design-Builder shall coordinate with private, public and City utilities (i.e., Information Technology Division, Water Services Division) regarding standard utility issues and incorporate pertinent information in the plans.

2.8.6 The Design-Builder shall be responsible for scheduling, submitting to, obtaining approval and retrieving all required Construction Documents from the various required reviewing agencies.

2.8.7 Until such time as a GMP amendment has been executed, Design-Builder when requested by the City, will attend, make presentations, and participate as may be appropriate in public agency and/or community meetings relative to the Project. Design-Builder will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any such meetings.

2.8.8 Design-Builder shall submit to the City, Construction Documents setting forth in detail drawings and specifications describing the requirements for construction.

2.8.8.1 The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting.

2.8.8.2 The Design-Builder shall provide the drawings in AutoCAD format compatible with City of Flagstaff Community Development Division CADD technology using City layering standards.

2.8.8.3 The drawing format will be a 24" x 36" sheet size unless otherwise authorized in writing by the City.

2.8.8.4 The parties shall have a design review meeting to discuss, and City shall review and approve, the Construction Documents in accordance with the procedures set forth this section.

2.8.8.5 Prior to commencement of construction, Design-Builder shall submit to the City the following.

- One set of approved Construction Drawings in AutoCAD format on electronic media (CD-ROM);
- Five print sets of approved Construction Drawings and five half-size sets; and
- Five sets of specifications.

2.8.9 To the extent not prohibited by Legal Requirements, Design-Builder may arrange for interim design submissions and Construction Documents for a portion of the construction to permit construction to proceed on that portion prior to completion of the Construction Documents for the entire construction.

2.9 Not Used

2.10 Government Approvals and Permits

2.10.1 Design-Builder shall obtain all necessary permits, approvals, and licenses required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project. The Design-Builder is specifically reminded of the need to obtain the necessary environmental permits and/or file the necessary environmental notices.

2.10.2 Copies of these permits and notices must be provided to the City's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the City's Representative. This provision does not constitute an assumption by the City of any obligation of any kind for violation of said permit or notice requirements.

2.10.3 City shall be responsible for City of Flagstaff review and permit(s) fees for building and demolition permits. City will also pay review fees for grading and drainage, water, sewer, and landscaping. City shall also pay for utility fees for permanent services.

2.10.4 Design-Builder shall be responsible for all other permits and review fees not specifically listed in this Agreement.

2.10.5 Design-Builder is responsible for the cost of water meter(s), water and sewer taps and fire lines and taps, and all utility fees including incremental billings until Substantial Completion. Arrangements for construction water and associated fees are the Design-Builder's responsibility.

2.11 Subcontractor Selection

2.11.1 Subcontractors shall be selected by a combination of qualifications and price derived through competitive bidding.

2.11.1.1 Design-Builder shall employ only Subcontractors who are duly licensed in Arizona and qualified to perform the Work per the requirements of the Contract Documents.

2.11.2 The Design-Builder will develop Subcontractor interest, submit the names of a minimum of three (3) qualified Subcontractors selected pursuant to a qualifications based procedure, for each trade in the Project for approval by the City and solicit bids for the various construction categories. If there are not three qualified Subcontractors available for a specific trade or there are extenuating circumstances warranting such, the Design-Builder may request approval by the City to submit less than three names. Without prior approval by the City, no change in the City-approved Subcontractors will be allowed.

2.11.2.1 If the Design-Builder desires to self-perform certain portions of the construction, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The Design-Builder's bid will be evaluated in accordance with the process identified below. If after selection of a Subcontractor, events warrant and the City concurs, the Design-Builder may self perform construction without bidding or re-bidding.

2.11.2.2 If the City objects to any nominated Subcontractor or to any nominated self-performed construction for good reason, the Design-Builder will nominate a substitute Subcontractor.

2.11.2.3 The Design-Builder will distribute drawings and specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors.

2.11.2.4 The Design-Builder shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the Design-Builder, in addition to bid price, shall consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor bids will be done with the City Representative in attendance to observe and witness the process. The Design-Builder will resolve any Subcontractor bid withdrawal, protest or disqualification in connection with the award at no increase in the cost of the construction.

2.11.3 Upon completion of the Subcontractor selection process, the Design-Builder shall submit a summary report to the City of the entire Subcontractor selection process. The report will indicate, by bid process, all Subcontractors contacted to determine interest, the Subcontractors solicited, the bids received and costs negotiated, and the selected Subcontractors for each category of Work.

2.11.4 The selected Subcontractors will provide a Schedule of Values, which will be used to create the overall Project Schedule of Values.

2.12 General Construction Services

2.12.1 Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, taxes, inspection, testing, start-up, material, equipment, machinery, arrangements for temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.12.2 The Design-Builder shall completely and totally construct the Project and install the material therein for the City, in a good and workmanlike and substantial manner. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Contract Documents as amended.

2.12.3 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.13 Pre-construction Conference

2.13.1 After approval of Construction Documents and prior to the commencement of any construction, the City's Representative will schedule a pre-construction conference.

2.13.2 The purpose of this conference is to establish a working relationship between the Design-Builder, utility firms, and various City departments. The agenda will include critical elements of the construction schedule, submittal schedule, cost breakdown of major lump sum items, the level of Record Project Documents required, Payment Requests and processing, coordination with the involved utility firms, and emergency telephone numbers for all representatives involved in the course of construction.

2.13.3 The construction start date will be concurred with. After the meeting a NTP letter will be issued confirming the construction start date, duration of the construction and if applicable the Substantial Completion date. If a Substantial Completion date is established the conditions of the Substantial Completion will be listed.

2.13.4 The Design-Builder shall provide a Schedule of Values based on the categories used in the buy out of the construction, but not greater than the approved GMP, and identifying the construction contingency. The Schedule of Values will subdivide the construction into all items comprising the construction.

2.13.5 Minimum attendance by the Design-Builder shall be the Design-Builder's Representative who is authorized to execute and sign documents on behalf of the firm, the Design-Builder's Design and Contractor Representatives, the job superintendent, and the Design-Builder's safety officer.

2.14 Supervision of Construction

2.14.1 Design-Builder or the Design-Builder's Representative shall at all times be present at the Site when construction activities are taking place.

2.14.1.1 All elements of the construction, such as concrete work, pipe work, etc., shall be under the direct supervision of a foreman or his designated representative on the Site, who shall have the authority to take actions required to properly carry out that particular element of the construction.

2.14.1.2 In the event of noncompliance of this Agreement, the City may require the Design-Builder to stop or suspend the construction in whole or in part. Such suspension, due to the Design-Builder's noncompliance shall not be considered a basis for an increase in the Contract Price or extension of Contract Time.

2.14.2 Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the Design-Builder's responsibility to ensure the Subcontractor employed for such Work is approved.

2.14.3 During construction the City may reasonably object to any Subcontractor and the Subcontractor shall be removed from the construction, provided that the Contract Price and/or Contract Time(s) may be adjusted to the extent that City's decision impacts Design-Builder's cost and/or time of performance.

2.14.4 Any person employed by the Design-Builder or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the construction by Design-Builder or Subcontractor employing such person, and shall not be employed again in any portion of construction without the written approval of the City. The Design-Builder or Subcontractor shall keep the City harmless from damages or claims, which may occur in the enforcement of this section.

2.14.5 Design-Builder shall be solely responsible to City for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor, including but not limited to any third-party beneficiary rights.

2.14.6 Design-Builder shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.15 Control of Construction Site

2.15.1 Throughout all phases of construction, including suspension of Work, Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the construction, or a portion of the construction, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the construction or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.

2.15.2 Design-Builder shall take whatever steps, procedures or means to prevent any dust nuisance due to

construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of the Arizona Department of Environmental Quality (ADEQ).

2.15.3 Design-Builder shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. Design-Builder shall be responsible for the coordination of all Work to minimize disruption to building occupants and facilities.

2.15.4 In the event of abnormal weather conditions, such as windstorms, rainstorms, snowstorms, etc., the Design-Builder shall immediately inspect the work site and take all necessary actions to insure public access and safety are maintained, and that the Work in place and site conditions are protected from damage.

2.15.5 Only materials and equipment, which are to be used directly in the construction, shall be brought to and stored on the Site by the Design-Builder. When equipment is no longer required for the construction, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the Design-Builder.

2.16 Shop Drawings, Product Data and Samples

2.16.1 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the construction for which submittals are required the way the Design-Builder proposes to conform to the information given and the design concept expressed in the Construction Documents.

2.16.2 The Design-Builder shall review, approve, verify, and submit to the City three copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Construction Documents in accordance with the approved construction schedule as prescribed in this Agreement as to cause no delay in the Work or in the activities of the City or of separate contractors.

2.16.3 By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the construction and of the Construction Documents.

2.16.4 The Design-Builder shall not be relieved of responsibility for deviations from requirements of the Contract Documents unless the Design-Builder has specifically informed the City in writing of such deviation at the time of submittal and the City has given written approval to the specific deviation.

2.16.5 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

2.17 Quality Control, Testing and Inspection

2.17.1 All materials used in the construction shall be new and unused, unless otherwise agreed to in writing by the parties, and shall meet all quality requirements of the Contract Documents.

2.17.2 All construction materials to be used on the construction or incorporated into the construction, equipment, plant, tools, appliances or methods to be used in the construction may be subject to the inspection and approval or rejection of the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.

2.17.3 The procedures and methods used to sample and test material will be determined by the City. Unless otherwise specified, samples and tests shall be made in accordance with (i) Maricopa Association of Governments (MAG) Uniform Standard Technical Specifications and Uniform Standard Details and Drawings, latest revision, (ii) the City of Flagstaff Supplements and Amendments to the latest revision of the MAG Uniform Standard Technical Specifications and Uniform Details and Drawings, (iii) City of Flagstaff Engineering Design and Construction Standards and Specifications latest revision, and (iv) ASHTO and ASTM standards, latest revisions.

2.17.4 The City will select a pre-qualified City or independent testing laboratory and will pay for initial City acceptance testing.

2.17.4.1 When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and the cost of all tests, except the first test, will be paid for by the Design-Builder. Construction contingency cannot be utilized for the cost of re-testing.

2.17.4.2 When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.

2.17.5 The Design-Builder will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the Work and shall provide them access to the Work at all times.

2.17.6 At the option of the City, materials may be approved at the source of supply before delivery is started.

2.17.7 Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the Design-Builder, unless otherwise provided in the Contract Documents.

2.17.8 Design-Builder's convenience and quality control testing and inspections shall be the sole responsibility of the Design-Builder and paid by the Design-Builder.

2.18 Trade names and Substitutions. Construction Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, unless indicated that no substitutions are permitted, may be substituted. Substitute or alternate items may be permitted, subject to the following:

2.18.1 The substitution shall be submitted by Design-Builder in writing to the City.

2.18.2 The Design-Builder shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

2.18.3 The submittal shall state any required changes in the Construction Documents to adapt the design to the proposed substitution.

2.18.4 The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution. Substitutions will only be considered if they do not extend Contract Time.

2.18.5 The Design-Builder if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

2.18.6 The City will make the final decision and will notify the Design-Builder in writing as to whether the substitution has been accepted or rejected. If accepted, the Design-Builder will cause the Construction Documents to be revised as approved at the Design-Builder's cost.

2.18.7 The Design-Builder shall continue to perform the construction in accordance with the Construction Documents unless the City accepts the substitution and there is no extension of Contract Time.

2.19 Project Record Documents

2.19.1 During the construction period, the Design-Builder shall maintain at the Site a set of blueline or blackline prints of the Construction Drawings and Shop Drawings for Project Record Document purposes.

2.19.1.1 The Design-Builder shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Drawings. The Design-Builder shall give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order, Field Order, Report of Field Change, ASI or RFI.
- Details not on original Construction Drawings.

2.19.1.2 The Design-Builder shall mark completely and accurately Project record drawing prints of Construction Drawings or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on Construction Drawings location.

2.19.1.3 The Design-Builder shall mark Project record drawings sets with red erasable colored pencil.

2.19.1.4 The Design-Builder shall note RFI Numbers, ASI Numbers and Change Order numbers, etc, as required to identify the source of the change to Construction Drawings.

2.19.1.5 The Design-Builder shall as a condition of Substantial Completion, submit Project record drawing prints and Shop Drawings to the City or its representative for review and comment.

2.19.2 Final Project record drawings: Upon receipt of the reviewed Project record drawings from the City, the Design-Builder shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City within 14 Days:

2.19.2.1 On electronic media: (i) a complete set of Project record drawings prepared in Autocad format compatible with the Community Development Division CADD technology using City layering standards, each drawing shall be clearly marked with “As-Built Document;" (ii) a complete set of Project specifications in Microsoft Word format; and (iii) Shop Drawings in CADD or graphic file format.

2.19.2.2 On hard copy media: (i) a complete set of reproducible mylars from the final AutoCAD drawings in the format compatible with the Community Development Division CADD technology using City layering standards; and (ii) two edge bound blueline or blackline sets reproduced from these mylars.

2.19.2.3 The original copy of the Project record drawings (redline mark-ups).

2.20 Project Safety

2.20.1 Design-Builder recognizes the importance of performing the construction in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the construction, including materials and equipment incorporated into the construction or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.

2.20.2 Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the construction.

2.20.3 Design-Builder shall, prior to commencing construction, designate a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the construction. Unless otherwise required by the Contract Documents, Design-Builder's safety representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety.

2.20.4 The safety representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.20.5 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.

2.20.6 Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the construction to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the construction.

2.20.7 Design-Builder's responsibility for safety under this section is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the construction.

2.21 Commissioning

2.21.1 The Design-Builder shall develop a Commissioning program, subject to the City's approval, as part of its CMP pursuant to this Agreement.

2.21.2 The Commissioning program shall include the roles and responsibilities of the City, tenants, and the Design-Builder.

2.21.3 The Design-Builder will provide a final Commissioning report indicating that the Project and all its systems and components are functioning as prescribed in the Contract Documents and training has been completed as required by the Contract Documents.

2.22 Design-Builder's Warranty

2.22.1 Design-Builder warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

2.22.2 Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to

maintain the Project by persons other than Design-Builder and anyone for whose acts Design-Builder may be liable.

2.22.3 Design-Builder's warranty obligation shall be for one (1) year, except for such greater periods as may be required by the technical specifications.

2.22.4 Nothing in this warranty is intended to limit any manufacturer's warranty, or any other remedy at law available to the City, which provides City with greater warranty or other rights than set forth in this section or the Construction Documents.

2.22.5 Design-Builder will provide City with all manufacturers' warranties upon Substantial Completion.

2.23 Correction of Defective Construction

2.23.1 Design-Builder agrees to correct any construction that is found to not be in conformance with the Construction Documents, including that part of the construction subject to section 2.22 hereof. A progress payment, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of construction not in accordance with the Construction Documents.

2.23.2 Design-Builder shall, within seven Days of receipt of written notice from City that the construction is not in conformance with the Construction Documents, take meaningful steps to commence correction of such nonconforming construction, including the correction, removal or replacement of the nonconforming construction and any damage caused to other parts of the construction affected by the nonconforming construction.

2.23.3 If Design-Builder fails to commence the necessary steps within such seven Day period, City, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that City will commence correction of such nonconforming construction with its own forces. If City does perform such corrective construction, Design-Builder shall be responsible for all reasonable costs incurred by City in performing such correction. Any such Work performed by the City as a result of the Design-Builder's failure to commence corrective action shall not impact, in any way, the remaining warranty of the affected construction.

2.23.4 If the nonconforming construction creates an emergency requiring an immediate response, the Design-Builder will respond and initiate corrections within twenty-four hours.

2.23.5 This Agreement shall not limit any rights or remedies the City may have regarding Design-Builder's obligations under the Contract Documents.

ARTICLE 3 - CITY'S SERVICES AND RESPONSIBILITIES

3.1 Duty to Cooperate

3.1.1 City shall, throughout the performance of Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 City shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in the Project Schedule.

3.1.3 City's Representative as identified in in this Agreement shall be responsible for providing City-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. City's Representative shall also provide Design-Builder with prompt

notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

3.1.4 Appropriate City staff will be available and will participate in required training as part of the Commissioning activities.

3.1.5 If requested by the Design-Builder, the City's Representative will provide assistance and guidance in obtaining necessary permits. Regulating agencies of the City, such as the Community Development Division and the Water Services Division, enforce Legal Requirements. These enforcement activities are not subject to the responsibilities of the City under this Agreement.

3.2 Furnishing of Services and Information

3.2.1 The City will be responsible for the payment of the following:

3.2.1.1 City review and permit(s) fees for building and demolition permits.

3.2.1.2 City review fees for grading and drainage, water, sewer, and landscaping.

3.2.1.3 Utility fees for permanent services.

3.2.2 Unless expressly stated to the contrary in the Contract Documents, City will provide, at its own cost and expense, for Design-Builder's information, the following:

3.2.2.1 To the extent available, surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

3.2.2.2 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

3.2.2.3 A legal description of the Site.

3.2.2.4 To the extent available, as-built record and/or historical drawings of any existing structures at the Site;

3.2.2.5 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including hazardous materials, in existence at the Site; and

3.2.2.6 To the extent available, geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

3.2.3 City will provide all City standards and guidelines, supplementary conditions and special provisions that shall be included in the plans and specifications for the Project. These may include but are not limited to: disposal of surplus material, special security provisions, investigation of underground facilities, traffic controls and regulations, special quality control testing and termite treatment requirements.

3.2.4 City is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the construction. City is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Field Inspections

3.3.1 The City may utilize field inspectors to assist the City's Representative during construction in observing performance of the Design-Builder. The inspector is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory agency or with an inspector from a City laboratory pursuant to this Agreement.

3.3.2 Through onsite observation of the Work in progress and field checks of materials and equipment, the inspector shall endeavor to provide protection against defects and deficiencies in the Work.

3.3.2.1 The inspector will be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.

3.3.2.2 The inspector will not be authorized to issue instructions contrary to the Construction Documents or to act as foremen for the Design-Builder.

3.3.2.3 The inspector shall have the authority to reject Work or materials until any questions at issue can be decided by the City's Representative.

3.3.3 The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequence or procedures or for safety precautions or programs or responsibility for the Design-Builder's failure to perform the Work in accordance with Contract Documents.

3.4 City's Separate Contractors. City is responsible for all Work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

3.5 Project Management Services (if applicable to this Project)

3.5.1 The City may contract separately with one or more technical consultants to provide project management assistance of the Project. The technical consultant's contract as well as other firms hired by the City shall be furnished to the Design-Builder. The Design-Builder shall not have any right however, to limit or restrict any contract modifications that are mutually acceptable to the City and technical consultant.

3.5.2 The technical consultant services will augment the City staffing resources to effectively manage the objectives of the City and this Project with the goal of managing the key project communication, cost and time parameters. The City and the Design-Builder shall endeavor to communicate through the technical consultant.

3.5.3 The technical consultant may provide preprogramming and design standards.

3.5.4 The City may contract with the technical consultant to provide some or all of the following services during the performance of the construction:

3.5.4.1 Oversight of the construction.

3.5.4.2 Site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed construction and to determine in general if the construction is being performed in accordance with the Construction Documents. The technical consultant will keep the City informed of progress of the construction, and will endeavor to guard the City against defects and deficiencies in the construction. The technical consultant may have authority to reject

construction which does not conform to the Construction Documents and to require additional inspection or testing of the construction in accordance with this Agreement.

3.5.4.3 Review and recommend approval of the Design-Builder's Payment Requests.

3.5.4.4 Interpretations of matters concerning performance under and requirements of the Contract Documents on written request of the City. The technical consultant's response to such requests will be made with reasonable promptness and within any time limits agreed upon.

3.5.4.5 Analyze, recommend and assist in negotiations of Change Orders.

3.5.4.6 Conduct inspections to determine Substantial Completion and Final Acceptance.

3.5.4.7 Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by the Design-Builder.

3.5.5 Commissioning Services. The technical consultant may supervise and/or participate in the Commissioning activities.

ARTICLE 4 – CONTRACT TIME

4.1 Contract Time

4.1.1 Contract Time shall start with the NTP and end with Substantial Completion.

4.1.2 The City shall issue a NTP letter establishing the mutually agreed upon NTP date for this Agreement and design.

4.1.3 The Design-Builder shall provide a Project Schedule of the design activities within seven (7) Days after the NTP.

4.1.3.1 The Project Schedule shall provide fourteen (14) Days to be used by the City or its designee for reviews and approvals for any interim design submissions pursuant to this Agreement.

4.1.3.2 Failure on the part of the Design-Builder to adhere to the Project Schedule may be the basis for termination of this Agreement by the City.

4.1.4 Each GMP amendment to this Agreement will establish a separate construction NTP date Performance Period and Substantial Completion date for the entire Project. The Performance Period(s) for individual GMP's may be sequential or concurrent as established in the individual Notices To Proceed.

4.1.5 Design-Builder agrees that it will commence performance of the Work and achieve Performance Periods and the Contract Time.

4.1.6 All of the times set forth in this Agreement or by amendments shall be subject to adjustment in accordance with the terms of this Agreement.

4.2 Construction Schedule. Each approved GMP proposal shall include a Project Schedule as prescribed in this Agreement with a CPM diagram construction schedule that will indicate the path of critical activities and establish the Performance Period encompassed by the GMP. The Design-Builder will maintain the construction schedule throughout the construction.

4.3 Substantial Completion

4.3.1 Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter. Substantial Completion shall be in accordance with its definition in this Agreement and with the criteria set forth in the NTP.

4.3.2 Prior to notifying the City, the Design-Builder shall inspect the construction and prepare and submit to the City a comprehensive list of items to be completed or corrected. The Design-Builder shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all construction in accordance with the Construction Documents.

4.3.3 Design-Builder shall notify City when it believes the construction, or a portion of the construction, is substantially complete.

4.3.4 Within five (5) Days of City's receipt of Design-Builder's notice, City and Design-Builder will jointly inspect such construction to verify that it is substantially complete in accordance with the requirements of the Construction Documents.

4.3.5 If such construction is substantially complete, City shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the construction or portion thereof, (ii) the remaining items of construction that have to be completed within thirty Days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

4.3.6 City, at its option, may use a portion of the construction which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of construction addressing the items set forth in this Agreement, (ii) Design-Builder and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and Design-Builder agree that City's use or occupancy will not interfere with Design-Builder's completion of the remaining construction.

4.4 Final Completion and Acceptance. The Work, or identified portions of the Work must be finally complete within thirty Days from the date the Certificate of Substantial Completion is issued unless there is a written agreement of the parties that establishes another date for Final Completion. Upon receipt of written notice that the construction or identified portions of the Work is ready for final inspection and acceptance, City and Design-Builder will jointly inspect to verify that the remaining items of Work have been completed as set forth in this Agreement. The City will issue a Final Acceptance letter when the City finds the Work or identified portions of the Work to be finally complete.

4.5 Liquidated Damages – Substantial Completion. Design-Builder understands that if Substantial Completion is not attained within the Contract Time as may be adjusted, City will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained within the Contract Time as may be adjusted, Design-Builder shall pay the City (to be determined separately for each GMP) as liquidated damages, and not as a penalty, for each Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.

4.6 Liquidated Damages – Final Completion. Design-Builder understands that if Final Completion is not attained within the time allowed in this Agreement, as may be adjusted, the City will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not attained within the specified time as may be adjusted, Design-Builder shall pay the

City (to be determined separately for each GMP) as liquidated damages, and not as a penalty, for each Day that Final Completion extends beyond the date for Final Completion as determined by the Agreement and further agrees that such amount is reasonable under the circumstances.

ARTICLE 5 – CONTRACT PRICE

5.1 Contract Price

5.1.1 The Contract Price will be the amounts prescribed for design in this Agreement the Fee Schedule attached as ***Exhibit C***, plus subsequent GMPs and Owner's Contingency as amendments to this Agreement.

5.1.2 The Contract Price is subject to adjustments made in accordance with this Agreement and by amendment.

5.1.2.1 GMP amendments are cumulative except for contingency. The amount of contingency for each GMP amendment will be negotiated separately.

5.1.2.2 If the GMP requires an adjustment due to changes in the Work, the cost of such changes is determined subject to this Agreement. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP.

5.1.3 Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

5.2 Design

5.2.1 The Design-Builder's fee for providing, through personnel employed by Design-Builder or procured from qualified Subconsultants, Design Services and GMP preparation for the construction of the USGS Renovation and Additions Project. The Fee Schedule attached as ***Exhibit C*** shall determine the basis for payment depending on how and when the individual Sites become available. Any savings from the design shall revert to the City for use during construction.

5.2.2 The Contract Price for Design-Builder and Subconsultants are based upon the Fee Schedule attached as ***Exhibit C***.

5.3 GMP

5.3.1 At the end of the design phase or at a time determined by the City, the City will request the Design-Builder to provide a GMP or series of GMP's at the same or different times. The approved GMP(s) will be made part of this Agreement by amendment. The GMP(s) will include amounts for completion of design, if applicable, in the same format as prescribed above and a price for construction in accordance with this Agreement.

5.3.2 The Design-Builder guarantees to bring the completion of the design and construction within the GMP or Design-Builder alone will be required to pay the difference between the actual cost and the GMP.

5.3.2.1 Any savings of the Design-Builder's bid contingency used to buy out the construction at the conclusion of the selection of Subcontractors may be used during construction by the Owner as a construction contingency.

5.3.2.2 Any savings realized during construction may be, at the City's sole discretion, incorporated into the construction of the Project to fund additional scope items or will be returned to the City upon the City's request.

5.3.3 The GMP is composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below.

5.3.3.1 The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.

5.3.3.2 The General Conditions Costs are firm fixed lump sum amount which will include bonds and insurance premiums based on the full Contract Price for construction.

5.3.3.3 The Construction Fee is a firm fixed lump sum.

5.3.3.4 Design-Builder's Contingency is an amount the Design-Builder may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the City for increases in General Condition Costs. Design-Builder Contingency is assumed to be a direct Project cost so will receive all markups at the time of GMP submission.

5.3.3.5 Taxes are deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

5.3.3.6 When the Design-Builder utilizes Design-Builder's Contingency funds, the Design-Builder shall make the appropriate changes to the Schedule of Values with the next regular progress Payment Request. The Design-Builder shall deduct the amount of Design-Builder's Contingency funds used from the Design-Builder's Contingency line item and add the same amount to the line item on the Schedule of Values where the funds were used. If the Design-Builder's Contingency funds are used for a new line item that was not given with the original Schedule of Values, that will be so indicated.

5.3.4 The Owner's Contingency is funds to be used at the sole discretion of the City to cover any increases in Project costs that result from City directed changes, Differing Site Conditions, or as the City may otherwise elect. Owner's Contingency will be added to the GMP amount provided by the Design-Builder, the sum of which will be the full Contract Price for construction. Markups for Construction Fee and taxes will be applied by the Design-Builder at the time that Owner's Contingency is used.

5.3.5 GMPs are cumulative except for Design-Builder's Contingency. The amount of Design-Builder Contingency for each GMP amendment will be negotiated separately and shall reflect the Design-Builder's risk from that point in the Project forward.

5.4 GMP Proposal

5.4.1 When requested, the Design-Builder shall submit three (3) sets of the approved sealed design submittal to be used to establish the GMP.

5.4.1.1 The Design-Builder shall sign and date the face of each document of each set used as the basis of the proposed GMP.

5.4.1.2 The Design-Builder shall send two (2) sets of these documents to the City's Representative, while keeping one set for itself.

5.4.2 The GMP proposal shall include:

5.4.2.1 A list of the documents including the latest approved plans and design criteria, with latest issuance date including all Addenda thereto which were used in preparation of the GMP proposal;

5.4.2.2 A list of allowances and a statement of their basis;

5.4.2.3 A list of the clarifications and assumptions made by the Design-Builder in the preparation of the GMP proposal, to supplement the information contained in the documents;

5.4.2.4 A summary of the GMP with a total for each of the components of the GMP as shown in the table below. On the table the percentages requested should be calculated as the percent of the "Total Construction Cost." The sub-amount shown under General Conditions should be included in the General Conditions amount.

PROJECT GMP PROPOSAL SUMMARY SHEET

PROFESSIONAL SERVICES				
	Professional Services			$
	Reimbursables			
	Construction Administration			
			TOTAL PROFESSIONAL SERVICES	$
CONSTRUCTION				
	Cost of the Construction (Labor, Materials, Equipment, Warranty)			$
	Design-Builder's Contingency			
	Indirect Costs		RATE	AMOUNT
	General Conditions, Total		%	$
	Payment and Performance Bond	$	%	
	Insurance	$	%	
	Construction Fee (overhead & profit)		%	$
	Sales Taxes		%	$
			TOTAL CONSTRUCTION COST	$
			Owner's Contingency	$
			GRAND TOTAL	$

5.4.2.5 A spread sheet showing the basis for professional services, with hours and hourly costs for basic services and Subconsultant services indicating overhead and profit.

5.4.2.6 A list and estimated cost of reimbursables and other not-to exceed costs.

5.4.2.7 An itemized detail of any costs proposed to be included in the General Conditions.

5.4.2.8 A statement of proposed additional services, if any.

5.4.2.9 The GMP shall include in the Cost of the Work those taxes that are applicable at the time the GMP is executed. If, in accordance with the City's express written direction an exemption is claimed for taxes, the City agrees to indemnify, defend and hold Design-Builder harmless for any liability, penalty, interest, fine, tax assessment, attorney's fees or other expense or cost incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with the City's direction relative to the taxes as described in this section only.

5.4.2.10 The GMP shall exclude the actual costs of any jurisdictional or regulatory agency permit or fee as well as those for testing and inspection services that are to be paid as defined in this Agreement. However, a detailed estimate of all anticipated direct costs for permits, fees, inspection and testing shall be attached to the GMP.

5.4.2.11 A Schedule of Values for the construction, with the costs organized by subcontract categories, allowances, contingency, General Conditions Costs, and the Design-Builder's construction phase fee.

5.4.2.12 A Project Schedule as prescribed in this Agreement and establishing the Performance Period and the Scheduled Substantial Completion Date.

5.4.2.13 The updated CMP as prescribed in this Agreement.

5.4.2.14 The street or physical address of the Site of the Work for each GMP, phased GMP, or separate location at which Work, or a portion of the Work, will be performed shall be set forth in each GMP amendment.

5.5 GMP Approval

5.5.1 The Design-Builder shall meet with the City to review the GMP proposal and the written statement of its basis. In the event that the City discovers any inconsistencies or inaccuracies in the information presented, the City shall promptly notify the Design-Builder, who shall make appropriate adjustments to the GMP proposal, its basis or both.

5.5.2 Upon receiving the GMP proposal from the Design-Builder, the City may submit the same documents that were used by Design-Builder in developing its GMP to an independent third party for review and verification. The third party shall develop an independent estimate and review the CPM schedule.

5.5.2.1 If the Design-Builder's GMP proposal is greater than the independent third party estimate, the City may require the Design-Builder to reconfirm its proposal.

5.5.2.2 The Design-Builder shall describe the differences between the two, and explain why its GMP reflects the scope of the Work and is correct.

5.5.3 If the City accepts the Design-Builder's GMP proposal and the GMP proposal is within the City's budget, the City may accept the Design-Builder's GMP proposal without comment. If the GMP proposal exceeds the City's budget, the City must indicate in writing to the Design-Builder that the budget has been increased to fund the excess cost.

5.5.4 If the City accepts the Design-Builder's GMP, the City and the Design-Builder will execute an amendment to this Agreement for the GMP amending the Contract Price and establishing the Performance Period and the Contract Time.

5.5.5 The City shall authorize and cause the Design-Builder to revise the documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP proposal.

5.5.6 After final submission of the GMP the City may, at the City's sole discretion and for any or no reason, accept or reject the GMP. If the City rejects the Design-Builder's GMP, the City may terminate the Design-Builder's Contract. If this Agreement is terminated pursuant to this section, the Design-Builder's compensation shall be limited to the direct cost of its completed Work and materials supplied as of the date of termination. Design-Builder shall not be entitled to any unearned or anticipated profit or overhead. If this Agreement is terminated pursuant to this section, Design-Builder shall deliver to the City all drawings, plans, specifications, special provisions, estimates and other work entirely or partially completed, together with all unused materials supplied by the City.

ARTICLE 6 – CHANGES TO CONTRACT PRICE AND TIME

6.1 Delays

6.1.1 If Design-Builder is delayed in the performance of the Work that will cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or of those for whom Design-Builder is responsible, the Contract Times for performance may be reasonably extended by Change Order.

6.1.2 The Design-Builder shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work.

6.1.2.1 In the case of a continuing delay only one (1) request is necessary.

6.1.2.2 Written notice by the Design-Builder shall be provided to the City within thirty (30) Days of the commencement of the cause.

6.1.2.3 If written notice is received by the City more than thirty (30) Days after commencement of the cause, the period of delay shall be deemed to commence thirty (30) Days prior to the giving of such notice.

6.1.3 By way of example, events that may entitle Design-Builder to an extension of the Contract Time include acts or omissions of City or anyone under City's control (including separate contractors), changes in the Work, Differing Site Conditions, hazardous conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

6.1.4 If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled Substantial Completion. All terms, conditions and definitions necessary for the application of this paragraph shall be as set forth on the City of Flagstaff's Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto.

6.1.5 It is understood, however, that permitting the Design-Builder to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.

6.1.6 In addition to Design-Builder's possible right to a time extension for those events set forth in this section, Design-Builder may also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this section that are beyond the control of both Design-Builder and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

6.2 Differing Site Conditions

6.2.1 If Design-Builder encounters a Differing Site Condition, Design-Builder may be entitled to a Change Order to adjust the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are impacted by the Differing Site Condition.

6.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to City of such condition, which notice shall not be later than seven Days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

6.3 Legal Requirements. The Contract Price and/or Contract Time(s) shall be adjusted by Change Order to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of this Agreement negatively affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of this Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

6.4 City Requested Change in Work

6.4.1 The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or desirable in the City's sole discretion.

6.4.2 Such alterations and changes shall not invalidate this Agreement, and the Design-Builder agrees to perform the Work as altered, the same as if it has been a part of the original Agreement.

6.4.3 Upon receipt of a request for proposal for a change in Work, the Design-Builder shall prepare a proposal in significant detail, using the rates and markups established in the Contract Documents as a basis of the Contract Price adjustment. The Design-Builder's proposal shall include a detailed description of any schedule impact.

6.4.4 City and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.

6.4.5 If City requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order may be issued to reimburse Design-Builder for reasonable costs incurred for estimating services and other services involved in the preparation of proposed revisions to the Contract Documents.

6.5 Minor Changes. The City may make minor changes in the Work that do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall immediately inform City, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

6.6 Emergencies. In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time on account of emergency work shall be determined as provided in this Agreement.

6.7 Force Majeure. The parties acknowledge that there may be events that occur during the term of this Agreement that are beyond the control of both the City and the Design-Builder, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God. These events may result in temporary delay or permanent shut down of the work that is the subject of this Agreement. 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 this Agreement.

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

The parties agree to act in good faith to extend the Agreement completion date without any penalty to the Design-Builder 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.

ARTICLE 7- PROCEDURE FOR PAYMENT

7.1 Design Services

7.1.1 Design-Builder will be paid 100% of the amount earned for Design Services minus the value or cost arising from any deficiencies or defects in the Design Services.

7.1.2 The Design-Builder shall pay all sums due to Subconsultants for services and reimbursable expenses within fourteen calendar Days after the Design-Builder has received payment for those services from the City.

7.1.3 Requests for monthly payments by the Design-Builder shall be submitted on the City's "Payment Request" form and shall be accompanied by a design progress report, detailed invoices and receipts, if applicable. This submittal shall include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and the Subconsultants' actual requests for payment plus similar narrative and listing of their Work.

7.1.4 After approved completion of design and GMP(s) for the total construction of the Project in accordance with this Agreement, Design-Builder will be paid 100% of the amount for Design Services less the total of payments previously made, subject to this Agreement.

7.1.5 Payments for those services negotiated as a lump sum shall be made in accordance with the percentage of the services completed during the preceding month. Those services negotiated as a not-to-exceed fee shall be paid in accordance with the actual cost of the service expended during the preceding month.

7.1.6 All Payment Requests shall be submitted to the City for review and approval.

7.2 Request for Payment for Construction Services. The Design-Builder agrees at its own cost and expense, to perform all construction, as called for by this Agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in this Agreement.

7.2.1 The Schedule of Values submitted as prescribed in this Agreement, subject to adjustment in accordance, will serve as the basis for monthly progress payments made to Design-Builder throughout the construction.

7.2.2 Design-Builder shall submit to City's Representative the construction phase services "Payment Request" form no later than the 3rd of the month to be paid on the 15th check run, or by the 19th of the month to be paid on the 30th check run. If the 3rd or 19th falls on a Saturday or Sunday invoices are due on the preceding Friday.

7.2.3 At least five (5) working Days prior to the date established for a Payment Request, the Design-Builder shall submit an updated Project Schedule and meet with the City's Representative to review the progress of the construction, as it will be reflected on the Payment Request.

7.2.4 The Design-Builder Payment Request may request payment for equipment and materials not yet incorporated into the Project if construction progress is in reasonable conformance with the approved schedule.

7.2.4.1 For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances.

7.2.4.2 For materials and equipment stored off the Site, the City must approve the storage facility. The material and equipment must be stored within Coconino County or other sites as may be approved accessible for City's inspection. The Design-Builder must establish City title to such materials and equipment or otherwise protect the City's interest and shall include applicable insurance, bonding, storage and transportation to the Site.

7.2.4.3 All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.

7.2.5 The Payment Request shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and all construction will pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the construction into the Project.

7.3 Progress Payment

7.3.1 City shall make payment in accordance with A.R.S. § 34-607 such that payment will be made no later than fourteen (14) Days after Payment Request is certified and approved. City shall review Payment Request and make recommendation of approval or denial within seven (7) Days after City's receipt of each properly submitted and accurate Payment Request, but in each case less the total of payments previously made, and less amounts properly withheld under this Agreement.

7.3.2 City shall pay Design-Builder all amounts properly due. If City determines that Design-Builder is not entitled to all or part of the Payment Request, it will notify Design-Builder in writing at least seven (7) Days after the date the Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify City's concerns. Design-Builder and City will attempt to resolve City's concerns. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under this Agreement.

7.3.3 Notwithstanding anything to the contrary in the Contract Documents, City shall pay Design-Builder all undisputed amounts in a Payment Request within the times required by this Agreement.

7.4 Retention on Progress Payments

7.4.1 City will retain ten percent (10%) of the amount on each Payment Request provided, however, that when fifty percent (50%) of the construction has been completed by Design-Builder, upon request of the Design-Builder, City may reduce the amount retained to five percent (5%) from Design-Builder's subsequent Payment Requests, if the Design-Builder's performance of construction has been satisfactory.

7.4.2 In lieu of retention, the Design-Builder may provide as a substitute any of the following: an assignment of time certificates of deposit (CDs) from a bank licensed by Arizona; securities guaranteed by the United States; securities of the United States, the State of Arizona, Arizona counties, Arizona municipalities, or Arizona school districts; or shares of savings and loan institutions authorized to transact business in Arizona.

7.4.2.1 CDs assigned to the City must be maintained at the City's servicing bank, in the form of time deposit receipt accounts.

7.4.2.2 Securities deposited in lieu of retention must be deposited into a separate account with a financial institution within the state of Arizona.

7.4.2.3 CDs and Securities shall be assigned exclusively for the benefit of the City of Flagstaff pursuant to the City's form of escrow agreement. Escrow agreement forms may be obtained from the Management Services Division.

7.5 Substantial Completion. Upon Substantial Completion of the entire construction or, if applicable, any portion of the construction, City shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount up to two and one half times (2.5) the reasonable value of all remaining, deficient or incomplete items of construction as noted in the Certificate of Substantial Completion.

7.6 Final Payment

7.6.1 After receipt of a final Payment Request from Design-Builder, City shall make final payment within 60 Days after the receipt by the City, provided that a Final Acceptance Letter has been issued by the City in accordance with this Agreement.

7.6.2 At the time of submission of its final Payment Request, Design-Builder shall provide the following information:

7.6.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the construction which will in any way affect City's interests.

7.6.2.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment, and

7.6.2.3 Consent of Design-Builder's surety, if any, to final payment.

7.7 Payments To Subcontractors or Suppliers

7.7.1 Design-Builder shall pay its Subcontractors or Suppliers within seven Days of receipt of each progress payment from the City. The Design-Builder shall pay for the amount of construction performed or materials supplied by each Subcontractor or Supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the Design-Builder shall result in a corresponding reduction to Subcontractors or Suppliers who have performed satisfactory work. Design-Builder shall pay Subcontractors or Suppliers the reduced retention within fourteen Days of the payment of the reduction of the retention to the Design-Builder. No contract between Design-Builder and its Subcontractors and Suppliers may materially alter the rights of any Subcontractor or Supplier to receive prompt payment and retention reduction as provided herein.

7.7.2 If the Design-Builder fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and Design-Builder agrees that the City may take such actions:

7.7.2.1 To hold the Design-Builder in default under this Agreement;

7.7.2.2 Withhold future payments including retention until proper payment has been made to Subcontractors or Suppliers in accordance with these provisions;

7.7.2.3 Reject all future offers to perform work for the City from the Design-Builder for a period not to exceed one year from Substantial Completion date of this Project.

7.7.2.4 Terminate this Agreement.

7.7.3 If Design-Builder's payment to a Subcontractor or Supplier is in dispute, it shall act in compliance with A.R.S. § 32-1129.02 and related statutes as amended, and shall further hold the City harmless from any ensuing damages, claims or costs.

7.7.4 Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this section or of any of the terms or provisions thereof.

7.7.5 Design-Builder shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

7.8 Record Keeping and Finance Controls

7.8.1 Records of the Design-Builder's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and Design-Builder shall be kept on a generally recognized accounting basis and shall be available for up to three (3) years following Final Completion of the Project.

7.8.2 The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the Design-Builder's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any change orders.

7.8.3 The City reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of the Design-Builder's records, the audit discloses the Design-Builder has provided false, misleading, or inaccurate cost and pricing data.

7.8.4 The Design-Builder shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.

7.8.5 The City reserves the right to decrease Contract Price and/or payments made on this Agreement if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

ARTICLE 8- CLAIMS AND DISPUTES

8.1 Requests for Contract Adjustments and Relief

8.1.1 If either Design-Builder or City believes that it is entitled to relief against the other for any event arising out of or related to the Work, such party shall provide written notice to the other party of the basis for its claim for relief.

8.1.2 Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of this Agreement.

8.1.3 In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one Days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.

8.1.4 Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

8.2 Dispute Avoidance and Resolution

8.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or

disagreements. If disputes or disagreements do arise, Design-Builder and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

8.2.2 Design-Builder and City will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and City's Representative.

8.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and City's Representative, Design-Builder's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) Days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

8.2.4 Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court and Arizona law shall apply and control. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

8.3 Duty to Continue Performance. Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and City shall continue to satisfy its payment obligations to Design-Builder pending the final resolution of any dispute or disagreement between Design-Builder and City.

8.4 Representatives of the Parties

8.4.1 City's Representatives

8.4.1.1 City designates the individual listed below as its Senior Representative ("City's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under this Agreement:

David Pedersen
Senior Project Manager
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001

8.4.1.2 City designates the individual listed below as its City's Representative, which individual has the authority and responsibility set forth in this Agreement:

Doug Slover
Project Manager
City of Flagstaff
2323 N. Walgreens St., Suite 1
Flagstaff, AZ 86004

8.4.2 Design-Builder's Representatives

8.4.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under this Agreement:

Chuck English
President
Hunter Contracting Co.
701 N. Cooper Road
Gilbert, AZ 85233

8.4.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in this Agreement:

Bob Carlson
Vice President
Hunter Contracting Co.
701 N. Cooper Road
Gilbert, AZ 85233

ARTICLE 9 – SUSPENSION AND TERMINATION

9.1 City's Right to Stop Work

9.1.1 City may, at its discretion and without cause, order Design-Builder in writing to stop and suspend the Work. Immediately after receiving such notice, the Design-Builder shall discontinue advancing the Work specified under this Agreement.

.

9.1.2 Such suspension shall not exceed one hundred eighty (180) consecutive Days during the duration of the Project.

9.1.3 Design-Builder may seek an adjustment of the Contract Price and Time, if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by City.

9.2 Termination for Convenience

9.2.1 Upon receipt of written notice to Design-Builder, City may, at its discretion and without cause, elect to terminate this Agreement. If the City suspends the Work for 181 consecutive Days or more, such suspension shall be deemed a termination for convenience.

9.2.2 Upon such termination during Design Services, the Design-Builder shall deliver to the City all drawings, plans, specifications, special provisions, estimates and other Work entirely or partially completed, together with all unused materials supplied by the City.

9.2.2.1 The Design-Builder shall estimate the value of the Work it has completed and submit its appraisal to the City for evaluation. The City shall have the right to inspect the Subconsultant's Work to appraise the Work completed.

9.2.2.2 The Design-Builder shall receive compensation for services performed to the date of such termination as set forth in this Agreement. The fee shall be paid in accordance with this Agreement, and shall be an amount mutually agreed upon by the Design-Builder and the City. If there is no mutual agreement, the final determination shall be made in accordance with this Agreement.

9.2.2.3 Design-Builder shall not be entitled to anticipated profit or anticipated overhead. In no event shall the fee exceed that set forth in this Agreement or as amended.

9.2.2.4 The City shall make the final payment within sixty Days after the Design-Builder has delivered the last of the partially completed items and the final fee has been agreed upon.

9.2.2.5 If City terminates this Agreement pursuant to this section and proceeds to design and construct the Project through its employees, agents or third parties, City's rights to use the work product shall be as set forth in this Agreement.

9.2.3 Upon such termination during construction services, the Design-Builder shall proceed with the following obligations:

9.2.3.1 Stop Work as specified in the notice.

9.2.3.2 Place no further subcontracts or orders.

9.2.3.3 Terminate all subcontracts to the extent they relate to the Work terminated.

9.2.3.4 Assign to the City all right, title and interest of the Design-Builder under the subcontracts terminated, in which case the City shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

9.2.3.5 Take any action that may be necessary for the protection and preservation of the property related to the Agreement that is in the possession of the Design-Builder and which the City has or may acquire an interest.

9.2.4 The Design-Builder shall submit complete termination inventory schedules no later than sixty (60) Days from the date of the notice of termination.

9.2.5 The City shall pay Design-Builder the following.

9.2.5.1 The direct value of its completed Work and materials supplied as of the date of termination.

9.2.5.2 The reasonable costs and expenses attributable to such termination.

9.2.5.3 Design-Builder shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead. If it appears the Design-Builder would have sustained a loss on the entire Work had the Project been completed, the Design-Builder shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.

9.2.6 The Design-Builder shall maintain all records and documents for three years after final settlement. These records shall be maintained and subject to auditing as prescribed in this Agreement.

9.3 City's Right to Perform and Terminate for Cause

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

9.3.2 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants and/or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work are completed by the Contract Time, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in this Agreement.

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

9.3.3.1 If Design-Builder fails to cure, or reasonably commence to cure, such problem within such seven (7) Day period, then City may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) Day period.

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

9.3.4 Upon declaring the Agreement terminated as defined above, City may enter upon the Site and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to 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.

9.3.5 In the event of such termination, Design-Builder 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 Design-Builder will only be entitled to be paid for Work performed and accepted by the City prior to its default.

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

9.3.7 If 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 this Agreement.

ARTICLE 10 – INSURANCE AND BONDS

10.1 Insurance Requirements

10.1.1 Design-Builder and Subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement 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 Design-Builder, his agents, representatives, employees or Subcontractors.

10.1.2 The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

10.1.3 The City in no way warrants that the minimum limits contained herein are sufficient to protect the Design-Builder from liabilities that might arise out of the performance of the Work under this Agreement by the Design-Builder, his agents, representatives, employees, or subcontractors. Design-Builder is free to purchase such additional insurance as may be determined necessary.

10.2 Minimum Scope And Limits Of Insurance. Design-Builder shall provide coverage with limits of liability not less than those stated below:

10.2.1 Commercial General Liability - Occurrence Form

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

- General Aggregate/for this Project $2,000,000/$1,000,000
- Products – Completed Operations Aggregate $1,000,000
- Personal and Advertising Injury $1,000,000
- Each Occurrence $1,000,000

The policy shall be endorsed to include the following additional insured language: "The City of Flagstaff shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Design-Builder".

10.2.2 Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

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

The policy shall be endorsed to include the following additional insured language: "The City of Flagstaff shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Design-Builder, including automobiles owned, leased, hired or borrowed by the Design-Builder".

10.2.3 Worker's Compensation and Employers' Liability

Workers' Compensation Statutory
Employers' Liability
Each Accident
Disease - Each Employee
Disease – Policy Limit

10.2.4 Professional Liability

Each Claim $1,000,000

10.2.4.1 The required professional liability coverage must cover Work done or to be done or on the behalf of the Design-Builder.

10.2.4.2 In the event that professional liability insurance required by this Agreement is written on a “claims made” basis, coverage shall be maintained for two years past completion and acceptance of the Work or services required by this Agreement.

10.2.4.3 Any professional liability shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

10.2.5 Builders' Risk Insurance or Installation Floater: N/A
In an amount equal to the initial Agreement amount plus additional coverage equal to Agreement amount for all subsequent Change Orders.

10.2.5.1 The City of Flagstaff, the Design-Builder, Subcontractors, design professional and design professional’s consultant and any others with an insurable interest in the Work shall be Named Insureds on the policy.

10.2.5.2 Coverage shall be written on an all risk, replacement cost basis and shall include coverage for soft costs, flood and earth movement.

10.2.5.3 Policy shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or, (ii) until no person or entity, other than the City of Flagstaff, has an insurable interest in the property required to be covered.

10.2.5.4 Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.

10.2.5.5 Policy must provide coverage from the time any covered property becomes the responsibility of the Design-Builder, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off Site.

10.2.5.6 Policy shall contain a waiver of subrogation against the City of Flagstaff.

10.2.5.7 Design-Builder is responsible for the payment of all policy deductibles.

10.3 Additional Insurance Requirements. The policies shall include, or be endorsed to include, the following provisions:

10.3.1 The City, its officers, officials, agents, employees and volunteers shall be additional insured to the full limits of liability purchased by the Design-Builder even if those limits of liability are in excess of those required by this Agreement.

10.3.2 The Design-Builder's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

10.3.3 Coverage provided by the Design-Builder shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

10.3.4 The policies shall contain a waiver of subrogation against the City, its officers, officials, agents, and employees for losses arising from Work performed by the Design-Builder and Subcontractors for the City.

10.4 Notice Of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) Days prior written notice has been given to the City. Such notice shall be sent directly to the City Senior Representative and shall be sent by certified mail, return receipt requested.

10.5 Acceptability Of Insurers. Insurance is to be placed with insurers duly licensed companies in the state of Arizona and with an “A.M. Best” rating of not less than A-,7, or as approved by the City and licensed in the State of Arizona with policies and forms satisfactory to the City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Design-Builder from potential insurer insolvency.

10.6 Verification Of Coverage

10.6.1 Design-Builder shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

10.6.2 All certificates and endorsements are to be received and approved by the City before Work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of Work under this Agreement and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

10.6.3 All certificates required by this Agreement shall be sent directly to City's Procurement Section. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

10.6.4 If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the Design-Builder or Subcontractors, as the case may be, must submit a current insurance certificate (dated within 15 Days of the Payment Request submittal) with each form. The Payment Request will be rejected if the insurance certificate is not submitted with the Payment Request.

10.7 Subcontractors. Design-Builders' certificate(s) shall include all Subcontractors as additional insureds under its policies. All coverage's for Subcontractors shall be subject to the minimum requirements identified above.

10.8 Approval. Any modification or variation from the insurance requirements in this Agreement shall be made by the Risk Manager, whose decision shall be final. Such action will not require a formal Agreement amendment, but may be made by administrative action.

10.9 Bonds and Other Performance Security

10.9.1 Prior to execution of this Agreement and/or amendment to this Agreement for any Work that includes construction, the Design-Builder must provide a performance bond and a labor and materials bond, each in an amount equal to the full amount of the construction set forth in the GMP.

10.9.2 Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two years prior to the execution of this Agreement.

10.9.3 The bonds shall be made payable and acceptable to the City of Flagstaff.

10.9.4 The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.

10.9.4.1 If one Power of Attorney is submitted, it shall be for twice the total GMP amount.

10.9.4.2 If two Powers of Attorney are submitted, each shall be for the total GMP amount. Personal or individual bonds are not acceptable.

10.9.5 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

10.9.6 All bonds submitted for this Project shall be provided by a company which has been rated "A-, 7, or better" by the A.M. Best Company.

ARTICLE 11 - INDEMNIFICATION

11.1 Intellectual Property

11.1.1 The Design-Builder shall pay all royalties and license fees associated with its performance of services herewith.

11.1.2 The Design-Builder shall defend any action or proceeding brought against City based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. City shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify, defend and hold harmless City from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against City or Design-Builder in any such action or proceeding. Design-Builder agrees to keep City informed of all developments in the defense of such actions.

11.1.3 If City is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

11.1.4 This Agreement shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer required by City and not offered or recommended by Design-Builder to City and to which Design-Builder has objected in writing or (ii) arising from modifications to the Work by City or its agents after acceptance of the Work.

11.1.5 The obligations set forth in this this Agreement shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

11.2 General Indemnification

11.2.1 The Design-Builder hereby agrees to indemnify, defend and hold harmless the City, any of its departments, agencies, officers, or employees from all damages, claims or liabilities and expenses (including reasonable Attorneys' fees) arising out of or resulting in any way from the performance of professional services for the City in the Design-Builder's capacity as a Design-Builder, and caused by any error, omission, or negligent act of the Design-Builder or any person employed by it or anyone for whose acts the Design-Builder is legally liable. In consideration of the award of this Agreement, the Design-Builder agrees to waive all rights of subrogation against the City, its officers, agents and employees for losses arising from the Work performed by the Design-Builder for the City.

11.2.2 The Design-Builder agrees to indemnify, defend and save harmless the City of Flagstaff, its officers, agents and employees, and any jurisdiction or agency issuing permits for any Work included in the Project, their officers, agents and employees, hereinafter referred to as indemnitee, from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the Work done in fulfillment of the terms of this Agreement or on account of any act, claim or amount arising or recovered under workmen's compensation law or arising out of the failure of the Design-Builder to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the Design-Builder will be responsible for primary loss investigation, defense and judgment costs where this Agreement of indemnity applies. In consideration of the award of this Agreement, the Design-Builder agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the Work performed by the Design-Builder for the City.

ARTICLE 12 - GENERAL PROVISIONS

12.1 Interpretation and Intent

12.1.1 The Contract Documents form the entire Agreement between City and Design-Builder and by incorporation herein are as fully binding on the parties as it repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

12.1.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

12.1.3 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in this Agreement. In the event conflicts occur between the drawings and specifications, the Design-Builder is deemed to have estimated the more expensive method unless he has asked for and receive a written decision from the City determining which method or material will be required.

12.2 Time is of the Essence. City and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

12.3 Mutual Obligations. City and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

12.4 Work Product

12.4.1 All Work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes or CD's, and other related documents which are prepared or procured in the performance of this Agreement (collectively referred to as documents) are to be and remain the property of the City and are to be delivered to the City before the final payment is made to the Design-Builder or pursuant to this Agreement. In the event these documents are altered, modified or adapted without the written consent of the Design-Builder or the Subconsultants, which consent the Design-Builder or the Subconsultants shall not unreasonably withhold, the City agrees to hold the Design-Builder and the Subconsultants harmless to the extent permitted by law from any liability arising out of the City's alteration, modification or adaption of the documents.

12.4.2 City acknowledges Design-Builder's plans and specification as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become property of the City upon completion and approval of the Construction Documents and payment in full of all monies then due to Design-Builder for services, or upon termination of this Agreement at an earlier time and upon City payment of any pro rata amount due Design-Builder for Design Services at the time of such termination. Design-Builder shall not use the drawings and specifications, therefore, for any purpose not related to the Project without City's consent. City will not reuse, for matters unrelated to the Work any phase of the Work as set forth in the Scope of Work in ***Exhibit A*** and its subsequent usage, or make any modification to the plans and specifications without the prior written authorization of the Design-Builder. City agrees to hold the Design-Builder harmless, to the extent permitted by law, from any liability arising out of the City's modification or alteration of the Construction Documents without the written authorization of Design-Builder. The City specifically reserves the right to use or reuse any design concept, feature, or aspect of the Work incorporated into the plans and

specifications in any subsequent City project. The City specifically reserves the right to use or reuse any design concept or aspect of the Work incorporated into the plans and specifications to complete the Project in the event that the City and Design-Builder are unable, after good faith efforts, to execute a GMP. Design-Builder shall incorporate such use rights into any agreement with a Subcontractor or consultant, and shall indemnify the City from any claims from such for copyright or patent infringement.

12.4.3 With this Agreement, the Design-Builder and its Subconsultants hereby grant a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the documents, works or Deliverables developed or created as a result of the Project and this Agreement and to which Design-Builder and its Subconsultants may retain rights. This license also includes the making of derivative works. In the event that the derivative works require the City to alter or modify the documents, then the provisions of this Agreement apply.

12.5 Assignment. Design-Builder shall not, without the written consent of the City, assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents. Notwithstanding the City's consent to assignment, Design-Builder as Assignor, and the Assignee shall both remain liable under all rights, obligations, terms and conditions of this Agreement.

12.6 Successorship. Design-Builder and City intend that the provisions of the Contract Documents are binding upon the parties and their successors and assigns.

12.7 Third Party Beneficiary. Nothing under this Agreement shall be construed to give any rights or benefits in the Agreement to anyone other than the City and the Design-Builder, their successors and assigns, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of City and the Design-Builder and not for the benefit of any other party.

12.8 Governing Law. This Agreement and all Contract Documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought in the Superior Court, Coconino County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

12.9 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

12.10 No Waiver. The failure of either party to enforce any of the provisions of this Agreement or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.

12.11 Headings. The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.12 Notice

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

If to the City:

Patrick Brown, C.P.M., CPPB
Purchasing Director
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001

If to the Design-Builder:

Bob Carlson
Vice President
Hunter Contracting Co.
701 N. Cooper Rd.
Gilbert, AZ 85233

or to such other place and with such other copies as either party may designate as to itself by written notice to the other party. Rejection, any refusal to accept, or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

12.12.2 Notices Related to Payment, Securities-In-Lieu, Bonds. Any notice, request, instruction or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds or other instrument securing the performance of this Agreement, including but not limited to, bid bonds, performance bonds, or payment bonds shall be in writing and shall be delivered in person or by courier or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business Days after the Day mailed by certified mail, to the parties listed in section 8.4 with a copy to:

Patrick Brown, C.P.M., CPPB
Purchasing Director
City of Flagstaff
211 W. Aspen Ave
Flagstaff, AZ 86001

or to such other place and with such other copies as either party may designate as to itself by written notice to the other party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

12.13 Amendments. The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.14 Equal Opportunity/Affirmative Action

12.14.1 The Design-Builder shall comply with the provisions of this Agreement, including the requirements of the City of Flagstaff Employee Handbook of Regulations pertaining to discrimination and accepting applications or hiring employees. The Design-Builder shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The Design-Builder will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. The Design-Builder further agrees that this clause will be incorporated in all subcontracts, job-consultant contracts of this Agreement entered into by the Design-Builder.

12.14.2 The City extends to each individual, firm, vendor, Supplier, contractor, and Subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of Disadvantaged and/or Minority-owned or Woman-owned business to reflect both the industry and community ethnic composition.

The following two paragraphs apply to the Design-Builder named herein and shall appear in all contracts between the Design-Builder and any and all Subcontractors who are employed on this Project. The Design-Builder further agrees that the two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement.

"Any Party (Subcontractor), in performing under this Agreement, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice.

The Party (Subcontractor) will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship."

The Design-Builder further agrees that the above two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement.

12.15 Compliance with Federal Laws. Design-Builder understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989 to it. The Design-Builder agrees to comply with these laws in performing this Agreement and to permit the City to verify such compliance.

12.16 Independent Contractor. The Design-Builder is and shall be an independent contractor. Any provisions in this Agreement that may appear to give the City the right to direct the Design-Builder as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the Design-Builder shall follow the wishes of the City as to the results of the Work only.

12.17 City's Right Of Cancellation. All parties hereto acknowledge that this Agreement is subject to cancellation by the City of Flagstaff pursuant to the provisions of A.R.S. § 38-511.

12.18 Data Confidentiality

12.18.1 As used in this Agreement, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the Design-Builder in the performance of this Agreement.

12.18.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Design-Builder in connection with the Design-Builder's performance of this Agreement is confidential and proprietary information belonging to the City.

12.18.3 The Design-Builder shall not divulge data to any third party without prior written consent of the City. The Design-Builder shall not use the data for any purposes except to perform the services required under this Agreement. These prohibitions shall not apply to the following data provided the Design-Builder has first given the required notice to the City:

12.18.3.1 Data which was known to the Design-Builder prior to its performance under this Agreement

unless such data was acquired in connection with Work performed for the City;

12.18.3.2 Data which was acquired by the Design-Builder in its performance under this Agreement and which was disclosed to the Design-Builder by a third party, who to the best of the Design-Builder's knowledge and belief, had the legal right to make such disclosure and the Design-Builder is not otherwise required to hold such data in confidence; or

12.18.3.3 Data, which is required to be disclosed by virtue of law, regulation, or court order to which the Design-Builder is subject.

12.18.4 In the event the Design-Builder is required or requested to disclose data to a third party, or any other information to which the Design-Builder became privy as a result of any other contract with the City, the Design-Builder shall first notify the City as set forth in this section of the request or demand for the data. The Design-Builder shall give the City sufficient facts so that the City can be given an opportunity to first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

12.18.5 Unless prohibited by law, within ten (10) Days after completion of services for a third party on real or personal property owned or leased by the City, the Design-Builder shall promptly deliver, as set forth in this section, a copy of all data to the City. All data shall continue to be subject to the confidentiality agreements of this Agreement.

12.18.6 The Design-Builder assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the Design-Builder, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section shall be deemed to cause irreparable harm that justifies injunctive relief in court.

12.19 Conflict Of Interest

12.19.1 To evaluate and avoid potential conflicts of interest, the Design-Builder shall provide written notice to the City, as set forth in this section, of any work or services performed by the Design-Builder for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice shall be given seven (7) business Days prior to commencement of the Project by the Design-Builder for a third party, or seven (7) business Days prior to an adverse action as defined below. Written notice and disclosure shall be sent to the City Senior Representative identified in this Agreement.

12.19.2 Actions that are considered to be adverse to the City under this Agreement include but are not limited to:

12.19.2.1 Using data as defined in this Agreement acquired in connection with this Agreement to assist a third party in pursuing administrative or judicial action against the City;

12.19.2.2 Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and

12.19.2.3 Using data to produce income for the Design-Builder or its employees independently of performing the services under this Agreement, without the prior written consent of the City.

12.19.3 The Design-Builder represents that except for those persons, entities and projects identified to the City, the services to be performed by the Design-Builder under this Agreement are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.

12.19.4 The Design-Builder's failure to provide a written notice and disclosure of the information as set forth in this section shall constitute a material breach of this Agreement.

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

12.20 Legal Requirements.

12.20.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

12.20.2 Design-Builder shall comply with the Grant Provisions of FEMA and ADEMA as attached in *Exhibit E.*

12.21 Confidentiality of Plans and Specifications

12.21.1 Any plans or specifications the Design-Builder generates regarding this Project are for official use only. They may not be shared with others except as required to fulfill the obligations of the Design-Builder's Agreement with the City.

12.21.2 All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the Design-Builder shall include the following language: "These plans are official use only and may not be shared with others except as required to fulfill the obligations of the Design-Builder's Agreement with the City of Flagstaff."

12.22 Hazardous Materials

12.22.1 Unless included in the Work, if the Design-Builder encounters onsite or as material to be incorporated in the Work any material which it reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by public health laws, it shall immediately stop work and report the condition to the City.

12.22.2 If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by public health laws, the Design-Builder shall not resume work in the affected area until the material has been abated or rendered harmless. The Design-Builder and the City may agree, in writing, to continue work in non-affected areas onsite.

12.22.3 An extension of Contract Time may be granted in accordance with this Agreement.

12.22.4 The Design-Builder will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.

12.22.5 Notwithstanding the preceding provisions, the City is not responsible for hazardous conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless the City and City's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those hazardous conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

12.23 Design-Builder and Subcontractor Employee Security Inquiries. The parties acknowledge that security measures required in this section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, Design-Builder shall take such other measures as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare.

12.23.1 Security Inquiries. Design-Builder acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). Design-Builder shall perform all such security inquiries and shall make the results available to City for all employees considered for performing Work (including supervision and

oversight) under this Agreement. City may make further security inquiries. Whether or not further security inquires are made by City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by Design-Builder for performing Work under this Agreement. Employees rejected by City for performing services under this Agreement may still be engaged by Design-Builder for other Work not involving the City of Flagstaff. An employee rejected for work under this Agreement shall not be proposed to perform Work under other City contracts or engagements without City's prior approval.

12.23.2 Criteria for Evaluating Security Inquiries. Once formally adopted by the City, criteria for excluding an individual from performing Work under this Agreement shall be communicated by City to Design-Builder and used by Design-Builder as a factor in making its decision. Prior to such adoption, Design-Builder shall use its best judgment in making its decision using, among other criteria, applicable law, administrative regulations of federal, state and local agencies concerned with Work performed under this Agreement, specific local concerns that deal with the specific Work and Work location(s) of the project, and standards used by City in evaluating its own personnel.

12.23.3 Additional City Rights Regarding Security Inquiries. In addition to the foregoing, City reserves the right to: (i) have an employee/prospective employee of Design-Builder be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4); (ii) act on newly acquired information whether or not such information should have been previously discovered; (iii) unilaterally change its standards and criteria relative to the acceptability of Design-Builder 's employees and/or prospective employees; and, (iv) object, at any time and for any reason, to an employee of Design-Builder performing Work (including supervision and oversight) under this Agreement.

12.23.4 Terms of This Provision Applicable to all of Design-Builder 's Contracts and Subcontracts. Design-Builder shall include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for Work performed under this Agreement, including supervision and oversight.

12.23.5 Materiality of Security Inquiry Provisions. The Security Inquiry provisions of this Agreement, as set forth above, are material to City's entry into this Agreement and any breach thereof by Design-Builder may, at City's option, sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Agreement. Such termination shall subject Design-Builder to liability for its breach of contract.

12.24 Computer Systems. Design-Builder shall warrant fault free performance in the processing of date and date-related data including, but not limited to calculating, comparing, and sequencing by all equipment and software products, individually and in combination, from the commencement of the Work. Fault free performance shall include the manipulation of data when dates are in the 20th or 21st centuries and shall be transparent to the user. Failure to comply with "Year 2000" requirements shall be considered a breach of contract.

12.25 Traffic Control. Design-Builder will comply with all provisions of the latest version of the Manual on Uniform Traffic Control Devices and any other traffic control provisions as may be provided in the technical specifications.

12.26 Covenant Against Contingent Fees. Design-Builder warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Flagstaff has any interest, financially, or otherwise, in the Design-Builder's firm, or the firms of Design-Builder's Design Consultant, or Design-Builders other consultants or Subcontractors. For breach or violation of this warrant, the City of Flagstaff shall have the right to annul this Agreement without liability, or at its discretion to deduct from the compensation or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

12.27 Fair Treatment of Workers. The Design-Builder shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having jurisdiction or authority, which in any way affects the conduct of Work. The Design-Builder shall at all times observe and comply with all such laws, ordinances, regulations, codes. orders and decrees; this includes but is not limited to laws and regulations ensuring fair and equal treatment for all employees against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The Design-Builder shall protect, defend and indemnify the City and its representatives against any claim or liability arising from or based on the violation of such, whether by itself or its employees.

12.28 Compliance. All Work performed shall conform to all applicable City of Flagstaff codes, ordinances and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and those in the Project Description attached as ***Exhibit A***, the provisions in this Agreement shall prevail.

12.29 Exhibits. The following exhibits are included in this Agreement and considered as if fully set forth herein:

Exhibit A – Project Description
Exhibit B – Scope of Services
Exhibit C – Fee Schedule
Exhibit D – Monthly Anticipated Adverse Weather Days
Exhibit E – Grant Provisions

12.30 Compliance with Federal Immigration Laws and Regulations. Design-Builder 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. Design-Builder acknowledges that pursuant to A.R.S. § 41-4401 a breach of this warranty is a material breach of this Agreement subject to penalties up to and including termination of this Agreement, and that the City retains the legal right to inspect the papers of any employee who works on this Agreement to ensure compliance with this warranty.

12.31. 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 Agreement 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 Agreement, will not engage in a boycott of Israel.

12.32. Forced Labor of Ethnic Uyghurs: If Design-Builder engages in for-profit activity and has ten (10) or more employees, pursuant to A.R.S. §35-394, the certifies that it does not currently, and agrees for the duration of the contract that it will not, use: 1) the forced labor of ethnic Uyghurs in the People's Republic of China; 2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and 3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If the Independent Contractor becomes aware during the term of the contract that the company is not in compliance with the written certification, the company shall notify the County within five business days after becoming aware of the noncompliance. If the Contractor does not provide the County with a written certification that the Contractor has remedied the noncompliance within 180 days after notifying the County of the noncompliance, this Contract terminates, except that if the contract termination date occurs before the end of the remedy period the Contract terminations on the Contract termination date.

DESIGN-BUILD SERVICES AGREEMENT
PROJECT NO. *3519/PSPipline*

CONTRACT NO. 2023-74

This Agreement will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

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

IN WITNESS WHEREOF, the parties hereto have executed this Contract on _____.

CITY OF FLAGSTAFF, ARIZONA

By: _____
Greg Clifton
City Manager

HUNTER CONTRACTING CO.

By:_____

Title: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A – PROJECT DESCRIPTION

The scope of this proposed project includes the engineering design, project management, contracting, and environmental clearance work that are necessary to prepare for construction of are routed and rebuilt Waterline Road and Inner Basin Pipeline at flood-impacted points where drainages cross Waterline Road. Construction will involve replacing flood-impacted sections of ductile iron and concrete pipe with ductile iron pipe. The actual construction will be a separate project. Design, contracting, environmental clearance, and project management costs will be approximately $2 million. Construction costs are estimated at $8 million.

Several points have been mapped where drainage channels cross Waterline Road (see attached map). Mitigation measures have been prioritized for these points. Points 1 through 28 were initially impacted by the Schultz Fire (2010) and were addressed by earlier mitigation measures. Some of these points were further impacted by the Pipeline Fire (2022). Points A through L were affected by the Pipeline Fire. Proposed mitigation sites include points 7, 9, 17A, 32, and I. Point I is the most heavily impacted site and includes a break in the ductile iron pipe.

The intention of the proposed design work is to stabilize the drainages and Waterline Road cross-sections to reduce incision, erosion, and sediment deposition. By stabilizing the drainage crossings and roadway and strengthening the pipeline, we will protect the reliability of both a significant portion of the City of Flagstaff's water supply and a critical interagency roadway used to service this infrastructure and to access the Inner Basin of the San Francisco Peaks. Much of the roadway and pipeline infrastructure that was damaged by post-Schultz Fire flooding has been repaired and remains greatly intact. However, some of these previous repairs must be modified to accommodate the larger burn-impacted drainage areas caused the Pipeline Fire. The proposed project will right-size and improve the integrity of the existing flood mitigation infrastructure (appoints 7, 9, and 17A). The project will also add mitigation structures north and south of the existing post-Schultz Fire structures (at points 32 and I) to include impacted drainages from the Pipeline Fire.

The level of protection will be calculated by design engineers to encompass the newly burned watersheds and a determined storm event. The design will ensure critical protection of Waterline Road and the Inner Basin Water Pipeline.

The desired outcome is to ensure a reliable conveyance of well and spring water to the City of Flagstaff without any compromise to our water supply. Outcomes would also include a passable, stable road with drainage crossings that can safely and effectively pass water and debris while not compromising infrastructure integrity. Although the roadway will require some ongoing maintenance in terms of clearing debris from the road surface, this maintenance would not involve more construction or repairs.

The mitigation methods for the infrastructure system repair would be the creation of structures that are anchored and secured to protect the integrity of the road and waterline. Improvements will not stop the passage of water or debris, but rather they will allow the passage of water and debris while the watershed is in the process of being restored. By creating sound structures and systems, the road and new waterline will be able to function effectively and reliably even during flood events.

EXHIBIT B – SCOPE OF SERVICES

The scope of services for this contract includes the 30-percent design documents. These deliverables include plan-view drawings, for each of the 45 sites shown on the attached map. Furthermore, each site will have an initial assessment of potential approaches, solutions, and challenges at each location. Initial solutions may be accompanied by preliminary detail drawings. Also included in the scope of services is the 30-percent level engineer's opinion of probable construction costs. Finally, the last item in the scope of work is the research and reporting by EnviroSystems on Section 106 compliance and reporting.

EXHIBIT C – FEE SCHEDULE

(See Attached)

To be supplemented after initial programming session with City and Design-Build team.

EXHIBIT D – MONTHLY ANTICIPATED ADVERSE WEATHER DAYS

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 in Table 108.7. Table 108.7 as follows is the monthly schedule of adverse weather Days that shall be anticipated by the Contractor in scheduling the Work:

TABLE 108.7 – MONTHLY ANTICIPATED ADVERSE WEATHER CALENDAR DAYS

MONTH	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE
MONTHLY ANTICIPATED ADVERSE WEATHER CALENDAR DAYS	**7 days**	**7 days**	**8 days**	**6 days**	**4 days**	**3 days**
AVERAGE MONTHLY PRECIPITATION	1.98”	1.96”	2.05”	1.84”	0.68”	0.51”
MONTHLY DAILY HIGH TEMPERATURE ≤32º F	5 days	3 days	2 days	0 days	0 days	0 days
MONTH	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
MONTHLY ANTICIPATED ADVERSE WEATHER CALENDAR DAYS	**12 day**	**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”
MONTHLY DAILY HIGH TEMPERATURE ≤ 32º F	0 days	0 days	0 days	0 days	1 day	5 days

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 inch and daily high temperatures below 32º Fahrenheit.

EXHIBIT E – GRANT PROVISIONS

(See Attached)

Inner Basin Waterline

Flood-Impacted Sites

Well 1
Well 2
Well 3
A
B
C
D
E
F
G
H
I
J
K
L
01
02
03
3A
3B
04
05
06
07
09
10
11
12
13
14
15
16
17
17A
18
18A
19
20
21
22
22A
22B
24
24A
24C
25
25A
26
26A
27
28
29
30
31
32
33
34
35

Pipeline New Burn Area

Schultz Fire Reburn Area

FSR 420

FSR 556

Schultz Creek Watershed

N

0 1 2 Mile

Sites
Waterline Road
Schultz Creek and Tributaries
US Forest Service Roads
Schultz Creek Watershed

CAPITAL IMPROVEMENTS
CITY OF FLAGSTAFF

Hunter CONTRACTING CO.

701 N. Cooper Rd. Gilbert AZ 85233
6930 N. Camino Martin, Tucson AZ 85741
3580 W. Ina Rd., Ste. 170, Tucson AZ 85741

PH: 480.892.0521 FX: 480.892.4932
www.huntercontracting.com

December 20, 2022

David Pedersen, Project Manager
Capital Improvements
Office :: 928.213.2677 || Cell :: 928.607.2515

City of Flagstaff
211 W Aspen Avenue
Flagstaff, AZ 86001

Re: Pipeline West Post-Fire Flooding – INNER BASIN WATERLINE
AZ Department of Emergency Management and Military Affairs (AZDEMA): Declaration #SD2302
City of Flagstaff Program No.: 3519 / PS Pipeline

Subject: Design-Build Services DS-1 Cost Proposal

Dear Mr. Pederson,

Following is the Hunter Contracting Co./Jacobs, Design-Build Team's Cost Proposal and Guaranteed Maximum Price (GMP-1) in the amount of $189,694.00 for the initial design efforts for the Schultz Flooding Inner Basin Road & Pipeline Reconstruction project. This GMP will deliver to the City of Flagstaff 30% Design documents, with a term through March 2023. These documents will include plan-view drawings for each of the 45 sites defined in the City of Flagstaff commissioned Preliminary Design Document. For each defined site our team will provide an initial assessment of potential approaches, solutions, and challenges at the location. Initial solutions may be accompanied by preliminary detail drawings. Please note that at this time due to the project locations being covered by snow and currently inaccessible, a typical plan-and-profile view cannot be generated.

We have included estimated effort hours for personnel from Hunter Contracting Co. and Jacobs. In addition, Jacobs has provided a breakdown of costs from one key sub-consulting and resource firm, EnviroSystems Management.

The first page is an overall Summary sheet of our anticipated design services. This work is broken down into two separate contracts; This proposal covers the scope listed for the Preliminary Implementation plan. The scoping for the Final Implementation Plan will be adjusted as required as we develop more information in the initial phase.

If you have questions or comments, please do not hesitate to contact me at 520-954-3016 (cell) or at my direct office line 480-632-4954.

Thank you for your time and consideration.

Chuck English
President
Hunter Contracting Co.

City of Flagstaff
2022 Schultz Flooding Inner Basin Road
Pipeline West Post-Fire-Flooding-INNER BASIN WATERLINE

PRELIMINARY IMPLEMENTATION PLAN (DESIGN TO 30% PLANS)

Dates	Contracts	Approach	
Dec 22	Design Contra	Start Concept	Based on what we know - Drone Footage
			Update Drainage Study / Develop Flows for New Sites
			Complete Environmental
Jan 23		15% Plans	Based on Above and Drone Footage:
			Develop Existing Site Repairs
			Develop Alternative Site Repair Concept
			Initial Quantities
			Initial Costs
Feb 23			Share Concepts with Stakeholders
			Discuss Pros/Cons with Forest / DEMA
			Agree on Approach
			Review Environmental with Concepts
March 23		30% Plans	Jacobs Advance concepts with comments addressed
			Update Quantities based on comments
			Update Costs
			Identify Long-Lead Materials / Items
			Access Review
			Permit Review
			Develop Scoping and Proposal for Final Design Contract (Design Contract 2)

FINAL IMPLEMENTATION PLAN (DESIGN TO FINAL PLANS)

April 23	Design Contract 2		Design Contract 2 Approval
May 23			Site Review/Investigations (Weather Permitting)
			Survey
			Final Concept Review / Final Design Kick-off Meeting
			Confirm Concept Plans / Assumptions
			Incorporate Environmental Constraints
August 23		90% Plans	Update Plans
			Develop Mitigation Toolbox — Revised Tool Kit for Repairs
			Prioritize / Develop Implementation Plan
			Initial Construction Schedule
			- Develop Quantities
			- Develop Cost Estimates
			Share Concepts with Stakeholders
			Discuss Pros/Cons with Forest / DEMA
			Agree on Approach
			Review Environmental with Concepts
			Final Design Review Meeting
Sept 23	GMP's	100% Plans	Develop Final Drawings
			Design Documents
			Final Construction Schedule
			- Develop Quantities
			- Develop Cost Estimates
			Construction Documents

SUMMARY of TOTAL COST 30% DESIGN PHASE

ESTIMATED PROJECT COSTS, BY FIRM

Firm	Estimated Labor-Hours				
Hunter Contracting Co.	273	26%		$	37,249.00
Jacobs	780	74%		$	145,395.00
Estimated Direct Labor Hours	1,053		**Total Estimated Costs**	$	182,644
			Total Cost	$	182,644

OTHER ESTIMATED OUTSIDE SERVICES & CONSULTANTS

EnvironSystems Management (Subconsultant to Jacobs)	$	7,050		
Sub 2	$	-		
Sub 3	$	-		
Sub 4	$	-		
	$	7,050		
			Total Estimated Outside Services	$ 7,050
			Total Estimated Cost, Combined	$ 189,694
			Total Estimated Cost	**$ 189,694**

DERIVATION OF COST PROPOSAL FOR HUNTER CONTRACTING CO.

SUMMARY

ESTIMATED DIRECT LABOR

Classification	Estimated Labor-Hours		Average Hourly Rate	Labor Costs
Program Manager	0	0%	$ 166.00	$ -
Project Manager	65	24%	$ 145.00	$ 9,425.00
Preconstruction Manager	106	39%	$ 145.00	$ 15,370.00
Superintendent	16	6%	$ 135.00	$ 2,160.00
Senior Estimator	40	15%	$ 135.00	$ 5,400.00
Project Engineer	40	15%	$ 94.00	$ 3,760.00
Clerical/Administration	6	2%	$ 89.00	$ 534.00
Estimated Direct Labor Hours	273		**Total Estimated Direct Labor**	$ 36,649.00
			Total Labor Cost	$ 36,649.00

ESTIMATED DIRECT EXPENSES

Travel	$	-
Subsistence	$	600
Publications and Supplies	$	-
Reproductions	$	-
	$	600
Total Direct Expenses	$	600.00

ESTIMATED OUTSIDE SERVICES & CONSULTANTS

Sub 1	$	-
Sub 2	$	-
Sub 3	$	-
Sub 4	$	-
	$	-
Total Estimated Outside Services	$	-

Total Estimated Cost, Combined $ 37,249.00

Total Estimated Cost (Hunter Contracting Co.) **$ 37,249.00**

Hunter Contracting Scope of Work

DERIVATION OF ESTIMATED LABOR HOURS FOR HUNTER CONTRACTING CO

Scope Ref.	MILESTONE SUBMITTAL	Sheet Count	Program Manager	Project Manager	Precon Manager	Project Supt.	Senior Estimator	Project Engineer	Clerical	Total Hours
	GENERAL SERVICES									
	Program Evaluation			2	2					4
	Internal Hunter Meetings									
	Progress Payments				2				2	4
	30% CONCEPT / DEVELOPMENT PLANS									
	Preliminary Site Information Collection									
	Preliminary Concepts for Scoping Meeting			8	8	8			2	26
	Final Concept Development for 30%			8	8	8			2	26
	Design									
	Sheet Production									
	30% Cost Estimate				20		40	40		100
	Agency Coordination									
	Environmental Determination									
	30% CONCEPT / DEVELOPMENT PLANS SUBTOTALS:			18	40	16	40	40	6	160
	PROJECT COORDINATION / ADMINISTRATIVE									
	NOTE: See Mtg. Summary for detailed breakdowns									
	Kick-Off / Scoping Meeting	1 Mtgs			7					7
	Site Reviews	1 Mtgs		8	8					16
	Progress Meetings (Flagstaff)	12 Mtgs		12	24					36
	Progress Meetings (Contractor)	3 Mtgs		9	9					18
	Team Meetings	2 Mtgs		18	18					36
	Project Workshops	2 Mtgs								
	Public Meeting	None								
	Project Administation									
	PROJECT COORDINATION / ADMINISTRATIVE SUBTOTALS:			47	66					113
	TOTAL HOURS ()Hunter Contracting Co.)			**65**	**106**	**16**	**40**	**40**	**6**	**273**

Hunter Contracting Scope of Work

MEETING ACTIVITIES FOR HUNTER CONTRACTING CO.

Hunter Contracting Scope of Work

Scope Ref.	MILESTONE SUBMITTAL	Sheet Count (If Applicable)	Program Manager	Project Manager	Precon Manager	Project Engineer	Senior Environ. Planner	Environ. Planner	Engineer/ Designer	Tech. Drafter	Clerical	Total Hours
PROJECT COORDINATION / ADMINISTRATIVE												
	Kick-Off / Scoping Meeting											
	Meeting Participation				7							7
	Sub-Total for each Meeting				7							7
	Total for projected Meetings	1 Mtgs			7							7
	Council Workshop											
	Preparation (Special Plots, coordinates)			2	2							4
	Meeting (Including Travel)			6	6							12
	Sub-Total for each Field Review			8	8							16
	Total for projected Field Reviews	1 Mtgs		8	8							16
	Progress Meetings (Virtual)											
	Preparation				1							1
	Meeting			1	1							2
	Sub-Total for each Meeting			1	2							3
	Total for projected Progress Meetings	12 Mtgs		12	24							36
	Progress Meetings (Contractor)											
	Preparation			1	1							2
	Meeting			2	2							4
	Sub-Total for each Meeting			3	3							6
	Total for projected Progress Meetings	3 Mtgs		9	9							18
	Plan/Cost Reviews (Flagstaff)											
	Preparation			1	1							2
	Meeting			8	8							16
	Sub-Total for each Meeting			9	9							18
	Total projected Team Meetings	2 Mtgs		18	18							36
	Project Workshops (Flagstaff)											
	Preparation											
	Meeting											
	Sub-Total for each Meeting											
	Total projected Workshop Meetings	2 Mtgs										
	Pulbic Meeting											
	Preparation											
	Meeting											
	Prepare Meeting Minutes											
	Total projected for Public Meetings:	None										
	PROJECT COORDINATION / ADMINISTRATIVE SUBTOTALS:			47	66							113

Hunter Contracting Scope of Work

DERIVATION OF ESTIMATED DIRECT EXPENSES FOR HUNTER CONTRACTING CO.

SUBSISTENCE (Field Visits)

Lodging:	Event	Number of People	Days	Cost/day		
	Meetings in Flagstaff	1	3	$150.00	$	450
	Event 2	2	0	$150.00	$	-
	Event 3	2	0	$150.00	$	-
	Event 4	2	0	$150.00	$	-
	Event 5	2	0	$150.00	$	-
	Event 6	2	0	$150.00	$	-
	Event 7	2	0	$150.00	$	-
	Event 8	2	0	$150.00	$	-
	Event 9	2	0	$150.00	$	-

Meals:	Event	Number of People	Days	Cost/day		
	Meetings in Flagstaff	1	3	$50.00	$	150
	Event 2	2	0	$50.00	$	-
	Event 3	2	0	$50.00	$	-
	Event 4	2	0	$50.00	$	-
	Event 5	2	0	$50.00	$	-
	Event 6	2	0	$50.00	$	-
	Event 7	2	0	$50.00	$	-
	Event 8	2	0	$50.00	$	-
	Event 9	2	0	$50.00	$	-
					$	600

SUBSISTENCE SUBTOTAL: $ 600.00

Hunter CONTRACTING CO.

City of Flagstaff

Schultz Flooding Inner Basin Road and Pipeline Reconstruction

City of Flagstaff Contract No. 2022-XXX

JACOBS

DERIVATION OF COST PROPOSAL

SUMMARY

(Figures Rounded to Nearest $1.00)

ESTIMATED DIRECT LABOR

Classification	Estimated Labor-Hours		Average Hourly Rate	Labor Costs
Project Manager	192	25%	$ 260.00	$ 49,920.00
Sr. Project Engineer	207	27%	$ 200.00	$ 41,400.00
Project Engineer	79	10%	$ 170.00	$ 13,430.00
Sr. Environ. Planner	0	0%	$ 176.00	$ -
Environmental Planner	0	0%	$ 155.00	$ -
Design Engineer	204	26%	$ 145.00	$ 29,616.25
Technician/Drafter	58	7%	$ 110.00	$ 6,380.00
Clerical/Administration	40	5%	$ 85.00	$ 3,400.00
	780			

Total Labor Costs $ 144,146

Total Labor Cost $ 144,146

ESTIMATED DIRECT EXPENSES

Travel	$	949
Subsistence	$	-
Publications and Supplies	$	300
Reproductions	$	-
	$	1,249

Total Direct Expenses $ 1,249

ESTIMATED OUTSIDE SERVICES & CONSULTANTS

AeroTech Mapping	(Phase II)		
EnvironSystems Management, Inc.	Class I Cultural Report	$	7,050
		$	7,050

Total Estimated Outside Services $ 7,050

Total Estimated Cost to Consultant $ 152,445

Total Estimated Cost $ 152,445

12/13/2022
Date

Operations and Office Manager

Jacobs Engineering Scope of Work

Hunter CONTRACTING CO.

City of Flagstaff

Schultz Flooding Inner Basin Road and Pipeline Reconstruction

City of Flagstaff Contract No. 2011-25

JACOBS

DERIVATION OF ESTIMATED DIRECT EXPENSES

TRAVEL:

MILEAGE (Personal Vehicles)

Personal Mileage: Origin	Destination	Miles/ Trip	# of Trips	Cost/ Mile	
Client Meetings	Flagstaff	350	3	$ 0.650	682.5
Scoping / Kickoff	Flagstaff	350	1	$ 0.650	227.5
Site Reviews	Flagstaff	500		$ 0.650	0
Contractor Mtgs	Gilbert	20	3	$ 0.650	39

PERSONAL VEHICLE SUBTOTAL: $ 949.00

TRAVEL TOTAL: $ 949.00

SUBSISTENCE (Field Visits)

Lodging:	Event	Number of People	Days	Cost/day	
Meals:	Event	Number of People	Days	Cost/day	
				$55.00	$ -
					$ -
					$ -
					$ -

SUBSISTENCE SUBTOTAL: $ -

PUBLICATIONS AND SUPPLIES

Maps (USGS, County, FEMA, Etc.)		$ 100
Exhibit Supplies, Duplicating Large Color Exhibits, Handouts		$ 200
Publications		$ -
Surveying GPS Unit	(Basis for cost)	$ -
Surveying Lath and Supplies		$ -
		$ 300

PUBLICATIONS AND SUPPLIES TOTAL: $ 300.00

Jacobs Engineering Scope of Work

Hunter CONTR

City of Flagstaff

Schultz Flooding Inner Basin Road and Pipeline Reconstruction

City of Flagstaff Contract No.2022-xx

JACOBS

DERIVATION OF ESTIMATED LABOR HOURS

Jacobs Engineering Scope of Work

Scope Ref.	MILESTONE SUBMITTAL	Sheet Count (As Reqd.)	Project Principal	Project Manager	Senior Project Engineer	Project Engineer	Senior Environ. Planner	Environ. Planner	Engineer/ Designer	Tech. Drafter	Clerical	Total Hours
30% CONCEPT / DEVELOPMENT PLANS												
	Preliminary Site Information / Data Collection			8	8	8						24
	Set up Site Exhibit											
	Individual Site Maps / Exhibits	45 Sheets		8					40			48
	Strip Maps of the Roadway	30 Sheets							30	30		60
	Assessment / Revisions to Damaged Sites											
	Develop Site Concepts			16	16							32
	Full Site Repair	18 Sheets				18			36			54
	Site Modification	21 Sheets				10			32			42
	Simple Grading / Light Work	6 Sheets				2			6			8
	Initial Site Quantities	45 Sheets				12			12			24
	Share Concepts with Stakeholders			8								8
	Distribution of Concepts											
	Address Stakeholder Comments											
	Contractor Feedback / Modifications			8	8							16
	Revisions to Sites based on Comments			12	12							24
	Full Site Repair	18 Sheets				9			18			27
	Site Modification	21 Sheets				5			16			21
	Simple Grading / Light Work	6 Sheets				1			3			4
	Initial Site Quantities	45 Sheets				6			6			12
	Initial Concept Report			16								16
	Tool Box / Document History			16								16
30% CONCEPT / DEVELOPMENT PLANS SUBTOTALS:				92	44	71			198	30		435

Scope Ref.	MILESTONE SUBMITTAL	Sheet Count (As Reqd.)	Project Principal	Project Manager	Senior Project Engineer	Project Engineer	Senior Environ. Planner	Environ. Planner	Engineer/ Designer	Tech. Drafter	Clerical	Total Hours
Updated DRAINAGE CONCEPT / HYRDROLOGY												
	Updated Hydrology for Basins											
	Updated Maps / Topography for expanded area				16					8		24
	Hydraulic Analysis for added basins				40							40
	Model in HEC 1 drainage flows				32							32
	Report / Figures / Tables / Maps			2	32					12		46
Updated DRAINAGE CONCEPT / HYRDROLOGY SUBTOTALS:				2	120					20		142
PROJECT COORDINATION / ADMINISTRATIVE												
NOTE: See Mtg. Summary for detailed breakdowns												
	Kick-Off / Scoping Meeting	1 Mtgs		7								7
	City Council Working Session	1 Mtgs		8								
	Progress Meetings (Virtual)	12 Mtgs		24	6				6			36
	Progress Meetings (Contractor)	3 Mtgs		9	9							18
	20% Concept Review (Flagstaff)	2 Mtgs		18								18
	Project Workshops	Mtgs										
	Site Reviews											
	Project Administation			32	28	8				8	40	116
PROJECT COORDINATION / ADMINISTRATIVE SUBTOTALS:				98	43	8			6	8	40	203
	TOTAL HOURS			**192**	**207**	**79**			**204**	**58**	**40**	**780**

Jacobs Engineering Scope of Work

Hunter CONTRACTING CO.

City of Flagstaff

Schultz Flooding Inner Basin Road and Pipeline Reconstruction

City of Flagstaff Contract No. 2011-25

JACOBS

Scope Ref.	MILESTONE SUBMITTAL	Sheet Count (If Applicable)	Project Principal	Sr. Project Manager (Berwyn)	Senior Project Engineer (Pat)	Project Engineer (Dan)	Senior Environ. Planner (Nancy)	Environ. Planner (Kay)	Engineer/ Designer (Sam)	Tech. Drafter	Clerical	Total Hours
PROJECT COORDINATION / ADMINISTRATIVE												
	Kick-Off / Scoping Meeting											
	Preparation (Special Plots, Exhibits)											
	Meeting (Including Travel)			7								7
	Sub-Total for each Meeting			7								7
	Total for projected Meetings	1 Mtgs		7								7
	City Council Working Meeting											
	Preparation			2								2
	Meeting (Including Travel)			6								6
	Total projected for City Council Working Meeting:	1 Mtgs		8								8
	Progress Meetings (Virtual)											
	Preparation			1								1
	Meeting			1	1				1			2
	Sub-Total for each Meeting			2	1				1			3
	Total for projected Progress Meetings	12 Mtgs		24	6				6			36
	Progress Meetings (Contractor-Construction Details / Pricing)											
	Preparation			1	1							2
	Meeting			2	2							4
	Sub-Total for each Meeting			3	3							6
	Total for projected Progress Meetings	3 Mtgs		9	9							18
	20% Concept Review (Flagstaff)											
	Preparation			1								1
	Meeting			8								8
	Sub-Total for each Meeting			9								9
	Total projected Team Meetings	2 Mtgs		18								18
	Project Workshops (Flagstaff)											
	Preparation											
	Meeting											
	Sub-Total for each Meeting											
	Total projected Workshop Meetings	Mtgs										
	Site Visits											
	Preparation (Special Plots, coordinates)											
	Site Visit											
	Sub-Total for each Field Review											
	Total for projected Field Reviews	Mtgs										

Jacobs Engineering Scope of Work

Scope Ref.	MILESTONE SUBMITTAL	Sheet Count (If Applicable)	Project Principal	Sr. Project Manager	Senior Project Engineer	Project Engineer	Senior Environ. Planner	Environ. Planner	Engineer/ Designer	Tech. Drafter	Clerical	Total Hours
	Administration/Project Management/Sub Coordination	(Jan - April)										
	Project Set up / General Administration			16							28	
	Monthly invoicing	4 Months		4							4	
	Coordination of Sub-Consultants			4							8	12
	Review QA/QC of Sub Consultant Reports / Plans											
	Final Environmental Reports				8							8
	QA of Plans Packages											
	Initial Concept Submittal				8							8
	Final Concept Submittal											
	Final Plans Submittal											
	Assemble plans for print / Distirbution											
	Initial Concept Submittal				4					8		12
	Final Concept Submittal											
	Final Plans Submittal											
	Review Mtg & Respond to Comments											
	Initial Concept Submittal			8	8	8						24
	Final Concept Submittal											
	Final Plans Submittal											
	Total for Admin / Project Management			32	28	8				8	40	116
	PROJECT COORDINATION / ADMINISTRATIVE SUBTOTALS:			98	43	8			6	8	40	203

Jacobs Engineering Scope of Work

ENVIROSYSTEMS
COMPLIANCE • CULTURAL • BIOLOGICAL • GEOSPATIAL

23 East Fine Avenue
Flagstaff, Arizona 86001
www.esmaz.com
Ph: 928.226.0236
800.370.6060
Fax: 928.226.0237

December 13, 2022

Berwyn Wilbrink, PE
Vice President & Transportation Group Manager
Jacobs
1501 W Fountainhead Pkwy #401
Tempe, AZ 85282
Office: (602) 530-1661
Mobile: (480) 363-6328
Berwyn.Wilbrink@jacobs.com

Re: Class I Cultural Resources Overview and Update for the Inner Basin Water Pipeline Resulting from the Pipeline Fire.

Dear Mr. Wilbrink:

Per your request, EnviroSystems Management, Inc. (EnviroSystems) appreciates the opportunity to submit the following scope and fee for the completion of a Class I cultural resources overview of the Inner Basin Road and Water Pipeline in support of repairs after the Pipeline Fire on Coconino National Forest lands (CNF), Coconino County, Arizona. This project is being conducted on behalf of Jacobs for the City of Flagstaff to complete Section 106 consultation.

EnviroSystems has already contacted Nick Mustoe, Deputy District Ranger, and Jeanne Stevens, District Archeologist with the CNF. EnviroSystems will prepare a Class I overview of the proposed project area and consult with the City of Flagstaff and the CNF to ensure Section 106 compliance. The CNF will be responsible for the IS&A and consulting with the State Historic Preservation Office. The IS&A will be based on the Class I overview, results, and management recommendations.

CULTURAL RESOURCES OVERVIEW

The records search will consist of an online review of CNF records, the Arizona cultural resources database (AZSITE), a General Land Office (GLO) survey plats and land patents, the Arizona and National Register of Historic Places (AZ/NRHP) online databases, and any available historic topographic maps or aerials. It will also include information EnviroSystems has within its own extensive Arizona cultural resources library and databases, including the previous *Historic Resources Evaluation for the Schultz Flooding Inner Basin Road & Pipeline Reconstruction Project, Coconino National Forest, Coconino County, Arizona* completed by EnviroSystems. The records search for the Class I will focus on the pipeline and adjacent road(s) and will include a 200 meter buffer and will draw heavily on the aforementioned document, which will be supplemented with recent research in the project vicinity. Once the data have been compiled, EnviroSystems will make recommendations for cultural resources monitoring or any additional survey, if necessary. The environmental setting, cultural context, background research, results, and recommendations will be summarized in a technical report that will be submitted to the CNF and the City of Flagstaff.

ENVIROSYSTEMS
COMPLIANCE • CULTURAL • BIOLOGICAL • GEOSPATIAL

23 East Fine Avenue
Flagstaff, Arizona 86001
www.esmaz.com
Ph: 928.226.0236
800.370.6060
Fax: 928.226.0237

EnviroSystems will consult and work closely with the City of Flagstaff and CNF to define the project area and work with all stakeholders to ensure that Section 106 compliance can be met in the most efficient and expeditious manner possible.

EnviroSystems has the following assumptions.

- A Class I is the first step in defining the project area and baseline data.
- No fieldwork is planned for this phase.
- The management recommendations may include limited Class III survey or cultural resources monitoring

COST ESTIMATE

Task 1. Class I Records Search	$2,250.00
Task 2. Draft and Final Report	$3,250.00
Task 3. Consultation with the City of Flagstaff and CNF	$1,500.00
Other Direct Costs (report production)	$50.00
Subtotal	**$7,050.00**

The total cost for the cultural resources overview is ***$7,050.00***. This cost takes into account that some elements of the project have yet to be defined and includes flexibility to adapt to changes in scope through consultation and project development. EnviroSystems appreciates the opportunity to provide assistance on this project. If you have any questions or comments regarding this scope and fee, please call or email Dave Hart at dhart@esmaz.com or 928-266-6651. Thank you for your time and consideration.

Sincerely,

Dave Hart
Cultural Resources Division Director
EnviroSystems Management, Inc.

GRANT PROVISIONS

Sponsor: City of Flagstaff

Funding Agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA) and Arizona Department of Emergency Management and Military Affairs (ADEMA)

FEMA/ADEMA Public Assistance Grant: SD#2302

Project Number: 3519 / PSPipline

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)
CONTRACT PROVISIONS

1. APPLICABLE LAWS

a. The Contractor and its Subcontractor shall comply with all applicable Federal, State, and Local laws and regulations.

2. REMEDIES

a. Contracts for more than the simplified acquisition threshold, currently set at $250,000, 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. See 2 C.F.R. Part 200, Appendix II(A).

3. TERMINATION FOR CAUSE AND CONVENIENCE

a. 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. See 2 C.F.R. Part 200, Appendix II(B).

4. EQUAL EMPLOYMENT OPPORTUNITY

a. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246**,** *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. 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 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II(C).

b. Key Definitions.

   i. Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any

application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

ii. Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

c Required Language. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an

investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it

participates in federally assisted construction work: *Provided,* that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

5. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

a Where applicable (see 40 U.S.C. §§ 3701-3708), 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 at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II(E). Under 40 U.S.C. § 3702, 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. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

b. This requirement applies to all FEMA contracts awarded by the non- federal entity in excess of $100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

c. Compliance with the Contract Work Hours and Safety Standards Act.

(1) *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.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (c)(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 (c)(1) of this section, in the sum of
$27 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 (c)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City of Flagstaff 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 (c)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (c)(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 (c)(1) through (4) of this section.

6. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

a. Applicability. This requirement applies to contracts awarded by a non-federal entity of amounts in excess of $150,000 under a federal grant.

b. Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

2. The contractor agrees to report each violation to the City of Flagstaff and understands and agrees that the City of Flagstaff will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

c. Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to City of Flagstaff and understands and agrees that the City of Flagstaff will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

7. DEBARMENT AND SUSPENSION

a. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's

regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

b. This requirement applies to all FEMA grant and cooperative agreement programs.

c. Requirements.

i. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II(H); and 2 C.F.R. § 200.213. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that 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. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530.

ii. In general, an "excluded" party cannot receive a Federal grant award or a contract within the meaning of a "covered transaction," to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a "covered transaction," which is any nonprocurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although "covered transactions" do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipients.

iii. Specifically, a covered transaction includes the following contracts for goods or services:

1. The contract is awarded by a recipient or subrecipient in the amount of at least $25,000.

2. The contract requires the approval of FEMA, regardless of amount.

3. The contract is for federally-required audit services.

4. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of $25,000.

d. Governing Language

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of

the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the City of Flagstaff. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City of Flagstaff, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, 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. BYRD ANTI-LOBBYING AMENDMENT

a. 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. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 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 Federal awarding agency.

b. This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of $100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.

c Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

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 non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

d. If applicable, contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the

required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor,_____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

_____
Signature of Contractor's Authorized Official

_____
Name and Title of Contractor's Authorized Official

_____
Date

9. PROCUREMENT OF RECOVERED MATERIALS

a. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II(J); and 2 C.F.R. § 200.322.

b. This requirement applies to all contracts awarded by a non- federal entity under FEMA grant and cooperative agreement programs.

c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

d. Governing Language.

i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
    1. Competitively within a timeframe providing for compliance with the contract performance schedule;
    2. Meeting contract performance requirements; or

3. At a reasonable price.

ii. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

10. DOMESTIC PREFERENCES FOR PROCUREMENT

a. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with the requirements of 2 C.F.R. § 200.322. As appropriate and to the greatest extent consistent with law, state and non-state entities should, to the greatest extent practicable under its FEMA award, provide a preference for the purchase of goods, products or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. 2 CFR § 200.322 also provides specific definitions for "Produced in the United States" and "manufactured products" that states should review.

11. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

a. Section 889(b)(1) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA) and 2 C.F.R. § 200.216 prohibit the obligation or expending of federal award funds on certain telecommunication products or from certain entities for national security reasons. Effective August 13, 2020, FEMA recipients and subrecipients, as well as their contractors and subcontractors, may not obligate or expend any FEMA award funds to:

i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Additional information, including definitions for this requirement can be found in FEMA

Policy 405- 143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim).

12. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS

a. 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.

b. 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.

13. ENERGY POLICY AND CONSERVATION ACT

a. 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).

14. CONFLICTS OF INTEREST

a. 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.

15. COPYRIGHTS

a. 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.

16. PATENT FEES AND ROYALTIES

a. 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.

17. ACCESS TO RECORDS

a. All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS/FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, Section 1225 of the Disaster Recovery Reform Act of 2018 prohibits FEMA from providing reimbursement to any state, local, tribal, or territorial government, or private non-profit for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.

b. Access to Records. The following access to records requirements apply to this contract:

(1) The Contractor agrees to provide State of Arizona, City of

Flagstaff, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the City of Flagstaff and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

18. CHANGES AND MODIFICATIONS

a. To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

19. DHS SEAL, LOGO, AND FLAGS

a. The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions: Version 8.1 (2018).

20. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

a. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

21. NO OBLIGATION BY FEDERAL GOVERNMENT

a. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

22. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

a. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

23. AFFIRMATIVE SOCIOECONOMIC STEPS

a. For procurements under awards or declarations issued on or after November 12, 2020, all nonfederal entities are required to take the six affirmative steps to ensure use of small and minority businesses, women's business enterprises, and LSA firms when possible.230 One of the six steps is to require the prime contractor, if subcontracts are to be let, to take the five other affirmative steps, For procurements under awards or declarations issued between December 26, 2014, and November 12, 2020, this requirement only applies to non-state entities.

FEDERAL STANDARD - 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.

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.
(a) 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.
(b) Affirmative steps shall include:
(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
(3) 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;
(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
(5) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
(6) The Prime Contractor, if subcontracts are to be let, take affirmative steps listed in paragraph (b)(1) through (5) of this section.

Domestic preferences for procurements.
(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Procurement of recovered materials.
A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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). NOT APPLICABLE
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]

8. B.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Amy Hagin, Assistant Parks and Recreation Director
Date:	01/12/2023
Meeting Date:	01/17/2023

TITLE:

Consideration and Approval of Contract: Cooperative Purchase Contract with Deere & Company of a John Deere Compact Utility Tractor in the amount of $66,071.40.

STAFF RECOMMENDED ACTION:

1. Approve the Cooperative Purchase Contract with Deere & Company of a John Deere Compact Utility Tractor in the amount of $66,071.40; and
2. Authorize the City Manager to execute all the necessary documents.

Executive Summary:

The Parks Section maintains 700-acres of park land, 58-miles of Flagstaff Urban Trails System (FUTS), miles of Bed, Board, and Beverage (BBB) tax improved streetscapes and spaces, as well as performs snow operations for the City frequently using tractors. Providing the consistent service to the community of trail maintenance, park grounds maintenance and snow operations by adding this utilitarian equipment to the Parks fleet is a key ingredient to the overall success of the Section.

The purchase of this equipment has been approved by the Fleet Management Committee and the Parks Section will use the AZ Mohave cooperative purchase contract # 20E-DEER-0825 (PG 3V CG 22) in order to provide the City better pricing. This equipment will replace a 2008 John Deere 4270 Tractor within the Section, which is a like for like replacement as the Parks Section continues to strive for superior emissions and fuel efficiency, drivability on the roads and a larger array of attachments that accompany a proper grounds maintenance vehicle. The equipment warranty and services are supported locally by the City of Flagstaff Fleet Program.

Financial Impact:

The Parks Section has $70,000 budget capacity in the Rolling Stock line item within the Park Grounds Program for fiscal year 2022-2023 in account 001-11-155-0561-5-4401.

Policy Impact:

None.

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

Priority Based Budget Key Community Priorities and Objectives
Safe & Healthy Community and Sustainable, Innovative Infrastructure by promoting physical health through providing recreational opportunities, parks, open space. Also providing multiple transportation options (maintenance of the FUTS) and deliver outstanding services to residents through a healthy, well maintained infrastructure system

Carbon Neutrality Plan
CNP-1 Reduces greenhouse emissions from City operations by adjusting the replacement vehicle type to a newer and more efficient tractor

Regional Plan
Goal E&C.2 Reduce greenhouse gas emissions

Has There Been Previous Council Decision on This:

No.

Options and Alternatives:

1. Approve the Cooperative Purchase Contract with Deere & Company for a John Deere Compact Utility Tractor in the amount of $66,071.40; or
2. Direct staff to hold a formal procurement for the purchase of the equipment.

Background/History:

For fiscal year 2022-2023, the Parks Section was budgeted to replace an aging tractor within the Sections' Fleet.

In 2022, the Parks Section staff researched available tractors from a variety of manufacturers to replace the existing tractor, falling upon a John Deere as the replacement. Purchasing this piece of equipment enables the Parks Section to perform maintenance tasks in our park grounds with an updated tractor providing efficiencies.

Deere & Company has Contract #20E-DEER-0825 (PG 3V CG 22) with AZ Mohave to supply materials and/or services, which was awarded through a competitive and open procurement process. The Procurement Department reviewed that cooperative purchase agreement and determined that it allowed for competitive pricing providing the best value for the purchase of the John Deere Compact Utility Tractor.

Key Considerations:

The City of Flagstaff and Fleet Services have educated backgrounds working with John Deere equipment and a local provider is available for warranty and post warranty repairs, if needed.

Attachments: COF Contract
Exhibit A - Quote
Tractor Image
Exhibit B - Agency Contract
Exhibit B – Agency Contract 1

COOPERATIVE PURCHASE CONTRACT
Contract No. 2023-81

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 Deere & Company, a North Carolina Corporation ("Contractor").

RECITALS:

A. Contractor holds a Contract No. 20E-DEER-0825 (PG 3V CG 22) with the Mohave Educational Services to supply materials and/or services ("Agency Contract"), which was awarded through a competitive and open procurement process; and

B. Contractor is a fully authorized vendor of John Deere products as described in the Agency Contract; and

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

AGREEMENT:

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

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

John Deere Tractor (PROSE)

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, will not exceed **sixty-six thousand seventy-one dollars and forty cents ($66,071.40) including other fees and taxes**; 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.

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.

Deere & Company:

By:_____

Title:_____

CITY OF FLAGSTAFF

By:_____

Title:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney's Office

EXHIBIT A
SPECIFIC REQUIREMENTS OF CITY

Deere & Company Quote ID 27954233 (Attached)

EXHIBIT B
AGENCY CONTRACT

1. **AZ Mohave Contract 20E-DEER-0825 (PG 3V CG 22)** (Attached)
2. **Arizona Mohave – Utility Vehicles, Tractors, Golf Carts, Grounds Maintenance Vehicles, Equipment and Services** (Attached)

JOHN DEERE

Customer:

Quotes are valid for 30 days from the creation date or upon contract expiration, whichever occurs first.

A Purchase Order (PO) or Letter of Intent (LOI) including the below information is required to proceed with this sale. The PO or LOI will be returned if information is missing.

Vendor: Deere & Company
2000 John Deere Run
Cary, NC 27513

- ☐ Signature on all LOIs and POs with a signature line
- ☐ Contract name or number; or JD Quote ID
- ☐ Sold to street address (no PO box)
- ☐ Ship to street address (no PO box)
- ☐ Bill to contact name and phone number
- ☐ Bill to address
- ☐ Bill to email address (required to send the invoice and/or to obtain the tax exemption certificate
- ☐ Membership number if required by the contract

For any questions, please contact:

Chuck Clanton

Flagstaff Equipment Company
500 North Grant
Flagstaff, AZ 86004

Tel: 928-774-1969
Fax: 928-774-7006
Email: chuck.fec@flagequip.com

Quotes of equipment offered through contracts between Deere & Company, its divisions and subsidiaries (collectively “Deere”) and government agencies are subject to audit and access by Deere's Strategic Accounts Business Division to ensure compliance with the terms and conditions of the contracts.

JOHN DEERE

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):
Deere & Company
2000 John Deere Run
Cary, NC 27513
FED ID: 36-2382580
UEID: FNSWEDARMK53

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:
Flagstaff Equipment Company
500 North Grant
Flagstaff, AZ 86004
928-774-1969
caflageq@msn.com

Quote Summary

Prepared For:
CITY OF FLAGSTAFF ACCOUNT PAYABLE
211 W ASPEN AVE
FLAGSTAFF, AZ 86001
Business: 928-779-7626

Delivering Dealer:
Flagstaff Equipment Company
Chuck Clanton
500 North Grant
Flagstaff, AZ 86004
Phone: 928-774-1969
chuck.fec@flagequip.com

Quote ID: 27954233
Created On: 20 December 2022
Last Modified On: 20 December 2022
Expiration Date: 20 January 2023

Equipment Summary	Suggested List	Selling Price		Qty		Extended
JOHN DEERE 4066R Compact Utility Tractor (52 PTO hp) **Contract:** AZ Mohave Contract 20E-DEER-0825 (PG 3V CG 22) **Price Effective Date:** August 1, 2022	$ 71,155.20	$ 59,058.82	X	1	=	$ 59,058.82
Frontier BB2072 Standard Duty Box Blade **Contract:** AZ Mohave Contract 20E-DEER-0825 (PG 3V CG 22) **Price Effective Date:** August 1, 2022	$ 1,755.00	$ 1,456.65	X	1	=	$ 1,456.65
Equipment Total						**$ 60,515.47**

* Includes Fees and Non-contract items

Quote Summary

Equipment Total	$ 60,515.47
Trade In	
SubTotal	**$ 60,515.47**
Sales Tax - (9.181%)	$ 5,555.93
Est. Service Agreement Tax	$ 0.00
Total	$ 66,071.40
Down Payment	(0.00)
Rental Applied	(0.00)

Salesperson : X _____

Accepted By : X _____

JOHN DEERE

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

Deere & Company
2000 John Deere Run
Cary, NC 27513
FED ID: 36-2382580
UEID: FNSWEDARMK53

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

Flagstaff Equipment Company
500 North Grant
Flagstaff, AZ 86004
928-774-1969
caflageq@msn.com

Balance Due **$ 66,071.40**

Salesperson : X _____

Accepted By : X _____

JOHN DEERE

Selling Equipment

Quote Id: 27954233 **Customer Name:** CITY OF FLAGSTAFF ACCOUNT PAYABLE

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):
Deere & Company
2000 John Deere Run
Cary, NC 27513
FED ID: 36-2382580
UEID: FNSWEDARMK53

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:
Flagstaff Equipment Company
500 North Grant
Flagstaff, AZ 86004
928-774-1969
caflageq@msn.com

JOHN DEERE 4066R Compact Utility Tractor (52 PTO hp)

Hours:
Stock Number:
Contract: AZ Mohave Contract 20E-DEER-0825 (PG 3V CG 22)
Price Effective Date: August 1, 2022

Suggested List *
$ 71,155.20
Selling Price *
$ 59,058.82

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
0389LV	4066R Compact Utility Tractor (52 PTO hp)	1	$ 49,512.00	17.00	$ 8,417.04	$ 41,094.96	$ 41,094.96
	Standard Options - Per Unit						
0202	United States	1	$ 0.00	17.00	$ 0.00	$ 0.00	$ 0.00
0409	English Operator's Manual and Decal Kit	1	$ 0.00	17.00	$ 0.00	$ 0.00	$ 0.00
1520	eHydro™	1	$ 0.00	17.00	$ 0.00	$ 0.00	$ 0.00
1701	Factory Installed Loader with Bucket	1	$ 8,878.00	17.00	$ 1,509.26	$ 7,368.74	$ 7,368.74
2060	Deluxe Cab with Air Ride Seat	1	$ 11,513.00	17.00	$ 1,957.21	$ 9,555.79	$ 9,555.79
2660	Factory Installed Stereo	1	$ 592.00	17.00	$ 100.64	$ 491.36	$ 491.36
4060	iMatch™ Quick Hitch Category 1	1	$ 366.00	17.00	$ 62.22	$ 303.78	$ 303.78
5090	Less Wheel Spacer	1	$ 0.00	17.00	$ 0.00	$ 0.00	$ 0.00
5243	44x18-20 (4PR, R3 Turf, 1 Position)	1	$ -577.00	17.00	$ -98.09	$ -478.91	$ -478.91
6243	27x10.50-15 (4PR, R3 Turf, 2 Position)	1	$ 0.00	17.00	$ 0.00	$ 0.00	$ 0.00
	Standard Options Total		**$ 20,772.00**		**$ 3,531.24**	**$ 17,240.76**	**$ 17,240.76**
	Dealer Attachments/Non-Contract/Open Market						
BM19937	Attaching Hardware for Additional Rear Wheel Weight, 55 lb (25 kg)	2	$ 13.20	17.00	$ 2.24	$ 21.92	$ 21.92
BM17968	Rear Wheel Weight, 48.5 lb	4	$ 162.80	17.00	$ 27.68	$ 540.48	$ 540.48
LVB25004	Attaching Hardware for Starter Rear Wheel Weight, 55 lb (25 kg)	2	$ 63.80	17.00	$ 10.85	$ 105.90	$ 105.90
BLV10640	Engine Coolant Heater Kit	1	$ 66.00	17.00	$ 11.22	$ 54.78	$ 54.78

JOHN DEERE

Selling Equipment

Quote Id: 27954233 **Customer Name:** CITY OF FLAGSTAFF ACCOUNT PAYABLE

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

Deere & Company
2000 John Deere Run
Cary, NC 27513
FED ID: 36-2382580
UEID: FNSWEDARMK53

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

Flagstaff Equipment Company
500 North Grant
Flagstaff, AZ 86004
928-774-1969
caflageq@msn.com

	Dealer Attachments Total	**$ 871.20**	**$ 148.12**	**$ 723.08**	**$ 723.08**
	Value Added Services Total	**$ 0.00**		**$ 0.00**	**$ 0.00**
Total Selling Price		**$ 71,155.20**	**$ 12,096.40**	**$ 59,058.80**	**$ 59,058.80**

Frontier BB2072 Standard Duty Box Blade

Equipment Notes:

Hours:

Stock Number:

Contract: AZ Mohave Contract 20E-DEER-0825 (PG 3V CG 22)

Price Effective Date: August 1, 2022

Suggested List *
$ 1,755.00

Selling Price *
$ 1,456.65

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
1044XF	BB2072 Standard Duty Box Blade	1	$ 1,755.00	17.00	$ 298.35	$ 1,456.65	$ 1,456.65
Total Selling Price			**$ 1,755.00**		**$ 298.35**	**$ 1,456.65**	**$ 1,456.65**

JOHN DEERE
4066R

JOHN DEERE

Last Updated: August 25, 2022

ARIZONA Mohave - Utility Vehicles, Tractors, Golf Carts, Grounds Maintenance Vehicles, Equipment and Services

Contract Number:	20E-DEER-0825
Contract Period:	August 25, 2020 – August 24, 2023
Eligibility:	This cooperative purchase contract can be extended to the political subdivisions, cities and counties that have a signed cooperative purchasing agreement with the state. Includes public school districts and community colleges that have a signed cooperative purchase agreement. A member list may be found on Mohave's website, www.mesc.org under "Sign Up" - Mohave Members Sign Up

Quotes and Purchase Orders:

Quotes are valid for 30 days from the creation date of the quote **OR** until the contract expires, whichever occurs first.

To obtain a quote, contact your local John Deere Dealer. Submit your purchase order to your dealer. The John Deere Dealer will submit the purchase order to John Deere's Government Sales office.

All purchase orders must show Deere & Company as the vendor and reference the contract # 20E-DEER-0825.

Contract Details

Delivery Obligations	**All Purchase Orders** and **complete detailed quotes** must be faxed (928-718-3232) or emailed (orders@mesc.org) to Mohave for review. Do not perform any work or provide any equipment until **"MESC Reviewed"** purchase order is received. **Training** - available via John Deere dealer at price determined by dealer.
Fees	**None**
Financing	**Not Allowed**. Contract prohibits financing.
Machine Hours	**Not Allowed:** Due to factory delivery, pre-delivery inspection, machine setup and installation of attachments, machines may have minimal hours. Machines designated as demos are not allowed.

Manuals	An Operator's Manual and Parts Manual is included with the delivery of the equipment at no charge. These manuals may be provided in paper, electronic or online formats. Dealer will be reimbursed for manuals listed on the quote.
Miscellaneous	**Pricing Errors:** must be approved by Mohave before offered to any agency.
Multiple Unit Discount	For sales of three or more like self-propelled equipment sold to one customer on the same purchase order qualifies for an additional discount. Implements and attachments sold with and for self-propelled ride-on machines are also eligible for multi-unit discounts, but do not count towards the total number of ride-on units, which determines the multi-unit discount percentage. See discount structure below: Quantity — Additional Discount 3-4 — 1% 5-6 — 2% 7-8 — 3% 9 units or more — 4% Frontier Equipment is excluded from the Multiple Unit Discount program.
Open Market by John Deere (listed in the price book)	**Allowed:** Open-Market items are **implements, attachments, accessories, parts and bundles** that are not currently on contract, but are requested by the customer to complete the purchase of John Deere equipment awarded on contract. Items must be clearly labeled on the purchase order as Open Market.
Open Market by Dealer (not listed in the price book)	**Allowed:** Open-Market items **not available from John Deere but offered by the delivering Dealer** to complete the purchase of John Deere equipment awarded on contract. Items must be clearly labeled on the purchase order as Open Market.
Payment and Remittance	Credit card payments not allowed. Remit to Address: Deere & Company Ag & Turf CBD & Government Sales 21748 Network Place Chicago, IL 60673-1217
Substitution	Government Sales must contact the state for approval.

Public

Trade-In	**Allowed:** Items must be clearly labeled on the purchase order or quote as Trade-In. The agency and the dealer will determine the trade-in value.

Price Structure

Product Descriptions	Discounts off MSRP	Price Page Dates
Residential Zero Turn Radius Mowers (formally Tab L21)	3%	01Aug22
Residential Zero Turn Radius Mowers Z700 Series Only (formally Tab L21)	8%	01Aug22
Lawn Tractors S100 – S240 (formally Tab L25)	3%	01Aug22
Lawn Tractors X300 Series Only (formally Tab L25)	17%	01Aug22
Garden Tractors X500 & X700 Series (formally Tab L30)	17%	01Aug22
Equipment for Lawn and Garden Tractors (formally Tab L35)	17%	01Aug22
Commercial Walk-Behind Mowers (formally Tab C10)	22%	01Aug22
Commercial Zero Turn Mowers (formally Tab C13)	22%	01Aug22
Commercial Front Mowers (formally Tab C15)	22%	01Aug22
Commercial Wide Area Mowers (formally Tab C18)	22%	01Aug22
Equipment for Commercial Mowing (formally Tab C21)	22%	01Aug22
Compact Utility Tractors (formally Tab C20)	17%	01Aug22
Equipment for Compact Utility Tractors (formally Tab C25)	17%	01Aug22
Mid-Size Crossover Utility Vehicles (formally Tab C40)	13%	01Aug22

Public

Full-Size Crossover Utility Vehicles (formally Tab C41)	13%	01Aug22
Traditional Utility Vehicles (formally Tab C42)	16%	01Aug22
HPX Utility Vehicles (formally Tab C47)	13%	01Aug22
Tractors - 5050E, 5060E, 5067E, 5075E (formally Tab A2)	13%	01Aug22
Tractors – 5090E, 5090EL, 5100E (formally Tab A2)	18%	01Aug22
Tractors - 5000Ms, MHs, MLs, GLs, GNs, GVs (formally Tab A2)	21%	01Aug22
Tractors - 6000-9000 Series (formally Tab A2)	23%	01Aug22
Material Handling, Cutters, and Shredders (formally Tab A9)	23%	01Aug22
Ag Management Solutions (AMS) (formally Tab A10)	Same As Tractors Discount 4% If Purchased w/o Tractor	01Aug22
Golf – Reel Mowers (formally Tab G10)	23%	01Aug22
Golf – Special Application Mowers (formally Tab G15)	23%	01Aug22
Golf – Special Application Vehicles (formally Tab G20)	23%	01Aug22
Golf – Aercore (formally Tab G25)	23%	01Aug22
Golf – Debris Maintenance (formally Tab G30)	23%	01Aug22
Golf – Fleet Management (formally Tab G35)	12%	01Aug22
Frontier Cotton	17%	01Aug22

Public

Frontier Cutting & Mowing	17%	01Aug22
Frontier Hay & Forage	17%	01Aug22
Frontier Landscape	17%	01Aug22
Frontier Livestock	17%	01Aug22
Frontier Material Handling	17%	01Aug22
Frontier Planting & Seeding	17%	01Aug22
Frontier Snow Equipment	17%	01Aug22
Frontier Sprayers	17%	01Aug22
Frontier Tillage	17%	01Aug22

Contract Updates

August 25, 2022 – Contract extended to August 24, 2023. Updated all price pages. Discounts have not changed.

August 30, 2021 – Contract extended to August 24, 2022. Price pages and discounts have not changed.

April 22, 2021 – Updated all price pages.

Public

MOHAVE COOPERATIVE

20E-DEER-0825 Table of Contents
Deere & Company
Response to RFP 20E-0521

Deere & Company Response to Best and Final Offer 2

Tab 1A - Signed Offer & Acceptance Form and Confidential/Proprietary Submittal 6
(See document 4. 20EDEER0825 Award Documentation for Offer & Acceptance Form.)

Tab 1B - Amendments ..... No Amendments were issued for this RFP.

Tab 1C - General Terms & Conditions 8

Tab 1D - Special Terms & Conditions 27

Tab 1E - Scope of Work/Services and Specifications 36

Tab 1F - Anti-Lobbying Certificate 46

Tab 1G - U.S. Department of Agriculture Form AD-1048 47

Tab 2A - Method of Approach 50

Tab 2B - Qualifications and Experience 54

Tab 2C - Certificate of Insurance ..... Please call Mohave for information.

Tab 2D - Financial Information ..... All financial information is kept confidiential and has been removed.

Tab 3A - Price Proposals ..... See document 6. 20EDEER0825 Pricing Summary.

Tab 3B - Pricing Methodology, Discounts, and Pcard Descriptions 68

Tab 3C - Mobilization, and Travel Descriptions 69

Tab 3D - Used, Reconditioned, Refurbished Equipment, Vehicle Pricing Methodology Description 70

Tab 4A - Supporting Contract Documents, Suppport and Maintenance Information 72

Tab 4B - Sample Supplemental or End-User Agreements 75

Tab 4C - Extended Warranty or Maintenance Service Plan Information 76

Tab 4D - Warranty Information 78

Tab 5 - Additional Information ..... Please call Mohave for information.

Click section title to be taken directly to that section.

4/5/18 EH

MOHAVE COOPERATIVE

Via Email
GovContractSupport@JohnDeere.com
RomanAndrewR@JohnDeere.com

REQUEST FOR BEST AND FINAL OFFERS

REQUEST FOR PROPOSAL RFP 20E-0521

UTILITY VEHICLES, TRACTORS, GOLF CARTS, GROUNDS MAINTENANCE VEHICLES, EQUIPMENT AND SERVICES

In accordance with Arizona procurement rules and code, Mohave Educational Services Cooperative, Inc. (Mohave) is requesting Best and Final Offers for Request for Proposal RFP 20E-0521, Utility Vehicles, Tractors, Golf Carts, Grounds Maintenance Vehicles, Equipment and Services.

BEST AND FINAL OFFER DUE DATE: Friday, July 17, 2020, at 3:00 p.m. (local time)

Electronic Submission: contracts@mesc.org

Best and Final Offers ***must be submitted electronically to*** Mohave Educational Services Cooperative, Inc., with Best and Final Offer, RFP 20E-0521, and **Offeror's Name clearly indicated in the email subject line.**

Best and Final Offers must be received by the due date and time, or shall be considered as a late response. Offerors are advised that late best and final offers shall be handled as specified by Arizona procurement rules and code. If a best and final offer is not submitted, the offeror's immediate previous offer will be construed as their best and final offer. ***Email your best and final offer, and any supporting attachments to: contracts@mesc.org.***

CONTACT PERSON: Maria Brissette, CPPB, Contract Specialist I PHONE: (928) 718-3237

Anita S. McLemore, C.P.M.
Executive Director

DATE: July 10, 2020

THIS BEST AND FINAL OFFER IS SUBMITTED BY:

Name: Andrew Roman, Contract Administrator

Firm: Deere & Company

Address: 2000 John Deere Run

City: Cary **State:** NC **Zip:** 27513

Phone: 800-358-5010 – Option 2285 **Signature:** Andrew Roman

Date: July 16, 2020 **Title:** Contract Administrator

Request for Proposal RFP 20E-0521, Utility Vehicles, Tractors, Golf Carts, Grounds Maintenance Vehicles, Equipment and Services
Deere & Company

REQUEST FOR BEST AND FINAL OFFERS

NOTE: Mohave has completed its initial review of your response to RFP 20E-0521, and is requesting the following information to better understand your offer. Carefully review and answer the questions that follow. Provide only the information requested. ***Do not provide another complete copy of your initial response.*** *Sign and include this Request for Best and Final Offer with your response. If you do not respond by the specified time, date and location, your immediate previous offer will be construed as your best and final offer.*

NOTE: YOUR ANSWERS TO QUESTIONS 1 AND 4 MAY REQUIRE REVISIONS AND/OR CLARIFICATIONS TO YOUR PRICING WORKBOOK. PROVIDE A REVISED COPY OF YOUR PRICING WORKBOOK VIA EMAIL WITH YOUR BEST AND FINAL OFFER. ENSURE THAT YOUR PRICING WORKBOOK IS NOT PASSWORD PROTECTED.

BEST AND FINAL OFFER SUBMITTAL

1. In your firm's response to Tab 2a, Method of Approach Question 1d, your firm provided information regarding distance learning classes on the equipment you sell. Your firm stated that classes are offered by John Deere dealers who provide local training. Additionally, your firm check "Comply" to Specification 1.1.10 regarding hands-on training for any equipment or vehicle. However, in Section Four of your pricing workbook, hourly training price(s) were not provided. Your firm stated your labor rate was "*Available from the John Deere dealer at prices determined by the dealer.*" **Can your firm provide training rates for the individual dealers? If yes, provide them in a revised pricing workbook.**

   Deere & Company does not establish training rates for the individual dealer. John Deere dealers are independent business owners and will establish their own training rates. At delivery, dealers will provide Safety, Operational and Basic Maintenance instructions to members at no cost.

2. In Tab 2b, Qualifications and Experience Question 1, your firm provided information regarding credit and finance services. Leasing services is not requested under RFP 20E-0521. **State your understanding that leasing would not be allowed under an awarded contract.**

   Deere & Company will not offer Leasing Services to the Mohave members under an awarded contract.

3. In order for Mohave Educational Services Cooperative, Inc.'s (Mohave's) contracts to comply with new legislation in revised Title 7, Article 10, School District Procurement rules that went into effect July 1, 2020, the following terms and conditions have been either revised or added. **Review each term and condition and initial to provide that you reviewed term and condition, and that your firm shall take no exceptions.** *Failing to initial or accept the modified or added terms and conditions shall render your best and final offer and proposal as "non-responsive."*

   The following terms and conditions of RFP 20E-0521 have been modified as follows:

   a. **General Term and Condition, 3.3 Cancellation for conflict of interest**, has been amended as follows:

      Original term and condition: ~~Mohave may cancel this contract pursuant to ARS §38-511 for conflict of interest. Conflict of interest occurs if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of Mohave, is or becomes at any time while the contract or an extension (contract modification) of the contract is in effect, an employee of, or a consultant to, any other party to the contract, with respect to the subject matter of the contract. Members shall incur no penalty or further obligation if the contract is cancelled for conflict of interest.~~

      Amended term and condition: *In accordance with A.R.S. §38-511, Mohave may cancel the contract within 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 Mohave 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 party to the contract with respect to the subject matter of the contract. The cancellation shall be effective when the contract vendor receives written notice of the cancellation unless the notice specifies a later time.*

AR____ (initial)

b. **General Term and Condition 3.9 Gratuities**, has been amended as follows:

Original term and condition: ~~Mohave shall cancel this contract if it is found that gratuities in the form of entertainment, gifts or otherwise, were offered or given by contract vendor or any agent or representative of contract vendor, to any employee of Mohave or member with a view toward securing a contract or with respect to the performance of this contract.~~ Officers, employees and agents are prohibited from soliciting or accepting gratuities, favors or anything of monetary value from contractors or parties of subcontractors under an awarded contract. Paying the expenses of normal business meals shall be in accordance with each member's policy regarding gratuities. Samples as requested in the solicitation and provided to Mohave for demonstration or evaluation are not considered gratuities.

Amended term and condition: *If it appears that any person has not complied with A.R.S. § 15-213(O), Mohave may, by written notice, terminate the contract, in whole or in part, if Mohave determines that any person or contract vendor has offered, conferred or agreed to confer any personal gift or benefit on any employee of Mohave or a member employee who supervised or participated in the planning, recommending, selecting or contracting of the contract. Officers, employees and agents are prohibited from soliciting or accepting gratuities, favors or anything of monetary value from contractors or parties of subcontractors under an awarded contract. Paying the expenses of normal business meals shall be in accordance with each member's policy regarding gratuities. Samples as requested in the solicitation and provided to Mohave for demonstration or evaluation are not considered gratuities.*

AR____ (initial)

c. **General Term and Condition 3.10 Contract vendor offerings**, has been added as follows:

Mohave may, by written notice, terminate the contract in whole or in part, if Mohave determines that employment or a gratuity was offered or made by the contract vendor or a representative of the contract vendor to any officer or employee of the school district or school purchasing cooperative 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 making of any determination or decision about contract performance.

AR____ (initial)

d. **General Term and Condition, 5. Certification**, second bullet point, has been amended by the additional language [*emphasis in bold and underlined*] as follows:

The submission of the offer did not involve collusion or other anticompetitive practices ***and that the offeror has taken steps and exercised due diligence to ensure that no violation of A.R.S. §15-213(O) has occurred.*** *Neither signatory nor any person on his behalf has connived or colluded to produce a deceptive show of competition in the matter of the bidding or award of a contract under this solicitation.*

AR____ (initial)

4. Considering a number of proposals for this contract. Pricing is very competitive.
   - Please review your prices to determine if any additional discounts are available.
   - If yes, provide a new comprehensive price schedule.
   - If no, indicate "No Additional Discounts."

No Additional Discounts

If a best and final offer is not submitted, the offeror's immediate previous offer will be construed as their best and final offer.

TAB 1

Offer and Acceptance

Terms and Conditions

Scope of Work and Specifications Documents

Anti-Lobbying Certificate

USDA Form AD-1048

CONFIDENTIAL/PROPRIETARY SUBMITTALS

Confidential/Proprietary Submittals (mark one):

__X__ No confidential/proprietary materials have been included with this offer.

_____ Confidential/proprietary materials have been included with this offer. Offerors shall identify below any portion of their offer deemed confidential or proprietary (see General Terms and Conditions 6. Confidential Information.

Note that any documentation marked as confidential or proprietary must be identified below. Any confidential or proprietary information NOT identified as instructed shall be deemed as non-confidential or non-proprietary.

The confidential/proprietary information identified below does not guarantee that disclosure will be prevented but that the item(s) will be subject to review by the offeror and Mohave prior to any public disclosure. Requests to deem the entire offer or pricing as confidential shall not be considered.

Deere & Company

Firm

Authorized Signature

NO ADDENDUMS

General Terms and Conditions
(Place after Tab 1c)

Some General Terms and Conditions specify placement of information in tabs other than Tab 1c as noted in the title above. Pay close attention to placement information (identified in bold text) as indicated in select General Terms and Conditions.

1. ADVERTISING

Offeror shall not advertise or publish information concerning this solicitation prior to an award being announced by Mohave. After award, contract vendor(s) may advertise the availability of products, materials, processes and services to members. Any promotional marketing materials using the Mohave logo shall be approved by a Mohave Contract Specialist in advance.

2. AVAILABILITY OF FUNDS

Member fund availability is unknown to Mohave at the time this solicitation was issued. Use of any contract awarded by Mohave will be conditioned upon the availability of member funds.

3. CANCELLATION

3.1. Cancellation Process: The following requirements shall apply to all cancellation notices issued under an awarded contract:

- A written notice of cancellation shall be sent to the contract vendor and the effective date of cancellation shall be the date specified within the written notice of cancellation.
- Upon cancellation, all products, materials, processes and services paid for by the member, along with documents, data and reports prepared by contract vendor under the contract shall become the property of the member.
- Contract vendor shall be entitled to receive just and equitable compensation in accordance with applicable contract pricing for authorized work in progress, authorized work completed and materials accepted before the effective date of the cancellation.
- Cancellation shall have no effect on projects in progress prior to the effective date of the cancellation.
- Contract vendor is obligated to continue submitting monthly reconciliation reports and administrative fee payments until all purchases are complete and closed.

3.2. Cancellation for bankruptcy or acquisition: Mohave reserves the right to cancel, or suspend the use of, any contract if contract vendor files for bankruptcy protection, or if the original contract holder is sold and ownership is transferred to a new party.

Note: See **Best and Final Offer** For Further Details

3.3. Cancellation for conflict of interest: Mohave may cancel this contract pursuant to ARS §38-511 for conflict of interest. Conflict of interest occurs if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of Mohave, is or becomes at any time while the contract or an extension (contract modification) of the contract is in effect, an employee of, or a consultant to, any other party to the contract, with respect to the subject matter of the contract. Members shall incur no penalty or further obligation if the contract is cancelled for conflict of interest.

3.4. Cancellation for convenience: Mohave reserves the right to immediately cancel the contract without penalty or recourse, in whole or in part, when Mohave determines that action to be in the best interests of its members.

3.5. Cancellation for non-performance or contract vendor deficiency: Mohave may terminate any contract if members have not used the contract, or if purchase volume is determined to be "low volume" in any 12-month period. Mohave reserves the right to cancel the whole or any part of this contract due to failure by contract vendor to carry out any obligation, term or condition of the contract. Mohave may issue a written deficiency notice to contract vendor for acting or failing to act in any of the following:

- Failing to comply with the accepted terms and conditions of the contract;
- Providing material that does not meet the specifications of the contract;
- Providing work and/or material that was not awarded under the contract;
- Failing to adequately perform the services set forth in the scope of work and specifications;
- Failing to complete required work or furnish required materials within a reasonable amount of time;
- Failing to make progress in performance of the contract and/or giving Mohave reason to believe that contract vendor will not or cannot perform the requirements of the contract;
- Performing work or providing products, materials, processes or services under the contract prior to receiving a Mohave reviewed member purchase order for such work.

Upon receipt of a written deficiency notice, contract vendor shall have ten (10) days to provide a satisfactory response to Mohave to adequately address all issues of concern. Failure to adequately address all issues of concern may result in contract cancellation. Upon cancellation under this clause, all goods, materials and work paid for by the member, along with documents, data and reports prepared by contract vendor under the contract shall become the property of the member.

3.6. Cancellation for replacement: Mohave reserves the right to cancel a contract awarded under this solicitation, if a new solicitation has been issued and a contract has been awarded to the same contract vendor for similar products, materials, processes and services. Mohave may, at its option, either replace a contract resulting from this solicitation or delay a new award until the existing contract expires. The decision to delay or replace the contract rests solely with Mohave.

3.7. Contract vendor cancellation: Contract vendor may cancel this contract at any time upon thirty (30) days prior written notice to Mohave or at time of annual contract renewal (contract modification). Termination shall have no effect on projects in progress at the time the notice of cancellation is received by Mohave.

3.8. Continuation of performance: Contract vendor shall continue to perform in accordance with the requirements of the contract, up to the date of cancellation and as directed in the cancellation notice.

Note: See **Best and Final Offer** For Further Details

3.9. Gratuities: Mohave shall cancel this contract if it is found that gratuities in the form of entertainment, gifts or otherwise, were offered or given by contract vendor or any agent or representative of contract vendor, to any employee of Mohave or member with a view toward securing a contract or with respect to the performance of this contract. Officers, employees and agents are prohibited from soliciting or accepting gratuities, favors or anything of monetary value from contractors or parties of subcontractors under an awarded contract. Paying the expenses of normal business meals shall be in accordance with each member's policy regarding gratuities. Samples as requested in the solicitation and provided to Mohave for demonstration or evaluation are not considered gratuities.

4. CAPTIONS, HEADINGS AND ILLUSTRATIONS

The captions, illustrations, headings, and subheadings in this solicitation are for convenience and ease of perusal only, and in no way define, limit or describe the scope or intent of the request.

5. CERTIFICATION

By signing the *Offer and Acceptance Form* (page 2 of the RFP), offeror certifies the following:

Note: See **Best and Final Offer** For Further Details

- Offeror has examined and understands the terms, conditions, scope of work, specifications and other documents in this solicitation.
- The submission of the offer did not involve collusion or other anticompetitive practices. Neither signatory nor any person on his behalf has connived or colluded to produce a deceptive show of competition in the matter of the bidding or award of a contract under this solicitation.
- Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.
- Neither offeror, nor any officer, director, partner, member or associate of offeror, nor any of its employees directly involved in obtaining contracts with the State of Arizona, Mohave Educational Services Cooperative, Inc., or any subdivision of the state has been convicted of false pretenses, attempted false pretenses, or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985.
- Offeror agrees to comply fully with any and all provisions of ARS Title 32, Chapter 10 (Registrar of Contractors) that may regulate offeror's business.
- Offeror shall not discriminate against any employee, or applicant for employment, in violation of federal and state laws (see Federal Executive Order 11246; and ARS Title 41, Chapter 9, Article 4).
- Offeror is not currently suspended, debarred or otherwise precluded from participating in any public procurement activity with any federal, state or local government entity.
- If awarded a contract, offeror agrees to promote, offer and sell under Mohave contract only those materials and/or services awarded to contract vendor by Mohave.
- If awarded a contract, offeror shall provide the equipment, commodities, and/or services to members of Mohave in accordance with the terms, conditions, scope of work, specifications, and other documents of this Request for Proposal.
- If awarded a contract, offeror agrees that all staff and other individuals eligible to receive services shall have equal access to the services regardless of race, religion, color, sex, disability, age or national origin (including language minority individuals).
- Offeror and all proposed subcontractors comply and shall remain in compliance with the Federal Immigration and Nationality Act (FINA), all other federal immigration laws and regulations, ARS §41-4401, and ARS §23-214, which requires compliance with current federal immigration laws by Arizona employers, Arizona contractors and Arizona subcontractors in accordance with the E-Verify employee eligibility verification program.
- Offeror shall comply with ARS §35-393.01 and certify that they are not currently engaged in, and agree that for the duration of the contract to not engage in, a boycott of Israel.
- If applicable to the products and services offered under this contract, Offeror shall comply with current applicable requirements of Health Insurance Portability and Accountability Act of 1996 (HIPPA) and accompanying regulations. Contract vendor agrees to work with the member in the course of performance so that the member and contract vendor are in compliance with HIPPA.

6. CONFIDENTIAL INFORMATION

6.1. Confidential information request: If offeror believes that its proposal contains confidential trade secrets or other proprietary data not to be disclosed, a statement advising Mohave of this fact shall accompany the proposal, and the information shall be so identified wherever it appears. Mohave shall review the statement and shall notify the offeror of their determination in writing whether the information shall be withheld or disclosed. Requests to deem the entire offer as confidential will not be considered.

6.2. Pricing: Mohave will not consider pricing to be confidential or proprietary.

6.3. Public record: All proposals submitted in response to this solicitation shall become the property of Mohave. They will become a matter of public record available for review, subsequent to award of contract(s), with the exception of information deemed confidential by Mohave.

7. CONFIRMATION/DISCUSSIONS

7.1. Confirmation: If an apparent mistake in a proposal, relevant to the award determination is discovered after opening and before award, Mohave shall contact the offeror for written confirmation of the proposal. If offeror fails to act, the offeror shall be considered non-responsive.

Mohave may contact an offeror to confirm our understanding of the proposal. Such contact shall be prior to award. Mohave shall obtain written confirmation from the offeror and shall retain the confirmation in the procurement file. Correction of mistakes in a proposal shall only be allowed as described in Arizona procurement rules and code.

7.2. Discussions: For the purposes of conducting discussions, Mohave shall determine that proposals are either acceptable for further consideration or unacceptable. Discussions may be conducted with responsible offerors who submit proposals determined to be acceptable for further consideration. Discussions may be conducted to assure full understanding of the proposal in order to obtain the most advantageous contract for Mohave, based on the requirements and evaluation factors in this Request for Proposal. Discussions may be conducted orally or in writing. If oral discussions are conducted, the offeror shall confirm the discussions in writing.

Mohave will not help offeror bring its proposal up to the level of other proposals through discussions. Mohave will not indicate to offeror a cost or price that it must meet to obtain further consideration nor will it provide any information about other offerors' proposals or prices.

8. CONTRACT MANAGEMENT

8.1. Applicable law: The contract shall be governed by the laws of the State of Arizona, and suits pertaining to the contract may be brought only in courts in the State of Arizona.

8.2. Application of law: The Arizona Procurement Code, the Arizona State Board of Education School District Procurement Rules, and the Uniform Commercial Code (UCC) as adopted by the State of Arizona, are part of this document as if fully set forth herein. Any provision or clause required by law, rule or regulation to be included in the contract will be read and enforced as if in the contract, whether or not physically included. If any such provision is not included, or is not correctly included, contract will be amended in writing to make such inclusion or correction upon application from either party to contract.

8.3. Arbitration: After exhausting applicable administrative review, the parties to this contract may agree to resolve disputes arising out of or relating to this contract through arbitration, to the extent allowed by law.

8.4. Assignment: Contract vendor shall assign no right or interest in this contract without prior written permission from Mohave. No delegation of any duty of contract vendor shall be made without prior written permission from Mohave. Mohave shall not unreasonably withhold approval and shall notify contract vendor of its decision within fifteen (15) days of receipt of written notice from contract vendor.

8.5. Contract claims or controversies: The requirements of the Arizona procurement rules and code shall govern any contract awarded as a result of this solicitation, as well as any contract claims or controversies associated with it.

Formal contract claims and controversies between a member and contract vendor shall be resolved in accordance with R7-2-1155 through R7-2-1159, or ARS, Title 41, Chapter 23, Article 9, as applicable. The member's authorized representative shall serve as the district representative for resolution of such claims and controversies. ARS, Title 41, Chapter 23, Article 9 and the rules promulgated under it, or R7-2-1155 through R7-2-1159, as applicable, provide the exclusive procedure for asserting a cause against the member under the contract.

8.6. Contract placed on hold: Mohave shall have the ability to place a contract on hold, if it is deemed necessary to address ongoing problems with an awarded contract. Details of the decision to place the contract on hold shall be provided in a written deficiency notice. A reasonable amount of time shall be provided to contract vendor to address issues in the written deficiency notice.

8.7. Modification of contract: An awarded contract may be modified for a variety of reasons. Contract modifications will be issued as deemed necessary by Mohave to address contractual issues that may arise.

8.8. Novation: If contract vendor sells or transfers all assets or the entire portion of the assets used to perform this contract, a successor in interest must guarantee to perform all obligations under this contract. Mohave reserves the right to accept or reject any new party. A simple change of name agreement will not change the contractual obligations of contract vendor.

8.9. Order cycle overview:

One, or both, of the following order cycles will apply to an awarded contract. A sample reconciliation report will be provided to contract vendors who have been awarded a contract. Instructions for filling out the purchase order, or Pcard process, will be contained in that sample reconciliation report.

For Procurements made with purchase orders:

1. Member forwards purchase orders to Mohave that lists the contract number, along with a copy of detailed contract vendor quote. Vendor listed on the purchase order is contract vendor.
2. Mohave reviews and emails member order with "*MESC Reviewed*" stamp, to contract vendor and member.
3. Contract vendor provides product/services.
4. Contract vendor invoices member.
5. Member pays contract vendor.
6. Contract vendor sends monthly Reconciliation Report to Mohave.
7. Contract vendor remits administration fee monthly, based on invoices paid.
8. Mohave audits selected invoices.

For Procurements made with Pcards:

1. Member purchases directly from contract vendor using a Pcard and forwards a copy of detailed contract vendor quote to Mohave (if applicable).
2. Mohave reviews and emails contract vendor quote with "*MESC Reviewed*" stamp, to contract vendor and member (if applicable).
3. Contract vendor provides product/services.
4. Contract vendor invoices member (if not previously paid with Pcard).
5. Member pays contract vendor (if not previously paid with Pcard).
6. Contract vendor sends monthly Reconciliation Report and copy of detailed Pcard transaction, invoice or quotation to Mohave.
7. Contract vendor remits administration fee monthly, based on Pcard purchases paid.
8. Mohave audits selected Pcard purchases.

8.10. Overcharges by antitrust violations: Mohave maintains that overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, contract vendor assigns to member any and all claims for such overcharges as to the products, materials, processes or services used to fulfill the contract.

8.11. Relationship of the parties: Contract vendors receiving contracts under this solicitation are independent contractors. Any party to the contract shall not be deemed to be the employee of another party to the contract.

8.12. Severability: The provisions of this contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

8.13. Successful performance: The sections of the solicitation defining the scope of work, requirements, or qualifications are not to be construed as a complete listing that exempts successful offeror from reasonable services required to ensure successful performance under the contract.

8.14. Title: Purchase orders placed under this contract are on behalf of Mohave's members. As such, title to goods passes directly from contract vendor to member.

9. COOPERATIVE PURCHASING

9.1. Cooperative purchasing: This contract is based on the need for Mohave to provide the economic benefits of volume purchasing and reduction in administrative costs through cooperative purchasing to members. Any offer that prohibits sales to specific types of members (e.g., state agencies or local government units) may not be considered. Sales without restriction to any members are preferred.

9.2. Cooperative purchasing agreements: Cooperative Purchasing Agreements between Mohave and its members have been established under Arizona procurement rules and code for use of contracts.

9.3. Most favored customer relationship: Nothing in this solicitation is intended to establish a most favored customer relationship between Mohave and contract vendor. Contract vendor may respond to any solicitation without regard to this contract. Offeror agrees all prices, terms, warranties, and benefits granted by offeror to members through this contract are comparable to or better than the equivalent terms offered by offeror to any present customer meeting the same qualifications or requirements. If contract vendor offers lower prices to any of its other customers, it may lower its prices to Mohave at the same time by written notice.

9.4. Eligible agencies: Any contract awarded from this solicitation shall be available to all Mohave members. Members shall have a current signed Mohave Cooperative Purchase Agreement. Member is defined as a local or public procurement unit, or a governmental public entity that is a political subdivision for purposes of federal income tax, or a nonprofit educational or public health institution that is a political subdivision for purposes of federal income tax or meets the requirements of Section 115 of the Internal Revenue Code. Mohave has approximately 450 members including public school districts, community colleges, city and county governments and political subdivisions throughout Arizona. A list of members may be found on Mohave's website, www.mesc.org. Actual use of any contract shall be at the sole discretion of Mohave's members.

10. ESTIMATED QUANTITIES

Mohave anticipates considerable activity resulting from this solicitation. An estimate of purchases is provided in the Scope of Work (page 8) of the requested materials or services. However, no commitment of any kind is made concerning quantities to be acquired. Mohave does not guarantee usage. Usage depends on the actual needs of members and marketing by contract vendor.

11. EVALUATION and AWARD

11.1. Basis of award: Award(s) will be made to the responsive and responsible offeror(s) whose proposal(s) is (are) determined in writing to be most advantageous to Mohave for its members. Mohave reserves the right to use model projects/market baskets to determine the most advantageous proposal(s). It is Mohave's intent to award a complete line of products, when possible and advantageous.

11.2. Best and final offers (Revisions to Proposals): Mohave may allow revisions to proposals through best and final offers, as authorized in Arizona procurement rules and code. Issuance of a request for best and final offer is not guaranteed. Proposals should be complete and meet all specifications and requirements of this solicitation.

11.3. Competitive range: Mohave reserves the right to establish a competitive range of acceptable proposals as part of the evaluation process. Proposals not in the competitive range are unacceptable and will not receive further award consideration.

11.4. Exceptions/deviations to requirements: All requested exceptions/deviations must be clearly explained. Unacceptable exceptions/deviations shall remove your proposal from consideration for award. Mohave shall be the sole judge on the acceptance of exceptions/deviations and Mohave's decision shall be final.

11.5. Formation of contract: A response to this solicitation is an offer to contract with Mohave based upon the terms, conditions, scope of work, specifications and amendment(s) contained in this request. A proposal does not become a contract unless and until Mohave accepts it. A contract is formed when a Mohave administrator signs the award document.

11.6. Effect of price: No contract shall be awarded solely on the basis of price.

***11.7.* Market Basket:** If offeror is providing an alternative product in the required Market Basket, offeror must provide specifications for those products. *White papers are not specifications and are not acceptable.*

11.8. Multiple award: To assure that our contracts meet the requirements of all members, Mohave may award multiple contracts. Offeror should consider this fact in preparing their response. The decision to award multiple contracts, award a single contract, or make no award rests solely with Mohave.

A multiple award shall be made only if the procurement officer determines in writing that a multiple award is necessary and is advantageous to Mohave members. A multiple award shall be limited to the least number of contracts necessary to meet the requirements of the using agencies. Mohave shall make the sole determination of the least number of contracts required to meet the need. Mohave's basis for determining whether to award multiple contracts shall be based upon considerations for the large number of members, diverse types of members, location of members throughout Arizona and members' past usage of similar contracts.

Criteria for selecting vendors for multiple contracts shall be based upon considerations for members' experience with existing products and systems, brand continuity for parts replacement and future expansion, contract vendor's ability to provide for our large, diverse membership, geographic area(s) served, Mohave's past experience with contracts for similar product/services, and/or other relevant criteria. Multiple contracts may also be awarded based on individual line items or groups of line items, incrementally, or by designated regions.

11.9. Non-exclusive contract: Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of Mohave's members. Mohave and its members reserve the right to obtain like goods and services from other sources.

11.10. Past performance information: Past Performance Information (PPI) is relevant information regarding a contract vendor's actions under previously awarded contracts to public agencies. It includes contract vendor's record of performance under such contracts including, but not limited to: conformance to the terms, conditions, specifications and scope of work of the contracts, responsiveness to, and correction of, contract claims and controversies, and satisfaction of the contracting entities. PPI shall be a factor in evaluation and award.

11.11. Price workbook: All offerors must complete the 20E Utility Vehicles, Tractors, Golf Carts, Grounds Maintenance Vehicles, Equipment and Services titled "**20E utility grounds equipment and vehicles WB.xlsx**". Failure to complete and submit the 20E Utility Vehicles, Tractors, Golf Carts, Grounds Maintenance Vehicles, Equipment and Services shall render your proposal nonresponsive. The original, unlocked Excel formatted pricing workbook shall be uploaded to ProcureNow. In addition, your pricing workbook, your pricing schedules and any additional requested pricing shall be submitted after Tab 3a in a searchable PDF format with your bid. If awarded a contract, all future pricing updates shall be based on the electronic workbook, or similar approved format.

11.12. Pricing extension errors: In case of error in extension of prices in the offer, unit prices shall govern.

11.13. Reasonably susceptible of being awarded: A proposal is acceptable if it is determined to be reasonably susceptible of being awarded a contract in accordance with the evaluation criteria and a comparison and ranking of original proposals. Proposals to be considered reasonably susceptible of being awarded a contract shall, at a minimum, demonstrate the following:

- Affirmative compliance with mandatory requirements designated in this solicitation.
- An ability to deliver goods or services on terms advantageous to members sufficient to be entitled to continue in the competition.
- That the proposal is technically acceptable as submitted.

11.14. Responsible offeror: A responsible offeror is a firm or person who at the time of contract award has the capability to perform the contract requirements and the integrity and reliability that will assure good faith performance. Mohave shall determine an offeror to be responsible before awarding a contract to offeror.

11.15. Responsive proposals: A responsive proposal conforms in all respects to the material requirements of the solicitation. Proposals must be responsive to receive award consideration. Mohave reserves the right to waive minor informalities.

11.16. Weighted evaluation: Mohave reserves the right to use a point system to evaluate proposals and to assign points to the evaluation criteria as it determines most appropriate. Additionally, Mohave reserves the right to use a ranking system (the Heisman scoring method) for determining the final ranking of proposals. Each evaluator shall calculate their total assigned points for each proposal, applying a ranking of 1 to their highest score, a 2 to their next highest score, and so forth for all proposals. Each proposal shall have a final calculated rank determined by averaging each applied individual evaluator rank. Any ties shall be broken by using the grand total points (total of all evaluator assigned point totals for each proposal) for each of the tied proposals.

Any offeror scoring zero (0) in any required area may be considered nonresponsive.

12. FEDERAL and STATE REQUIREMENTS

12.1. Affordable Care Act requirements: Contract vendor understands and agrees that it shall be solely responsible for compliance with the Patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care Education Reconciliation Act, Public Law 111-152 (collectively the Affordable Care Act "ACA"). Contract vendor shall bear sole responsibility for providing health care benefits for its employees who provide services to the member as required by state or federal law.

12.2. Audit rights: In accordance with applicable Arizona law, contract vendor's and subcontractor's books and records related to this contract may be audited at a reasonable time and place, for five years after completion of the contract.

12.3. Clean Air Act, Clean Water Act and Environmental Protection Agency Regulations: Contract vendor and its subcontractors shall comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act, section 508 of the Clean Water Act, Executive Order 11738 and Environmental Protection Agency regulations (7 CFR 3016.36 (i) (12)). This shall only apply to federally funded projects subject to the Clean Air Act, Clean Water Act and current applicable EPA regulations.

12.4. Compliance with federal and state requirements: Contract vendor agrees, when working on any federally assisted projects with more than $2,000 in labor costs, to comply with the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act, the Copeland "Anti-Kickback" Act, the Housing and Urban Development Act of 1968, and the Equal Opportunity Employment requirements as amended by Executive Order. In such projects, contract vendor agrees to post wage rates at the work site and submit a copy of their payroll to the member for their files.

In addition, to comply with the Copeland Act, contract vendor must submit weekly payroll records to the member. Contract vendor must keep records for three years and allow the federal grantor agency access to these records, upon demand. Contract vendor also agrees to comply with State of Arizona Executive Order 75-5, as amended by Executive Order 99-4.

When working on any projects funded with federal grant monies, contract vendor agrees to comply with the administrative requirements for grants and cooperative agreements to state, local and federally recognized Indian tribal government contract provisions.

The forms listed below are incorporated by reference into this solicitation and any resultant contract.

- HUD-5369, Instructions to Bidders for Contracts, Public and Indian Housing Programs
- HUD-5369-A, Representations, Certifications, and Other Statements of Bidders, Public and Indian Housing Programs
- HUD-5369-B, Instructions to Offerors Non-Construction
- HUD-5369-C, Certifications and Representations of Offerors Non-Construction Contract
- HUD-5370-C1, General Conditions for Non-Construction Contracts Section 1 (With or Without Maintenance Work)
- HUD-5370-C2, General Conditions for Non-Construction Contracts Section 1 (With Maintenance Work)

For federally funded projects only, the requirements of an applicable form shall supersede conflicting requirements in this solicitation. The forms may be accessed via HUDClips (www.hud.gov).

12.5. Compliance with workforce requirements: Pursuant to ARS §41-4401, contract vendor and subcontractor(s) warrant their compliance with all federal and state immigration laws and regulations that relate to their employees, and compliance with ARS §23-214 subsection A, which states, "*…every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.*" [To register for E-Verify, go to: https://e-verify.gov/employers/enrolling-in-e-verify.]

Mohave reserves the right to cancel or suspend the use of any contract for violations of immigration laws and regulations. Mohave and its members reserve the right to inspect the papers of any contract vendor or subcontract employee who works under this contract to ensure compliance with the warranty above.

12.6. Contract vendor employee work eligibility: By entering into the contract, contract vendor warrants compliance with ARS §41-4401, ARS §23-214, the Federal Immigration and Nationality Act (FINA), and all other current federal immigration laws and regulations. Mohave and/or Mohave members may request verification of compliance from any contract vendor or subcontractor performing work under this contract. Mohave and its members reserve the right to confirm compliance. Should Mohave or its members suspect or find that the contract vendor or any of its subcontractors are not in compliance, Mohave may pursue any and 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 contract vendor. All costs necessary for compliance are the responsibility of the contract vendor.

12.7. Davis-Bacon wage decisions: For federally funded projects subject to the Davis-Bacon Act, the member shall specify the applicable Davis-Bacon wage decision, prior to the contract vendor providing a firm price quotation for the proposed project. The wage decision shall be identified by the WD Number, modification number, and date of the wage decision. Davis-Bacon wage decisions may be accessed via www.wdol.gov or by requesting a copy from the member.

12.8. Energy Policy and Conservation Act: Contract vendor and its subcontractors shall comply with mandatory standards and policies relating to energy efficiency (7 CFR 3016.36 (i) (13)). This shall only apply to federally funded projects subject to current applicable energy policies and the Energy Conservation Act.

12.9. Non-compliance: All federally assisted contracts with members that exceed $10,000 may be terminated by the federal grantee for noncompliance by contract vendor. In projects that are not federally funded, offeror must agree to meet any federal, state or local requirements, as necessary. In addition, if compliance with the federal regulations increases the contract costs beyond the agreed-on costs in this solicitation, the additional costs may only apply to the portion of the work paid by the federal grantee.

12.10. Offshore performance of work prohibited: Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the state shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition 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.

12.11. Procurement of recovered material: Contract vendor and its subcontractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as stated in 2 CFR 200.321.

12.12. Rights to inventions: Rights to inventions made under a contract or agreement as specified under Appendix II to 2 CFR shall apply for federally funded projects.

12.13. Subcontracts: Prime Contractor, if subcontracts are to be let, will allow all business to have an equal opportunity to sign up as a prospective bidder for work assigned under this contract.

12.14. Terrorism country divestments: In accordance with ARS §35-392, Mohave and its members are prohibited from purchasing from a company that is in violation of the Export Administration Act. By entering into the contract, contract vendor warrants compliance with the Export Administration Act.

12.15. Compliance to USDA solicitation requirements:

- Offeror certifies that all pricing in their proposal has been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor certification regarding non-collusion.
- Offeror agrees to comply fully with U.S. Department of Agriculture, the Arizona Department of Education, U. S. Accounting Office, or any of their duly authorized representative to allow access to any books, documents, papers, and records of the offeror, which are directly pertinent to the specific contract, for the purpose of audits, examinations, excerpts, and transcriptions. Additionally, the offeror shall provide all documents as necessary for the independent auditor to conduct the school food authority (SFA) single audit (if applicable). In the event of any unresolved audit findings, the records shall be retained beyond the five (5) year period for as long as required for resolution of these issues raised by the audit.

- Offeror agrees to comply with all mandatory standards and policies relating to energy efficiency as cited in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).
- Offeror shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations, 41 CFR Part 60 3016.36(i)(3).
- Offeror shall comply with the following civil rights laws as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Department of Agriculture regulations on nondiscrimination 7 CFR 210.23 (b); Title 7 CFR parts 15, 15a, and 15b; the Americans with Disabilities Act; and the FNS Instruction 113-6; "Civil Rights Compliance and Enforcement in School Nutrition Programs".
- Offeror shall comply with the provisions of the Consumer Product Safety Act.
- Offeror shall disclose all discounts, rebates, allowances and incentives received by the offeror from its suppliers. If the offeror receives a discount, rebate, allowance, or incentive from any supplier, the offeror shall disclose and return to the SFA, (if applicable), the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of the SFA. The offeror shall identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the SFA for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit according to 7 CFR 210.21(f)(1)(iv).
- Offeror shall agree no expenditure may be made from the nonprofit school food service account for any cost resulting from a procurement failing to meet the requirements of the requirements for prohibited expenditures or as required in 7 CFR §210.21 or 7 CFR §210.21(f)(2).
- If applicable, allowable costs will be paid from the nonprofit school food service account to the offeror net of all discounts, rebates and other applicable credits accruing to, or received by the contractor, or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA.
- Prime Contractor, if subcontracts are to be let, will allow all business to have an equal opportunity to sign up as a prospective bidder for work assigned under this contract.
- The contract vendor shall provide products to the maximum extent practicable, domestic commodities or products in accordance with 7 CFR 210.21(d) and 220.16(d), (Buy American Provision). The contract vendor shall provide to the maximum extent practicable, domestic agricultural commodities or products substantially processed in the United States. "Substantially" means the final processed product contains over 51% domestically grown agricultural commodities. This provision applies to all food purchases paid from the nonprofit school food services account.

13. FORCE MAJEURE

Except for payments of sums due, neither party shall be liable to the other, nor be 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, including, but not limited to the following: acts of God (e.g. fire, flood, snow, earthquakes, tornadoes, violent winds, hail storms); acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; 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. The force majeure shall be deemed to commence when the party declaring it notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with the contract. Force majeure shall not include late deliveries of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences. If either party is delayed at any time by force majeure, the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours.

14. INDEMNIFICATION

14.1. General indemnification: To the extent permitted by law, Mohave and its members shall be indemnified and held harmless by contract vendor for its vicarious liability as a result of entering into this contract. Each party to the contract is responsible for its own negligence. Contract vendor agrees to save and hold harmless Mohave and/or its members from any and all liability for loss or damage to persons or property arising out of the work required by the contract. Contract vendor further agrees to waive any right of recovery against Mohave and/or its members for damage to the property of contract vendor, whether caused by negligence on the part of Mohave and/or its members or otherwise. This provision includes specifically the waiver of right of recovery against Mohave and/or its members for damage to property under contract and not yet formally accepted by member even though said property at the time of loss may be occupied, in whole or in part, by member.

14.2. Modification by member: Contract vendor shall have no obligation with respect to any patent and copyright infringement claim based upon member's modification of the equipment and/or software, or its operation or use with apparatus, data or programs not furnished by contract vendor. However, one member's action will not preclude contract vendor's obligation to members who have not modified their equipment or software.

14.3. Patent and copyright indemnification: To the extent permitted by law, contract vendor shall indemnify and hold harmless Mohave and its members against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of contract performance or use by Mohave and its members of materials furnished or work performed under this contract. Mohave and its members shall reasonably notify contract vendor of any claim for which it may be liable under this paragraph.

15. LICENSES

A contract vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by contract vendor. The contract vendor shall remain fully informed of and in compliance with all current ordinances and regulations pertaining to the lawful provision of services under the contract. Mohave reserves the right to stop work and/or cancel the contract of any contract vendor whose license(s) expire, lapse, are suspended or terminated. Contact vendor shall immediately notify Mohave of any expiration, lapse, suspension or termination of license(s).

16. OFFER ACCEPTANCE PERIOD/WITHDRAWAL

16.1. Late offers: Except as authorized by Arizona procurement rules and code, late offers shall not be considered. Offeror shall be responsible for all shipping costs when requesting the return of a late proposal.

16.2. Withdrawal of proposal: An offeror may withdraw a proposal in writing at any time before proposal opening if the withdrawal is received before the proposal due date and time at the location designated in the Request for Proposal for receipt of proposals. After the opening time and date, proposals may not be withdrawn, except as allowed by Arizona procurement rules and code.

17. ORDER OF PRECEDENCE

In the event of a conflict in the provisions of the contract as accepted by Mohave, the following order of precedence shall prevail:

1. Special terms and conditions
2. General terms and conditions
3. Scope of work and specifications
4. Attachments and exhibits
5. Documents referenced or included in the solicitation

18. ORDERING CYCLE

18.1. Acceptance of orders: This contract is for the sole use of Mohave and its members. All quotations provided to members must be based on prices in the contract and include the correct Mohave contract number. Contract vendor may only refuse a Mohave reviewed order under this contract after providing written documentation acceptable to Mohave describing the circumstances that warrant refusal. Improper documentation and/or frequent refusals may result in contract cancellation. Mohave may require the contract vendor to reject any purchase orders received from members based on this contract that may not comply with Mohave's rules, processes or standards.

18.2. Audit of contract activity: Mohave will audit some of the invoices related to this contract. The contract vendor agrees to provide all documentation necessary for Mohave to audit purchases made under contract, including invoices and credits issued to members, in a timely fashion.

18.3. Contract vendor contacts: Contract vendor agrees to assign only one contact person for each of the following: accounting, audit, contract administration, escalation, main member contact, open order/status report, and reconciliation. These contacts may be the same person, with the exception of the escalation contact. The name(s) of the contact persons will be provided to Mohave.

18.4. Open order and status reports: Mohave will send contract vendor open order and status reports on a periodic basis. Contract vendor agrees to reply to information requests in a timely fashion.

18.5. Orders in process: Member purchase orders dated on or before the contract cancellation and/or expiration date, will be processed and are considered valid until order fulfillment, or cancellation by the member. Any such order must be in the possession of Mohave within a reasonable amount of time. Acceptance of such orders shall be at the sole discretion of Mohave.

18.6. Purchase verification: It is the member's independent responsibility to verify that quotations and purchase orders comply with the terms of the award of a contract or procurement.

18.7. Quotations: Quotations with no end date are considered invalid after sixty (60) days from the issue date.

19. PAYMENT

19.1. Contacting member about payment: Contract vendor may contact member for payment for a product or service delivered to the member under the contract. Such contact shall be professional and courteous.

19.2. Contract vendor invoice: All invoices shall list the applicable member purchase order number and Mohave contract number. Contract vendor will invoice members directly. All transactions are payable in U.S. currency only. Contract vendor shall invoice member after delivery of goods and/or services. Goods and services shall be invoiced at applicable contract prices, which include Mohave's 1% administration fee. Invoice must include member purchase order number and Mohave contract number.

Mohave's administration fee is included in the invoice amount paid by the member. Contract vendor shall remit administration fee to Mohave monthly. Administration fee shall be calculated at .0099 of the subtotal amount. The Mohave administration fee shall not be calculated on ancillary charges (e.g. performance bonds, shipping, transaction privilege tax, transportation charges, mileage, lodging, meals and incidental expenses (M&IE), permits).

19.3. Contract vendor payment: Member shall issue payment to contract vendor after receipt of invoice.

19.4. Correct invoicing: Contract products or services may not be invoiced greater than the purchase order. If incorrect invoices are discovered, contract vendor must correct invoices resulting in excess charges, no matter the cause of the error. Any excess payment must be returned to member within the time allowed by law, in the form of a check or credit memo, as determined by the member.

If a member is invoiced at less than contract prices, contract vendor will invoice the member for the difference unless Mohave approves the undercharge.

If contract pricing in effect on the contract has gone down between the time of the order and the invoice date, contract vendor may invoice at the current contract price.

19.5. Credit hold: Contract vendor agrees to advise Mohave's Procurement Manager within five (5) days if member(s) are placed on credit hold.

19.6. Payment time: Payment terms are net thirty (30) days from receipt of contract vendor's invoice.

19.7. Prepayment: In accordance with the Uniform System of Financial Records and ARS §15-905(N), prepayments may be requested on items that normally require prepayment in order to be procured or to receive a discounted price. Items not meeting these prepayment specifications may be paid only after receipt of goods and services.

19.8. Progress payments: Members may make progress payments under the following conditions: 1) Member and contract vendor agree to the terms of the progress payments prior to issuing a purchase order; 2) the purchase order describes the amounts/percentages to be paid and the dates/frequency of payment; 3) member accepts responsibility for verifying the validity of each payment application; 4) payments are made only after goods and/or services are verified; and 5) any such payments are made in full compliance with member's local governing entity rules and any and all other applicable state rules and regulations.

19.9. Quick pay discounts: Quick pay discounts may be offered to members, provided they have received the materials or services, and that such discounts are available equally to all members. Mohave must approve such discounts in writing and before they are offered to members.

19.10. Reporting and payment of administration fees to Mohave: The contract vendor agrees to provide a Reconciliation Report detailing activity under the contract, and payment for Mohave administration fees for invoices paid or Pcard transactions made in the previous month.

Purchases made with purchase orders: Items in the report must include member names, PO numbers, amounts, administration fees, invoice numbers, invoice dates and credit/return information for all invoices paid in the prior month.

Purchases made with Pcards: The report must be identified as Pcard (or as a credit card) when submitted. Items in the report must include member names, notation that the purchase was made with a Pcard, date of transaction, job number designation, amounts, administration fees, invoice numbers (if applicable), invoice dates (if applicable) and credit/return information for all invoices paid in the prior month. An electronic copy (e.g. PDF) of the detailed Pcard sales receipt, invoice, or quotation shall be provided for review.

Payment and report are due as per a schedule agreed upon by Mohave and contract vendor. The initial due date shall be the **10th, 15th, 20th, 25th or 30th** of the following month and will be specified in an award notification letter. If no invoices were paid under the contract in the previous month, the contract vendor will provide notice of no activity. A sample reconciliation report will be made available upon award of contract.

Make Mohave administration fees payable to Mohave Educational Services Coop., Inc. Payments shall be mailed to: 625 E. Beale St.
Kingman, AZ 86401

20. PREPARATION OF PROPOSAL and PROPOSAL FORMAT

20.1. Modification of proposal: An offeror may modify a proposal in writing at any time before proposal opening if the modification is received before the proposal due date and time at the location designated in the Request for Proposals for receipt of proposals.

20.2. Compliance with instructions: Offeror's ability to follow proposal preparation instructions in this solicitation will be considered an indicator of offeror's ability to follow instructions should it receive an award as a result of this solicitation. The quality of organization and writing reflected in the proposal will be considered to be an indication of the quality of organization and writing that would be prevalent if a contract is awarded. As a result, the proposal will be evaluated as a sample of data submission. Subjective judgment on the part of Mohave's evaluators is implicit in this process.

20.3. Cost of proposal preparation: Mohave will not reimburse the cost of developing, presenting, or providing any response to this solicitation.

20.4. Offeror responsibility: Offeror shall examine the entire solicitation, seek clarification of any item or requirement that may not be clear, and check all responses for accuracy before submitting proposal. Failure to examine any requirements shall be at offeror's risk. Negligence in preparing an offer confers no right of withdrawal after due date and time.

20.5. Proposal forms: The forms and format contained in the solicitation shall be used. Offerors may reproduce the forms and retype the information, but all of the required information must be presented in the tab order requested.

21. PRODUCT LINES

21.1. Current products: Proposals shall be for materials and equipment in current production and marketed to the general public and education/government agencies at the time the proposal is submitted.

21.2. Discontinued products: If a product or model is discontinued by the manufacturer, contract vendor may substitute a new product or model if the replacement product meets or exceeds the specifications and performance of the discontinued model and if the discount is the same or greater than the discontinued model.

21.3. New products/services: New products/services must be submitted and approved by Mohave, prior to being offered to member. Mohave may reject any additions without cause. New products and/or services that meet the scope of work may be added to the contract. Contract vendor may replace or add product lines to an existing contract if the line is replacing or supplementing products on contract, is equal or superior to the original products offered, is discounted in a similar or to a greater degree, and if the products meet the requirements of the solicitation. No products and/or services may be added to avoid competitive procurement requirements. Mohave may require additions to be submitted with documentation from members demonstrating an interest in, or a potential requirement for, the new product or service.

21.4. Options: Optional equipment for products under contract may be added to the contract at the time they become available under the following conditions: 1) the option is priced at a discount similar to other options; 2) the option is an enhancement to the unit that improves performance or reliability.

21.5. Product line: Offerors with a published catalog may submit the entire catalog. Mohave reserves the right to select products within the catalog for award without having to award all contents. Mohave may reject any addition of equipment options without cause.

22. PROPOSAL OPENING

Proposals shall be opened immediately following the proposal due date and time. The name of each offeror shall be publicly read and recorded in the presence of witnesses. All information in the proposals shall remain confidential until after award of contracts, with the exception of review by Mohave staff and selected evaluators.

23. PROSPECTIVE BIDDERS REGISTRATION

Any offeror submitting a perfunctory proposal with no serious intent of being accepted may be removed from Mohave's prospective bidders list. Any vendor not responding to two (2) consecutive Requests for Proposal for similar procurements may be removed from the prospective bidders list for those items or services. A "no bid" response or request to remain on the list is sufficient to keep a vendor on the Prospective Bidders Registration.

24. PROTESTS

Protests shall be filed with Anita McLemore, C.P.M., the Executive Director (the District Representative), and shall be resolved in accordance with Arizona procurement rules and code, ARS, Title 41, Chapter 23, Article 9 (https://www.azleg.gov/arstitle) and State Board Rules R7-2-1001 through R7-2-1196 (https://azsos.gov/rules/arizona-administrative-code). *A protest must be in writing and must be filed with the Executive Director at 625 E. Beale Street, Kingman, Arizona, 86401.* Protests based upon alleged improprieties in a solicitation shall be filed before the due date and time for responses to the solicitation. The interested party shall file the protest within ten (10) days after Mohave makes the procurement file available for public inspection. Due to the "Stay at Home" order, reservations need to be made in advance for any live public inspection of documents. Refer to the Mohave Contract Specialist's contact information on page 1 of this Request for Proposal. A protest filed on the tenth day must be received by 5:00 p.m., local Arizona time. The interested party may file a written request for an extension. The written request shall be filed before the time limit specified above and shall set forth good cause as to the specific action or inaction of Mohave that resulted in the interested party being unable to file the protest before the time limit specified above.

A protest shall be in writing and shall include the following information:

- The name, address and telephone number of the interested party;
- The signature of the interested party or the interested party's representative;
- Identification of the solicitation by contract number;
- A detailed statement of the legal and factual grounds of protest including copies of any relevant documents;
- The form of relief requested.

Should Mohave prevail in an appeal of a decision issued by the Executive Director, appellant waives any objection to the hearing officer awarding Mohave its reasonable attorney's fees and costs along with the costs for the hearing.

25. RIGHT TO ASSURANCE

Whenever one party to the contract has a good faith reason to question the other party's intent to perform, they may demand that the other party give written assurance of its intent to perform. If a demand is made and no written assurance is given within ten (10) days, the demanding party may treat this failure as an anticipatory breach of the contract.

26. SAFETY STANDARDS

Items supplied under the contract shall comply with current applicable Occupational Safety and Health Standards of the Arizona Industrial Commission, National Electric Code, and National Fire Protection Association Standards.

27. SHIPPING

27.1. Shipping terms/transfer of title: Shipments shall be F.O.B. destination. Title and risk of loss of material shall not pass to member until member receives the material at delivery point, unless otherwise provided in the solicitation.

27.2. Shipment under reservation: Contract vendor is not authorized to ship materials under reservation and no tender of a bill of lading will operate as a tender of the materials.

27.3. Shipping charges: Prices that include shipping to any location in Arizona, delivered to the specific receiving point identified in the purchase order, are preferred. If shipping is charged, it shall be that member is not charged more than the actual invoiced amount for shipping, and is prepaid by the contract vendor (PP&A). It is the member's responsibility to confirm shipping charges under the contract.

27.4. Shipping errors/risk of transportation: Shipping errors will be at contract vendor's expense. If contract vendor ships a product that was not ordered, contract vendor shall pay for return shipment at the convenience of member. All risk of transportation and all related charges shall be contract vendor's responsibility. Contract vendor shall file all claims for visible or concealed damage. Member will notify contract vendor promptly of any damaged goods and shall assist contract vendor in arranging for inspection.

28. SUSPENSION OR DEBARMENT STATUS

Offeror shall include a letter in its proposal notifying Mohave of any debarment, suspension or other lawful action taken by any federal, state or local government within the last five years that precludes offeror or its employees from participating in any public procurement activity. Such letter shall provide name and address of the public procurement unit, effective date, duration, and relevant circumstances of the suspension or debarment. Failure to supply such letter or not disclose all pertinent information shall result in cancellation of any contract. **Letter shall be placed after Tab 1a.**

29. TAXES

29.1. Federal Excise Tax: Most members are exempt from paying Federal Excise Tax.

29.2. Payment of taxes: Member is responsible for payment of all taxes listed on the invoice. Contract vendor is responsible for collecting such taxes and shall forward all taxes to the proper revenue office. All applicable taxes must be listed as a separate item on all quotes and invoices.

29.3. Property taxes: Arizona public agencies may not pay state property taxes. (Arizona Constitution, Article 9, Section 2).

29.4. Reservation or tribal tax: If goods or services are subject to reservation or tribal tax, contract vendor shall include such taxes as a separate item on the original invoice to the member.

29.5. Transaction Privilege Tax (Sales Tax): Members may be liable for Arizona Transaction Privilege Taxes, which may include state, county and city taxes. Contract vendor is responsible for charging taxes correctly.

30. TIME (DEFINITION OF)

Periods of time, stated as a number of days, shall be in calendar days, not business days.

General Terms and Conditions Acceptance Form
(Place after Tab 1c)

Signature on Page 2 certifies complete acceptance of the General Terms and Conditions in this solicitation, except as noted below (additional pages may be attached, if necessary).

Check one of the following responses to the General Terms and Conditions:

☒ **We take no exceptions/deviations to the general terms and conditions.**

(*Note: If nothing is listed below, it is understood that no exceptions/deviations are taken.)*

☐ **We take the following exceptions/deviations to the General Terms and Conditions. All exceptions/deviations shall be clearly explained. Reference the corresponding General Terms and Conditions that you are taking exceptions/deviations to. Clearly state if you are adding additional terms and conditions to the General Terms and Conditions. Provide details on your exceptions/deviations below:**

(*Note: All requested exceptions/deviations must be clearly explained. Reference the specific terms and conditions that you are taking exceptions/deviations to, detail any proposed substitute terms and conditions, and clearly demonstrate how Mohave and its membership will be better served by the substituted terms and conditions. Unacceptable exceptions/deviations shall remove your proposal from consideration for award. Mohave shall be the sole judge on the acceptance of exceptions and Mohave's decision shall be final.)*

Special Terms and Conditions
(Place after Tab 1d)

Some Special Terms and Conditions specify placement of information in tabs other than Tab 1d as noted in the title above. Pay close attention to placement information (indicated in bold text) as indicated in select Special Terms and Conditions.

1. CONSTRUCTION

Contract vendor shall not perform any construction under this contract. For the purposes of this contract, construction is defined as: *The process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. Construction does not include:*

- *The routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.*
- *The investigation, characterization, restoration or remediation due to an environmental issue of existing facilities, structures, buildings or real property.*

2. DELIVERY

2.1. Default in one installment to constitute total breach: Contract vendor shall deliver conforming materials in each installment or lot under this contract and may not substitute nonconforming materials. Mohave reserves the right to declare a breach of contract if contract vendor delivers nonconforming materials to any member under this contract.

2.2. Defective goods: Contract vendor agrees to arrange and pay for return shipment of goods that arrive in a defective or non-operable condition.

2.3. Delivery time: Failure to deliver any order within the time frame specified on the purchase order may result in cancellation of that purchase order.

2.4. Improper delivery: If the goods or tender of delivery fail in any respect to conform to this contract, member may reject the whole, accept the whole, or accept any commercial unit or units and reject the rest.

2.5. Liens: All materials shall be free of liens.

2.6. Restocking fees: A restocking fee may only be charged on products ordered and delivered to member's site. Restocking fees in excess of fifteen percent (15%) shall not be allowed. Contract vendor may waive restocking fees. Restocking and return shipping charges shall be identified on the price workbook.

2.7. Serial numbers: Offers shall be for equipment on which the original manufacturer's serial number has not been altered in any way.

3. FORM OF CONTRACT

3.1. Contract vendor documents: If a firm submitting an offer requires member to sign an additional agreement, a copy of the proposed agreement shall be included with the proposal.

If awarded a contract, any additional contract vendor's documents shall not become part of Mohave's contract unless, and until, an authorized representative of Mohave reviews and approves them.

Contract vendor agrees to provide Mohave a copy of any agreements that are revised during the term of an awarded contract, prior to having the member sign the agreement.

3.2. Form of contract: The form of contract for this solicitation shall be the Request for Proposal, the awarded proposal(s) and best and final offer(s), and properly issued and reviewed purchase orders referencing the requirements of the Request for Proposals.

3.3. Parol evidence: The contract represents the final written expression of agreement. All agreements are contained herein and no other agreements or representations that materially alter it are acceptable.

4. INSTALLATION

Installation shall be scheduled directly with member and be done in a reasonable amount of time. Installation shall be in accordance with the manufacturer's instructions and shall be accomplished by skilled and properly licensed individuals.

5. INSURANCE

5.1. **Certificate:** Evidence of the required insurance shall be provided with your proposal by means of a current certificate of insurance with the coverage's as stated within the requirements below. Before any orders are processed under an awarded contract, contract vendor shall provide a certificate that names Mohave Educational Services Cooperative, Inc. as the certificate holder*.*

Certificate (or certificates if using multiple carriers) shall include, at a minimum, coverage for:

- General Liability
- Automobile liability
- Umbrella or Excess Liability
- Workers' Compensation

In addition, contract vendor must be willing to provide, upon request, identical certificate of insurance to any member using this contract. Contract vendor must also be willing, upon request, to add any member as an additional insured entity. Any costs for adding a member as an additionally insured entity shall be clearly identified in submitted contract pricing. If no pricing is identified, adding a member as an additionally insured entity shall be provided at no additional cost.

Provide evidence of current insurance coverage after Tab 2c.

5.2. Deductibles: Contract vendor shall pay the deductibles required by the insurance provided under this contract.

5.3. Liability insurance: Prior to commencing services under this contract, contract vendor shall procure and maintain during the life of this agreement, comprehensive general liability insurance, to include automobile liability, providing limits of an aggregate amount of not less than $2,000,000.

5.4. Scope of Insurance: Contract vendor's insurance shall provide adequate protection for contract vendor against damage claims which may arise from operations under this contract, whether such operations are by the insured or by anyone directly or indirectly employed by the insured. All insurance must be written by companies incorporated within the United States (exclusive of Territories or Possessions) and licensed or authorized to do business in Arizona.

5.5. Subcontractor insurance: Prior to commencing any work, any subcontractor shall procure and maintain at its own expense until final acceptance of the work, insurance coverage in a form and from insurers acceptable to the prime contractor. All subcontractors will provide workers' compensation insurance, which waives all subrogation rights against the prime contractor, member and Mohave.

5.6. Workers' compensation insurance: Contract vendor shall also procure and maintain during the life of this agreement, workers' compensation insurance for all of contract vendor's employees engaged in work under the contract. All workers' compensation insurance will be in compliance with Arizona state statute and evidenced by a certificate of insurance.

6. MAINTENANCE FACILITIES AND SUPPORT

It is preferred that each contract vendor should have maintenance facilities and a maintenance support system available for servicing products throughout Arizona, or the regions specified in their offer. Maintenance facilities shall have sufficient parts inventory to provide quality service on products sold to members. Trained and qualified technicians shall be available to cover all parts of the state, or specific regions within the state for regional offers. It is preferred that maintenance services are available within 24 hours. If a third party is used to provide maintenance or warranty work, offeror shall include details of any such arrangement in the proposal.

7. MANUFACTURER SUPPORT

Offerors submitting proposals as a manufacturer's representative must be able, if requested by Mohave, to supplement the offer with a letter from the manufacturer certifying that offeror is a bona fide dealer for the equipment offered, and that offeror is authorized to submit an offer on such equipment.

8. MEMBER AGREEMENTS

Some members may request the addition of specific requirements that would apply to products and services purchased under an awarded contract. These additional requirements shall be addressed through the use of an additional member agreement. In any agreement between the contract vendor and a member based on this contract, the terms and conditions of this contract shall prevail. Contract vendor and member must agree to all provisions in any additional agreements. If agreement requirements result in additional costs to the contract vendor, the contract vendor shall be entitled to direct reimbursement for these costs, in addition and separately to approved contract pricing. A copy of the additional member agreement shall accompany the member's purchase order.

9. OFFEROR QUALIFICATIONS

It is preferred that the offeror has extensive knowledge and at least three (3) years' experience with the sales, maintenance and provision of the equipment and services offered. Mohave reserves the right to accept or reject newly formed companies based solely on information provided in the proposal and/or its own investigation of the company.

10. PRICING

10.1. Administration fee: Mohave's 1% administration fee shall be included in offeror's contract price. Contract vendor shall not add the administration fee to approved contract prices. The value of trade-ins or rebates shall not affect the amount of administration fee paid to Mohave.

10.2. Application of pricing: In Mohave's purchase order review process, the date of a valid contract vendor's quote or the date Mohave receives a member purchase order will generally be used to determine the contract pricing that is in effect for that order. The date Mohave receives a member purchase order will only be used to determine the contract pricing that is in effect for an order when a contract vendor's quote does not exist or is invalid. However, other factors may apply.

10.3. Basis for pricing: Contract pricing under this RFP shall be based upon:

1. Percent of discount(s) off manufacturer's price list(s) or catalog(s);
2. Firm fixed price with economic price adjustment.
   - Economic price adjustments are defined as an unexpected price increase for services, raw materials or that are outside the control of the offeror.
   - Any contingencies for economic price adjustments shall be identified in the proposal.
   - Mohave shall make the sole determination whether contingencies for economic price adjustments identified in your proposal are appropriate under an awarded contract; or
3. A combination of the above.

The price included in a catalog, price list, schedule or other form that:

- Is regularly maintained by a manufacturer, distributor or contractor;
- Is either published or otherwise available for inspection by customers; and/or
- States prices at which sales are currently or were last made to a significant number of buyers for the product, material, process or services.

Established catalog price is referred to as manufacturer's price list, price list, or catalogs throughout this solicitation.

10.4. Initial catalogs/price lists: A copy of the latest edition of the price list or catalog to which discount shall be applied shall be included with proposal. Include a copy of the latest edition of all applicable price lists or catalogs to which discount shall be applied with your proposal. Submission of outdated price lists or catalogs may result in rejection of proposal.

10.5. Fixed prices: Fixed price offers shall include prices for any and all items. Fixed prices shall be firm until each anniversary date of the contract, unless there is an occurrence of allowed contingencies for economic price adjustment outlined in the proposal. If allowed contingencies for price adjustment occur, contract vendor shall submit a fully documented request for price adjustment to Mohave. The documentation must substantiate that any requested price increase was clearly unpredictable at the time of submittal and results from an increased cost to contract vendor that was out of contract vendor's control. Mohave shall review requests for fixed price adjustments to determine if the requested adjustments will be allowed. New fixed prices shall not apply until approved by Mohave. Price changes shall be a factor in contract renewal (contract modification).

10.6. Combination pricing: Offers for combination contracts shall clearly identify items covered by discount(s) and those with fixed prices. Prices for such contracts shall be adjusted as identified for the appropriate contract type above.

10.7. Decimal places: Pricing shall use a maximum of three (3) decimal places, unless specified otherwise.

10.8. Discounts: Submitted pricing shall clearly identify the percent of discount to apply to the price list. If multiple discounts apply, offeror shall clearly indicate the discounts and applicable materials or services. Offeror shall agree that there will be no reduction in discount(s) during the term of contract.

10.9. New catalogs/price lists: New price lists, workbooks and/or catalogs may be submitted for review throughout the term of the contract. Mohave will review new price lists, workbooks and/or catalogs to determine if the new prices or an alternative option is in the members' best interests. New price lists, workbooks and/or catalogs shall apply to the contract only upon approval from Mohave. New price lists workbooks and/or catalogs found to be non-competitive at any time during the contract may be grounds for terminating the contract. Any new catalogs/price lists shall meet requirements as stated in **Basis for pricing**.

10.10. Percent of discount as fixed price: Percent of discount offers that are not based upon published price lists or catalogs shall be administered as fixed price contracts.

10.11. Price reduction and adjustment: Price reduction may be offered at any time during a contract and shall become effective upon notice of acceptance from Mohave. Price reductions (e.g., quantity discounts, time sensitive offers, bundles) must apply to all Mohave orders of similar size and scope. Price reductions limited to a single member are not acceptable. Special time-limited reductions are permissible under the following conditions: 1) reduction is available to all members equally; 2) reduction is for a specific time period, normally not less than thirty (30) days; 3) original price is not exceeded after the time-limit; and 4) Mohave has approved the new prices prior to any offer of the prices to a member. Mohave shall be the sole judge on the acceptance of price reductions under an awarded contract.

10.12. Reimbursement for transportation, mileage, lodging, meals and incidental expenses (M&IE): Contract vendor may charge for transportation, mileage, lodging and M&IE costs for employees that are required to travel to perform services at member site under this contract. An overnight stay is required for lodging reimbursement. Mileage reimbursement shall be at a specified rate. Transportation charges are separate from mileage, and may include airfare, car rental, etc.

Reimbursements under this section shall not exceed the rates listed in approved pricing, and shall not exceed the actual charge. To be eligible for reimbursement, estimated charges must be on the quote and approved by the member. Receipts for such reimbursements must be provided upon request from the member.

10.13. Travel/drive rates or mobilization: Contract vendor may charge for travel/drive rates or mobilization under this contract. Travel/drive rates are only applicable for out of area employees working under this contract. Charges under this section shall not exceed the rates listed in approved pricing. Such charges must be on the quote and approved by the member.

- Travel/drive rates may be an hourly rate or a per mile rate. If you are using a per mile rate, list your travel/drive reimbursement separately from mileage reimbursement.
- Mobilization charges are for the movement of equipment to the jobsite. Mobilization may be billed at a per mile rate or a flat rate.

11. SAMPLES

11.1. Sample evaluation: Samples will be compared to proposal specifications and evaluated as to materials used in construction, quality and workmanship, durability, adaptability to the use for which the items were intended, and overall appearance.

11.2. Sample requirements: Samples may be required prior to awarding a contract. Offeror shall provide adequate samples and detailed specifications for any item offered. Samples must be submitted within ten (10) days of request from Mohave.

11.3. Sample submittals: Samples shall be free of charge and submitted and removed by offeror at offeror's expense. Mohave shall not be held responsible for samples damaged or destroyed in examination or testing. Samples not removed within thirty (30) days after notice to offeror shall be considered abandoned, and Mohave shall have the right to dispose of them.

12. SITE REQUIREMENTS

12.1. Cleanup: Contract vendor shall clean up and remove all debris resulting from their work as required or directed by member. Upon completion of the work, the premises shall be left in good repair and unobstructed condition.

12.2. Contract vendor employee fingerprinting: Contract vendor and its employees or subcontractors working under an awarded contract who are required to provide services on a regular basis at an individual school, shall obtain and present a valid Department of Public Safety fingerprint clearance card in accordance with ARS §15-512(H). The fingerprint card shall be issued pursuant to Title 41, Chapter 12, Article 3.1. Charges for such fingerprint checks will be the responsibility of the contract vendor, subcontractor or individual employee as determined by the member.

An exception to this requirement may be authorized in member's Governing Board policy, for persons who, "*as part of the normal job duties of the persons, are not likely to have independent access to or unsupervised contact with pupils*."

Contract vendor and its employees or subcontractors shall not provide services on school district property until so authorized by the school district. Additionally, contract vendor shall comply with applicable governing board fingerprinting policy(ies) at the school district where services are provided.

12.3. Onsite contract vendor responsibilities: The contract vendor is responsible for ensuring that all onsite work performed under this contract meets or exceeds the current OSHA standards, and is responsible for ensuring safe work performance of employees and subcontract vendors.

Contract vendor and its employees or subcontractors shall report accidents and incidents immediately to the member's responsible staff or its administration. The contract vendor is responsible for providing and obtaining appropriate medical and emergency assistance and notifying fire and law enforcement agencies, when necessary. Except for rescue and emergency measures, the scene of the accident or incident shall not be disturbed, and the operation shall not resume until authorized by the member's responsible staff or administration. The contract vendor must assist and cooperate fully with the investigation of the accident/incident and ensure availability of all information, personnel and data pertinent to the investigation.

For preemptive purposes, contract vendor and its employees or subcontractors shall immediately report to the member's responsible staff or administration all areas of concern that could potentially lead to accident or injury.

12.4. Preparation: Contract vendor shall not begin a project for which member has not prepared the site. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

12.5. Registered sex offender restrictions: For work to be performed at an Arizona school, contract vendor agrees that no employee or employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or are reasonably expected to be present. Contract vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the member's discretion.

12.6. Safety measures: Contract vendor shall take all reasonable precautions for safety on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Contract vendor shall post warning signs against all hazards created by its operation and work in progress. Proper precautions shall be taken pursuant to current Arizona law and standard practices to protect workers, general public, and existing structures from injury or damage.

12.7. Smoking: Persons working under the contract shall adhere to current local smoking policies.

12.8. Stored materials: Upon prior written agreement between the contract vendor and member, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other location, for installation at a later date. An inventory of the stored materials shall be provided to member prior to payment. Such materials shall be stored and protected in a secure location, and be insured for their full value by the contract vendor against loss and damage. Contract vendor agrees to provide proof of coverage and/or addition of member as an additional insured upon member's request. Additionally, if stored offsite, the materials shall also be clearly identified as property of member and be separated from other materials. Member shall be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary.

Payment for stored materials shall not constitute final acceptance of such materials. The contract vendor shall be responsible for the protection of all material and equipment, whether stored on or off site. Title for all work, materials and equipment shall pass to the member only upon final inspection and payment of remaining job costs.

13. SUBCONTRACTORS

13.1. Awarding subcontracts: Offeror agrees that any subcontract competitively solicited by contract vendor shall not be awarded solely upon membership or non-membership in a union or professional association.

13.2. Entering subcontracts: Subcontracts shall incorporate by reference the terms and conditions of the Mohave contract.

13.3. Prime contractor: Contract vendor shall be considered a prime contractor and not a subcontractor. Neither Mohave nor the member shall establish a contractual relationship with subcontractors.

13.4. Subcontracts: No subcontracts shall be entered into with any unlicensed party. Contract vendor must use subcontractors openly, include such arrangements in the proposal, and certify upon request that such use complies with the current rules of the Arizona Registrar of Contractors and the Arizona procurement rules and code. No subcontracting costs may be hidden in a cost proposal to member.

13.5. Subcontractor payment: Contract vendor agrees to pay subcontractors within seven days after receipt of payment from member, as required in Arizona procurement rules and code. If contract vendor receives any interest monies for delay of payment from member, contract vendor will pay subcontractor the correct proportion of interest received. Complaints by subcontractor may be resolved as described in Arizona procurement rules and code. Failure to pay subcontractor for work faithfully performed and properly invoiced may result in the suspension or cancellation of this contract.

13.6. Use of subcontractors: Use of subcontractors shall permit work to be managed effectively and without delay and shall not cause any disturbance or interference to the progress of the project (e.g. engaging in strike, work stoppage, picketing, ceasing work due to a labor dispute). Subcontractor shall not employ anyone whose employment may be objected to by prime contractor, member or Mohave.

14. TERM OF CONTRACT AND EXTENSION

14.1. Contract period: It is Mohave's intent to award a multi-term contract for the specified product, material, process, or services. The initial contract term shall be for one (1) calendar year from the effective date of contract award. By mutual written agreement between Mohave and contract vendor, the contract may be extended for up to four (4) consecutive additional 12-month periods, beginning immediately after expiration of the prior term. However, no contract extension (contract modification) exists unless and until contract vendor is so notified by Mohave.

14.2. Contract extension (contract modification): Conditions for contract extension (contract modification) may include, but are not limited to: contract usage, satisfactory performance of services during the preceding contract term, ability to continue to provide satisfactory services, continued adherence to the contract requirements, and continued competitive prices for the materials and services provided under the contract. Mohave shall prepare a performance report for all contracts prior to issuing any extension (contract modification). This performance report shall use past performance information gathered by your assigned Contract Specialist. Past performance information shall be used when determining whether a contract receives an extension (contract modification).

14.3. Month-to-month extensions (contract modification): Mohave reserves the right to offer month-to-month extensions (contract modification), if that is determined to be in the best interests of members.

15. TRADE-IN EQUIPMENT

Member and contract vendor shall determine values placed on trade-in products. The value of trade-in shall not affect the amount of administration fee paid to Mohave. Trade-in equipment shall be dismantled and removed at contract vendor's expense. The condition of trade-in equipment at the time it is turned over to contract vendor shall be the same as when the original agreement was made, except for normal wear and tear from use between the time of the offer and trade-in.

16. WARRANTY/QUALITY GUARANTEE

16.1. Extended warranties contracts: The contract vendor or a manufacturer may offer extended warranties available at extra cost for members that agree to a maintenance contract. The extended warranty contract shall be offered as a separate line item.

16.2. Fitness: Contract vendor warrants that any equipment or material supplied to Mohave or its members shall fully conform to all requirements of the contract, all representations of contract vendor, and shall be fit for all purposes and uses required by the contract.

16.3. Inspection: The warranties set forth in this section shall not be affected by inspection or testing of, or payment, for the product or materials to contract vendor by member.

16.4. Quality: Unless otherwise specified, contract vendor warrants that for a period of one (1) year after acceptance of the equipment or materials by member, they shall be:

- Of a quality to pass without objection in the industry or trade normally associated with them;
- Fit for the intended purpose(s) for which they are used;
- Of even kind, quantity and quality within each unit and among all units, within the variations permitted by the contract;
- Adequately contained, packaged and marked as the contract may require; and
- Conform to the written promises or affirmations of fact made by contract vendor.

16.5. Warranty requirements: Contract vendor warrants that all products, materials, processes and services delivered under this contract shall conform to the specifications. Unless stated otherwise, all equipment shall carry a minimum 12-month manufacturer's warranty that includes parts and labor. Contract vendor agrees to help member reach resolution in a dispute with the manufacturer over warranty terms. Any extended manufacturer's warranty shall be passed on to member without exception. Mohave reserves the right to cancel the contract if contract vendor charges member for a replacement part that the contract vendor received at no cost under a warranty.

16.6. Warranty work: The contract vendor shall perform all warranty work and remain available to the member should continued service be required after warranty obligations are met.

Special Terms and Conditions Acceptance Form
(Place after Tab 1d)

Signature on Page 2 certifies complete acceptance of the Special Terms and Conditions in this solicitation, except as noted below (additional pages may be attached, if necessary).

Check one of the following responses to the Special Terms and Conditions:

◄ **We take no exceptions/deviations to the Special Terms and Conditions.**

(*Note: If nothing is listed below, it is understood that no exceptions/deviations are taken.)*

☐ **We take the following exceptions/deviations to the Special Terms and Conditions. All exceptions/deviations shall be clearly explained. Reference the corresponding Special Terms and Conditions that you are taking exceptions/deviations to. Clearly state if you are adding additional terms and conditions to the Special Terms and Conditions. Provide details on your exceptions/deviations below:**

(*Note: All requested exceptions/deviations must be clearly explained. Reference the specific special terms and conditions that you are taking exceptions/deviations to, detail any proposed substitute special terms and conditions, and clearly demonstrate how Mohave and its membership will be better served by the substituted special terms and conditions. Unacceptable exceptions/deviations shall remove your proposal from consideration for award. Mohave shall be the sole judge on the acceptance of exceptions/deviations and Mohave's decision shall be final.)*

1. DESCRIPTION

In order to gain economies of scale, Mohave is formally soliciting sources for utility vehicles, tractors, golf carts, grounds maintenance vehicles, equipment and services, as specified within this Request for Proposal. These products/services are requested for Mohave's statewide membership of approximately 470 public agencies. However, other members may be added during the term of an awarded contract(s). A current list of all members can be found on Mohave's website at www.mesc.org. Contracts, in whole or in part, shall be awarded to offeror, or offerors, for an initial one (1) year term and four (4) potential one-year extensions (contract modification).

The scope of work and specifications define the quality and characteristics of the desired materials and application. They are based upon specifications for known acceptable manufacturers, processes, materials and/or brands such as American Honda, Allied Toyota Lift, Billy Goat Industries, Bobcat, Club Car, Echo/Shindaiwa Power Products, Foley United, Husqvarna, John Deere, Rahn Groomers, Stihl, Toro, and/or equal quality products. The specifications are not intended to be exclusive or to restrict competition. Offerors may offer alternate solutions, including alternate manufacturers, which meet the quality and performance characteristics in the specifications. Mohave shall review such offers and be the final judge on the acceptance of any alternate solutions.

Four contract vendors hold Mohave's current contracts for the specified products and services. Activity under the contracts from August 24, 2015 including year to date activity (as of the publication date of this RFP) is $8,149,431. This information is provided as an aid to offerors in preparing proposals only. It is not to be considered a guarantee of volume under an awarded contract. The discount and pricing schedule shall apply regardless of the volume of business under the contract.

Restrictions of RFP 20E-0521 Utility Vehicles, Tractors, Golf Carts, Grounds Maintenance Vehicles, Equipment and Services:

- Equipment that is certified and/or classified earth moving, material handling, road maintenance, and construction equipment having a published manufacturer's minimum unit list price of fifty thousand dollars ($50,000), or more is not allowed.
- Leasing or credit services are not requested.
- Sales of bulk chemical and lubricants in pail and drum containers are not allowed under an awarded contract. These. items are currently being offered by other Mohave contracts.

2. ESTIMATED TIMELINE OF EVENTS

Mohave has developed the following estimated timeline of events related to this formal solicitation. All dates are subject to change as required and at the sole discretion of Mohave.

EVENT	ESTIMATED DATE
Request for Proposal Issued	April 23, 2020
Pre-proposal Conference Held	Tuesday, May 5, 2020 at 10:30 a.m. (local AZ time) Pre-proposal conference will be held using telephone conferencing. Please contact Mohave for reservation details.
Deadline for Questions	Thursday, May 14, 2020 at 5:00 p.m. (local AZ time)
Published RFP Due Date and Time	Thursday, May 21, 2020 at 3:00 p.m. (local AZ time)
Public Opening of Proposal	Thursday, May 21, 2020 at 3:00 p.m. (local AZ time)
Notice of Intent to Award (*estimated date only*)	July 25, 2020 NOTE: Notification will be sent by email to all awardee(s) and non awardee(s) on or before this date.
Execution of Contract(s) (*estimated date only*)	August 25, 2020

3. SUBMISSION OF PROPOSALS

3.1. Proposals should provide straightforward, concise information that satisfies the requirements. Emphasis should be placed on conformity to the specifications and terms and conditions, as well as the completeness and clarity of the submittal content.

3.2. The offeror must submit a proposal following information detailed in the *Instructions to Offeror and Checklist Form.*

3.3. A proposal submitted in response to this solicitation shall be valid and irrevocable for one hundred twenty (120) days after specified due date and time.

4. CONTRACT TYPE

The term contract shall be a percent of discount off manufacturer's price list or catalog, fixed price, or a combination of both with indefinite quantities.

5. AWARD CRITERIA

The weighted award criteria for this solicitation, in relative order of importance, are as follows:

Award(s) shall be made to the responsive and responsible offeror(s) whose proposal(s) are determined in writing to be most advantageous to Mohave for its members.

Responsive and responsible offeror(s) shall provide the following requirements:

1) Pricing Information: Excel pricing workbook uploaded to ProcureNow. Completed pricing workbook, price schedules, additional requested price information, (in searchable PDF format), used, reconditioned, refurbished equipment and vehicle pricing methodology, Tab 3b pricing methodology description, volume discount information, quick pay discount information, Pcard acceptance information, mobilization, and travel description;

2) Offer and Acceptance, Terms and Conditions, Scope of Work and Specification Documents: *Offer and Acceptance Form*, *Confidential/Proprietary Submittal Form*, amendments (if any), *General and Special Terms and Conditions Acceptance Forms*, Scope of Work, Specifications with exceptions/deviations noted*, Scope of Work and Specifications Acceptance Form*, *Anti-Lobbying Certificate Form,* and *U.S. Department of Agriculture Form AD-1048*;

3) Primary Vendor Information: Complete response to the Method of Approach and Qualification and Experience pages, references (past performance information), certificate of insurance, financial information;

4) Supporting Contract Documents: Completed supporting contract documents, support and maintenance information, sample supplemental or end-user agreements, extended warranty or maintenance service plan information;

5) Additional Information: *Instructions to Offeror and Checklist Form*, descriptive literature, slicks and any supporting documentation, overall evaluation orderliness, readability of offer and evidence that the firm has the ability to follow instructions, and any additional information.

References used for terms and conditions: (acronyms used in the solicitation are noted in bold font below):

Arizona Administrative Code **(A.C.C.)**: https://azsos.gov/rules/arizona-administrative-code

Arizona Executive Orders: https://azgovernor.gov/executive-orders

Arizona Revised Statutes **(ARS)**: https://www.azleg.gov/arstitle/

State of Arizona Accounting Manual - Travel Policy: Section IID - Section II **(SAAM)**: https://gao.az.gov/travel/welcome-gao-travel

Code of Federal Regulations **(CFR)**: www.ecfr.gov

Education Department General Administrative Regulations **(EDGAR)**: https://www2.ed.gov/policy/fund/reg/edgarReg/edgar.html

E-Verify: https://www.e-verify.gov/employers/enrolling-in-e-verify

Davis-Bacon: https://www.dol.gov/agencies/whd/laws-and-regulations/laws/dbra

Public Law: www.congress.gov/public-laws/116th-congress

Uniform Commercial Code as adopted by the State of Arizona **(UCC)**: https://www.azleg.gov/arsDetail/?title=47

United States Department of Housing and Urban Development **(HUD)**: www.hud.gov

Additional references and definitions used for specifications: (acronyms used in the solicitation are noted in bold font below):

American National Standards Institute (**ANSI**): www.ansi.org

American Society of Agricultural and Biological Engineers (**ASABE**): www.asabe.org

National Highway Traffic Safety Administration (**NHTSA**): www.nhtsa.dot.gov

Occupational Safety and Health Administration (**OSHA**): www.osha.gov

Outdoor Power Equipment Institute (**OPEI**): www.opei.org

United States Environmental Protection Agency (**EPA**): www.epa.gov

SPECIFICATIONS

Purpose of specifications: Specifications are designed to enable offeror to satisfy a requirement for a product, material, process, or service. A specification may be expressed as a standard, part of a standard, or independent of a standard. No specification is intended to limit competition by eliminating items capable of satisfactorily meeting the requirements of the procurement. If offeror believes a specification is unnecessarily restrictive, offeror must notify Mohave prior to specified proposal due date and time.

Partial proposals: Mohave will consider partial proposals for award of a contract.

Use of brand names: Brand names, trade names, model numbers, and/or catalog numbers may be used to describe the standard of quality, performance, and other characteristics needed to meet member requirements. Use of the name of a manufacturer, brand, make or catalog number is not intended to limit or restrict competition, nor does it restrict offeror from the submission of equivalent brands. However, Mohave reserves the right to decide whether alternatives are equivalent to the materials and equipment described in the solicitation. Mohave shall be the sole judge of equivalent quality, and Mohave's decision shall be final.

Compliance with specifications: Offerors shall offer products, materials, processes, or services they believe come closest to meeting specifications. The fact that a manufacturer, supplier or offeror chooses not to produce or provide product, material, process, or services to meet the specifications shall not be considered sufficient cause to adjudge the specifications as restrictive.

Deviations from specifications: Offerors will respond to each numbered specification by checking the appropriate "Comply" or "Deviate" box. "No Bid" items shall be marked as such in the appropriate "Deviate" box. Your exceptions/deviations must be clearly explained. Reference the specification that you are taking exceptions/deviations to, detail any proposed substitute language, and clearly explain how the exceptions/deviations meet or exceed specifications. Unacceptable exceptions/deviations shall remove your proposal from consideration for award. Mohave shall be the sole judge on the acceptance of exceptions and Mohave's decision shall be final. Details for exceptions/deviations shall be listed by specification number on the *Scope of Work and Specifications Acceptance Form*.

Requirement		Comply	Deviate*
1.1 General Requirements – Utility Vehicles, Tractors, Golf Carts, Grounds Maintenance Vehicles, Equipment and Services			
1.1.01 Earth moving, material handling, road maintenance, and construction equipment, (e.g. track-type tractor, motor grader, excavator, landfill compactor, wheel tractor scraper, off-highway truck, wheel loaders or track loaders) having a published manufacturer's minimum unit list price of fifty thousand dollars ($50,000), or more **is not requested and shall not be allowed** under an awarded contract. Equipment that is not certified or classified as earth moving, material handling, road maintenance, and construction equipment will be allowed to exceed the published manufacturer's minimum unit list price of fifty thousand dollars ($50,000), or more under an awarded contract.		**X**	
1.1.02 All small engine, utility vehicle, and outdoor power equipment shall meet current applicable OPEI standards.		**X**	
1.1.03 The contract vendor shall provide detailed warranty information for all vehicles and powered equipment offered on contract. Warranty information may be provided to the member in electronic format (online, CD, etc.) ***(Place after Tab 4d.)***		**X**	
1.1.04 All riding equipment shall comply with current applicable ASABE, and OSHA standards for rollover protection. These vehicles shall comply with current applicable ANSI standards, as related to operation on slopes. Provide documentation that certifies rollover compliance for riding equipment, if offering these types of vehicles. ***(Place after Tab 2 b.)***		**X**	

1.1.05 Low-speed vehicles shall meet the current applicable NHTSA standards.		**X**	
1.1.06 Riding mowers/equipment, walk behind mowers, skid steers and utility vehicles shall meet appropriate ANSI standards.		**X**	
1.1.07 Fossil fuel powered equipment shall comply with current applicable EPA emissions standards.		**X**	
1.1.08 Contract vendor shall provide members with manufacturer's operation and parts manuals. These manuals may be provided in paper, electronic, or online formats.		**X**	
1.1.09 Contract vendor may provide safety videos. If there is an additional cost for safety videos, pricing shall be provided in the pricing workbook ***"20E utility grounds equipment and vehicles WB.xlsx." (Place after Tab 3a.)***		**X**	
1.1.10 If requested by the member, the contract vendor may provide hands-on training for any equipment or vehicle. Provide training pricing, if applicable, in the pricing workbook ***" 20E utility grounds equipment and vehicles WB.xlsx." (Place after Tab 3a.)***		**X**	
1.1.11 In addition to the gasoline and diesel engines, electric, biodiesel, hybrid, fuel cells, compressed natural gas, and propane engines may be offered.		**X**	
1.1.12 Rechargeable electric unit accessories including additional batteries and/or battery recharging stations are requested.			**NO BID**
1.1.13 Used, reconditioned, refurbished equipment and vehicles may be offered. Contract vendor shall provide information if warranties are included prior to quoting to the member.			**NO BID**
1.1.14 Rental equipment may be offered under an awarded contract. If provided, add rental pricing to a separate worksheet in the pricing workbook ***" 20E utility grounds equipment and vehicles WB.xlsx." (Place after Tab 3a.)***			**NO BID**
1.2 Sub-Compact Utility, Compact Utility, Utility Tractors and Skid Steers			
1.2.01 Sub-compact utility, compact utility, and utility tractors shall allow various uses including, but not limited to: mowing, rotary cutting, flailing, blading, tilling, backhoeing, post-hole digging, loading, and snow removal.		**X**	
1.2.02 Sub-compact utility, compact utility, utility tractors and skid steers shall include, but not be limited to the following basic and/or optional features: tip-over protective structures; single foot pedal that operates speed and direction control; high-backed seat; seat-activated safety switch to lock controls in neutral when seat is unoccupied; adjustable steering; adjustable seat configurations; cruise control; enclosed engine and muffler system; and engines and transmissions in sizes and configurations depending on the intended use of the tractor and skid steer.			**X**
1.2.03 Implements for utility, sub-compact, and compact utility tractors shall include, but not be limited to: quick-change attachments for one-man operation; grooming mowers; hitch mowers; light and heavy-duty rotary cutters; flail and sickle bar mowers; posthole diggers; backhoes; front loaders; tillers, hydraulic dump material collection system; snow blowers and snow throwers; rotary brooms; leaf mulchers; and vacuum baggers.			**X**
1.2.04 Skid steer attachments shall include, but not be limited to: backhoes, post-hole diggers, loaders, lift fork attachments, and blades.			**NO BID**

1.3 Trim Mowers			
1.3.01 Air and liquid cooled four-cycle diesel or gas engine riding trim mowers shall be available in front or rear-engine configurations. Engines shall be available in a variety of sizes and power, ranging from 10 HP up to 80 HP.		**X**	
1.3.02 Trim mowers shall be available in either manual or hydrostatic transmissions.		**X**	
1.3.03 Mowing decks shall be available in a variety of sizes, including but not limited to: 32", 38", 44", or larger.		**X**	
1.3.04 Trim mower accessories shall include, but not be limited to the following: cruise control; spark arrestor muffler; canopy cover; snow thrower; leaf mulcher; headlight kit; cab; heater and defroster; cushion seats; plows; debris blower; aero-seeder; wide tires; tire chains; grass collection system; rotary broom (various sizes); dozer blades (various sizes), and fertilizer spreader.			**X**
1.4 Lawn Mowers			
1.4.01 Small, self-propelled front mowers shall allow attachments including, but not limited to: material collection, snow blowing and snow throwing, leaf cracking, thatching, flailing, and mulching. Surround, triplex greens, and wide area rotary mowers may be offered.			**X**
1.4.02 Grass aeration equipment shall include, but not be limited to: high velocity water injection equipment, coring aerators, and tractor-pulled tow-behind deep coring aerators.			**X**
1.4.03 Mowers shall be available in an electric or gasoline configuration. Electric mowers shall be available in a corded or cordless (rechargeable) configuration.		**X**	
1.4.04 Lawn mowers shall provide grooming features suitable for a golf course with a height of cut between 1/8" and 3/4." Large reel cutters shall come equipped for speeds up to 7 mph. Towed cutting units may also be offered.			**X**
1.5 Work Utility Vehicles			
1.5.01 Heavy duty off roadwork utility vehicles shall be 2 and/or 4-wheel drive and shall be available with a diesel or gasoline fueled engine.		**X**	
1.5.02 Work utility vehicles may have one or two-person front seating, and one or two passenger rear seating. Work utility vehicles shall include manual or automatic transmissions, power steering, drum or rotary brakes, and have a high speed of at least 15 mph.		**X**	
1.5.03 Work utility vehicle options shall include, but not be limited to: spray systems (foam markers, electric hose reels, boomless nozzles, hand guns, manual or electronic sprayer monitors, sonar units); pressure washer equipment; ground spreaders; top dressers and various adapters; flatbed (full size, 2/3, or 1/3); platform lifts (vehicle shall not move with lift raised); lifting forks; power generators and air compressor motors; fully enclosed cabs with heaters; cargo boxes; arboriculture and horticulture maintenance equipment to trim and maintain trees; sports field grooming equipment; safety glass; windshield defrosters; and reverse alarms.			**X**
1.5.04 Work utility vehicle accessories shall include, but not be limited to: lighting kits (signal or work lights); fender kits; seat belt kits; engine covers; towing kits; repair parts; and spark arrestors.		**X**	

1.6 Miscellaneous Equipment and Transportation Carts			
1.6.01 High-performance off-road commercial and industrial carryall shall come in various configurations, including but not be limited to: pickups, flatbeds, transporters, and people moving. Carryall utility vehicles shall be suitable for use in public areas, and on school recreational fields. These units shall be powered by gasoline or electricity and shall carry up to 1,500 pounds.			**NO BID**
1.6.02 A variety of industry-standard skid steer loaders with operating loads of not less than 600 pounds and up to 1,500 pounds may be offered. Attachments shall include, but not be limited to: utility buckets, utility forks, dirt and foundry buckets, manure and fertilizer buckets, pallet forks, and utility grapples.			**NO BID**
1.6.03 Compact excavators shall be equipped with a 360° house swing, side boom for digging along walls and fences, and optional enclosed cabin.			**NO BID**
1.6.04 Four-wheel rear drive material transports shall come equipped with a cargo box able to transport up to 600 pounds on level terrain and tow up to 1,000 pounds on level terrain.		**X**	
1.6.05 A variety of gasoline and electric golf, turf and hospitality carts are requested, including carts with optional features and accessories for golf course, parks and recreation and maintenance environments.		**X**	
1.7 Lawn Care and Grounds Equipment			
1.7.01 Lawn and grounds cleaning equipment shall include, but not be limited to: self-propelled sweepers; pulled sweepers; pulled debris loaders; spraying equipment; turf cultivation; bunker rakes; and blowers.			**X**
1.7.02 Lawn care and grounds equipment shall be powered manually, electrically or by fuel. Equipment shall include, but not be limited to: weed eaters; string trimmers; brush cutters; pole pruners; hedge trimmers; shrub and tree trimming equipment; seeders (towed or walk-behind); thatchers and dethatchers (towed or walk-behind); aerators; debris vacuums; back-pack sprayers; stump grinders; brush cutters; chain saws; hole diggers; cultivators; chipper/shredders; equipment for sports field maintenance; and back-pack sprayers.			**NO BID**
1.7.03 Contract vendor shall provide a range of leaf blowers, which are suitable to a variety of member's needs including, but not limited to: handheld, backpack, walk-behind, electric, and gas.			**NO BID**
1.7.04 Sweepers shall have a sweeper width of at least 48" or more, and have a multiple position sweeper reel, allowing for varied speeds and positions. Walk-behind power sweepers and brush sweepers shall have a sweeper width of at least 24" or more.			**NO BID**
1.7.05 Sweepers shall have a transport speed that is faster than its sweeping speed.			**NO BID**
1.8 Service, Repair, Parts, Maintenance and Warranty Work			
1.8.01 All repair, service, maintenance and warranty work shall be performed according to the manufacturer's specifications.			**X**
1.8.02 Original equipment from manufacturers (OEM) parts, options and accessories are requested.			**X**
1.8.03 Aftermarket parts, options and accessories may be offered.			**NO BID**
1.8.04 Specialty chemicals and lubricants specific to equipment or vehicle type may be offered.			**NO BID**
1.8.05 Chemicals and lubricants necessary to maintain the equipment may be offered. Sales for bulk chemical and lubricants in pail and drum containers are not allowed under an awarded contract.			**NO BID**

1.8.06 Contract vendor may offer OEM tires, tires specific to the equipment offered under an awarded contract, installations and repairs.			**NO BID**

***Exceptions/deviations must be listed on the *Scope of Work and Specifications Acceptance Form* . List the specification number for each exception/deviation.**

Scope of Work and Specifications Acceptance Form
(Place after Tab 1e)

Signature on page 2 certifies complete acceptance of the Scope of Work and Specifications in this solicitation, except as noted below (additional pages may be attached, if necessary).

Check one of the following responses to the Scope of Work and Specifications:

☐ **We take no exceptions/deviations to the Scope of Work and Specifications.**

(*Note: If nothing is listed below, it is understood that no exceptions/deviations are taken.)*

☒ **We take the following exceptions/deviations to the Scope of Work and Specifications. All exceptions/deviations shall be clearly explained. Reference the corresponding Scope of Work or Specifications that you are taking exceptions/deviations to. Provide details on your exceptions/deviations below:**

(*Note: All requested exceptions/deviations must be clearly explained. Reference the specific language that you are taking exceptions/deviations to, detail any proposed substitute language, and clearly explain how the exceptions/deviations meet or exceed Scope of Work and Specifications. Unacceptable exceptions/deviations shall remove your proposal from consideration for award. Mohave shall be the sole judge on the acceptance of exceptions/deviations and Mohave's decision shall be final.)*

Specifications	Deviations
1.2.02	John Deere Compact Utility Tractors has dual foot pedals. No Bid for Skid-Steer Loaders
1.2.03	John Deere does not offer hydraulic dump material systems or vacuum baggers for Sub Compact Utility, Compact Utility and Utility Tractors.
1.3.04	John Deere does not offer plows, debris blower, aero-seeder and fertilizer spreaders for Trim Mowers.
1.4.01	John Deere does not offer thatching or flailing attachments.
1.4.02	John Deere does not offer high velocity water injection equipment.
1.4.04	John Deere does not offer towed cutting units.
1.5.03	John Deere does not offer pressure washer equipment, ground spreaders, flatbed, platform lifts, lifting forks, power generators and air compressor motors, arboriculture and horticulture equipment for Work Utility Vehicles.
1.7.01	John Deere does not offer self-propelled sweepers, pulled sweepers and pulled debris loaders.
1.8.01	Repair, service and maintenance work are not a part of this RFP.
1.8.02	Parts are not a part of this RFP.

Anti-Lobbying Certification Form
(Place after Tab 1f)

ANTI-LOBBYING CERTIFICATION

Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

In accordance with the Byrd Anti-Lobbying Amendment 31 U.S. Code § *1352, 2 CFR § 200.450 and Federal Acquisition Regulation 52.203-11:*

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:

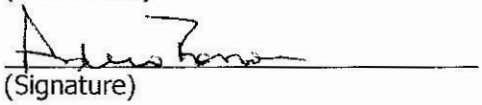
(1) No Federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of this contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer in accordance with its instructions; and

(3) The undersigned shall require that the language of this certification be included in the award documents for all subcontract awards at all tiers and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S. Code § 1352. Any person who makes expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

Deere & Company
(Firm Name)


(Signature)

Andrew Roma
(Print Name)

Contract Administrator
(Print Title)

5/19/2020
(Date Certified)

U.S. Department of Agriculture Form AD-1048
(Place after Tab 1g)

UNITED STATES DEPARTMENT OF AGRICULTURE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552(a), as amended). This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, and 2 C.F.R. §§ 180.300, 180.355, Participants' responsibilities. The regulations were amended and published on August 31, 2005, in 70 Fed. Reg. 51865-51880. Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

According to the Paperwork Reduction Act of 1995 an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0027. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal and civil fraud privacy, and other statutes may be applicable to the information provided.

(Read Instructions On Page Two (RFP Page 18) Before Completing Certification)

A. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;

B. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Deere & Company	Request For Proposal 20E-0521
Organization Name	PR/Award Number or Project Name

Andrew Roman – Contract Administrator

Name(s) and Title(s) of Authorized Representative(s)

Andrew Roman 5/19/2020

Signature(s) Date

The U.S. Department of Agriculture (USDA) prohibits discrimination in all of 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, political beliefs, genetic information, reprisal, or because all or 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, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

Instructions for Certification (for Form AD-1048)

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on 1 (RFP page 17) in accordance with these instructions.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal *Government*, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

2. The prospective lower tier participant shall provide immediate written notice to the person(s) to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, at 2 C.F.R. Parts 180 and 417. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

4. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

5. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the System for Award Management (SAM) database.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

TAB 2

Primary Vendor Information

Primary Vendor Information
Method of Approach
(Place after Tab 2a)

Offeror shall respond to each item below. The information will be used to assist Mohave in evaluating the method of approach that an offeror would take regarding specific issues under an awarded contract. Do not use "boilerplate" answers. Respond to each item by specifically addressing the Mohave request. Failure to complete all questions may result in your proposal being considered nonresponsive.

1. Offeror shall provide a project plan that describes how the offeror intends to implement the plan. This information shall include, but not be limited to:
   a. Account team structure (for a Mohave contract) and role which includes, but is not limited to description of sales contact process, account team support, and periodic account review processes;

      Account Team to support the Mohave Contract
      - Mike Ready, Manager Government Sales
      - Adrienne Larson, Government Account Manager
      - Andrew Roman, Contract Administrator
      - John Deere Order Processing and Audit Team
      - Arizona John Deere dealer organization. John Deere dealers will be delivering, setting up and performing any requested services for the equipment sold under this contract. (See dealer list in Tab 5-Additional Information; 5b-AZ_Dealer_List_Final.pdf)

   b. Communication process with Mohave and its members;

      John Deere's Government Account Manager for Arizona will attend events sponsored by Mohave with support from the appropriate Joh Deere dealer organizations within Arizona.

   c. Standard delivery time for products/services after receipt of purchase order;

      Delivery times vary based on the product type noted below:
      - Lawn & Garden 30 – 60 days
      - Commercial / Golf & Turf 60 – 90 days
      - Agricultural Equipment 90 – 180 days

   d. Member Training (initial and ongoing);

      The John Deere dealer is responsible for delivering and supporting the equipment sold under this contract. However, Mohave members will be encouraged to call the John Deere government sales direct toll-free number (800-358-5010, option 2) for assistance with locating their nearest dealer. John Deere does offer distance-learning classes on operation and adjustment of equipment for certain products. Many John Deere dealers offer local training, which is at the discretion of the dealer.

   e. Specific value-added services that may benefit members;

      Mohave members can be assured that the John Deere dealer network will offer best-in-class products, parts, service and support. The consistent training that is offered by John Deere Company to the dealer network will provide each member with a similar customer experience. Within the John Deere Government Sales Department, we have an entire department of approximately 30 people dedicated to government sales. This includes an Order Management Team, that within an average of 7 days of submission, audits and processes every PO to verify pricing and verify the items quoted are eligible for the contract. The Contract Administration Team ensures contract compliance is maintained. Additionally, having held this contract for several years, Deere & Company is familiar with Mohave and its members.

Note: See **Best and Final Offer** For Further Details

f. Indicate how you will ensure your sales staff does not sell products or services that are not on contract; and

The John Deere dealer organization is trained on Government contracts and will be responsible for providing quotes to members for only the products that have been awarded on the contract. Our Order Management Team will then audit and process every PO to verify pricing and verify the products quoted are eligible for the contract.

g. Are there any limitations to the types of members that you will provide services to? If so, indicate what those limitations are.

John Deere will serve all Mohave members.

2. Mohave is established to offer a cooperative purchasing program, which can be accomplished more efficiently and economically as a multi-entity operation.

Efficiency and economy can be established through reduced bidding effort for members and vendors, management of a single contract, fewer price schedules to maintain, fewer contact persons, and using Mohave as an extension of members' purchasing departments. Additionally, it is Mohave's assertion that a statewide contract available to approximately 470 public agencies results in economies of scale and lower prices than those received by bidding individual contracts, especially, but not limited to small member agencies.

Will a contract based upon your proposal result in the efficiencies and economies described above?

Yes ***X*** *No* _____

If no, what efficiencies and economies would members receive from a contract based on your proposal?

3. Do you anticipate using subcontractors for any portion of a project and/or for remote projects under an awarded contract?

*Yes*___ *No* ***X***

John Deere dealers will be delivering, setting up and performing any requested service for the equipment sold under this contract. John Deere dealerships are not sub-contractors but independently owned and operated businesses and maintain their own insurance. See dealer list in Tab 5-Additional Information; 5b-AZ_Dealer_List_Final.pdf.

(Note: If you indicated "No", then the use of subcontractors under an awarded contract will not be allowed.)

(Cont'd)

If "Yes" to Question #3, describe how you would use subcontractors to accomplish the work. Indicate if local subcontractors would be used. What is the maximum amount of work you would subcontract to complete a job?

4. Indicate if your proposal is regional or statewide: Regional_____ Statewide__**X**__

If you are providing a regional or county specific offer, that offer shall cover all members within that region or county.

Regardless if your firm is providing statewide or regional/county services, complete the chart below to include the following:

a. In the past three years, what percent of your Arizona business do you estimate was in each geographical area identified below?

b. Indicate which area(s) of the state that you will provide services under an awarded contract.

c. If you are awarded a contract with Mohave, which area(s) of the state will your sales force target?

Counties	a: Percentage of Business	b: Area(s) You Will Provide Services In	c: Area(s) Sales Force Will Target
Apache	2.08%	X	X
Cochise	3.47%	X	X
Coconino	6.25%	X	X
Gila	1.39%	X	X
Graham	6.25%	X	X
Greenlee	1.39%	X	X
La Paz	6.94%	X	X
Maricopa	28.47%	X	X
Mohave	3.47%	X	X
Navajo	8.33%	X	X
Pima	9.03%	X	X
Pinal	11.11%	X	X
Santa Cruz	3.47%	X	X
Yavapai	2.08%	X	X
Yuma	6.25%	X	X

5. If you are offering repair or maintenance services, provide information regarding each of your location's repair and/or maintenance capabilities. Include any manufacturer's certificates for authorized repair facility, mechanic or technician training, and the types of equipment you provide repair services for. All repair and maintenance service pricing shall be provided in **" *20E utility grounds equipment and vehicles WB.xlsx." (Place after Tab 3a.)***

Repair and maintenance service are offered through our John Deere dealer organization and therefore are not included in this offering.

---

6. If you are offering on-site repair or maintenance services, provide information how these services are performed. Include any member site requirements, disposal of fluids and waste, and your normal response time for emergency repairs.

On-site repair or maintenance services are offered through our John Deere dealer organization and therefore are not included in this offering.

Primary Vendor Information
Qualifications and Experience
(Place after Tab 2b & 2d – As Noted Below)

Offeror shall respond to each item below. The information will be used to assist Mohave in evaluating the qualifications and experience of the offeror. Do not use "boilerplate" answers. Respond to each item by specifically addressing the Mohave request. Failure to complete all questions may result in your proposal being considered nonresponsive.

1. **Place after Tab 2b:** Prepare a summary of your firm, explaining the qualifications and experience necessary to provide the products/services in this solicitation as follows:

- A short narrative description of what you are offering for this contract.

Note: See **Best and Final Offer** For Further Details

John Deere and its subsidiaries manufacture, distribute and finance a full line of agricultural and turf equipment and a wide range of construction and forestry equipment. John Deere also offers credit services for businesses and the general public.

John Deere is offering Agricultural and Turf equipment in response to the Mohave Educational Services Cooperative, Inc.'s Request for Proposal # 20E-0521. Description of the products John Deere will offer include:

Residential Zero-Turn Radius Mowers & Equipment
Lawn Tractors & Equipment
Garden Tractors & Equipment
Equipment for Lawn & Garden Tractors
Commercial Walk-Behind Mowers & Equipment
Commercial Zero-Turn Radius Mowers & Equipment
Commercial Front Mowers & Equipment
Commercial Wide Area Mowers & Equipment
Compact Utility Tractors & Equipment
Equipment for Commercial Mowing Products
Equipment for Compact Utility Tractors
Recreational Utility Vehicles & Equipment
Mid-Size Utility Vehicles & Equipment
Full-Size Utility Vehicles & Equipment
Traditional Utility Vehicles & Equipment
HPX Utility Vehicles & Equipment
Implements for Utility Vehicles
Agricultural Tractors & Equipment
Implements & Attachments for Agricultural Tractors
Ag Management Solutions (AMS)
Reel Mowers & Equipment
TerrainCut Mowers & Equipment
Special Application Vehicles & Equipment
Aercore & Equipment
Debris Maintenance & Equipment
Frontier Equipment – Attachments: Cotton, Cutting/Mowing, Hay & Forage, Landscape, Livestock, Material Handling, Planting & Seeding, Snow, Sprayers, Tillage

- A *brief* history of your company that includes length of time in business, how long your company has provided the products/services you are proposing, and your firm's philosophy of doing business.

Deere & Company, founded in 1837 (collectively called John Deere), began as a simple one-man blacksmith shop. Today its grown into a corporation that does business around the world and employs over 74,000 people worldwide. The company is guided by the same core values established by its founder; integrity, quality, commitment and innovation. John Deere is the world's leading provider of advanced products and services for agriculture and forestry and a major provider of advance products and services for construction and lawn & turf.

- Provide written verification if offeror has recently purchased an established business or has proof of prior success in this business or a closely related business.

Not Applicable.

Agricultural & Turf Division
2000 John Deere Run, Cary, NC 27513 USA
Phone: 919-804-2285 Fax: 309-749-2313
E-mail: GovContractSupport@JohnDeere.com

Andrew Roman
Contract Administration

May 20, 2020

Bidder:	Deere & Company
Due Date:	May 21, 2020
Due Time:	3:00 PM (Arizona Time)
RFP ID:	20E-0521
Event Name:	Utility Vehicles, Tractors, Golf Carts, Grounds Maintenance Vehicles, Equipment and Services

Online Survey

Due to COVID-19, telework and furloughs we are unable to confirm which agencies are available to complete the survey. However, the online survey has been sent to the following agencies:

1. Parker Unified School District
2. City of Yuma
3. Yuma School District
4. City of Apache Junction
5. Coolidge Unified School District
6. Pima County Arizona
7. Sacaton School District
8. Salt River Pima Maricopa
9. Tempe Union High School District
10. Town of Queen Creek

Regards,

Andrew Roman
Contract Administration
GovContractSupport@JohnDeere.com
800-358-5010, Ext. 2285

#16

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, May 21, 2020 2:12:50 PM
Last Modified: Thursday, May 21, 2020 2:19:21 PM
Time Spent: 00:06:31
IP Address: 24.121.67.179

Page 1: Mohave Educational Services Cooperative, Inc. Solicitation Reference Collection Survey

Q1

Your Contact Information:

Name	**Stella M. Baker**
Agency or Company	**Parker Unified School District 27**
Position	**Bookkeeper**
Email Address	**stbaker@parkerusd.org**
Phone Number	**928-669-9244**

Q2

The name of the vendor which you are providing this vendor performance information:

Company	**John Deere AG & Turf Strategic Accounts Business Division**
Address	**2000 John Deer Rd**
City/Town	**Cary**
State/Province	**NC**
ZIP/Postal Code	**27513**

Q3

The ability to deliver products/provide services per your expectations:

(no label)	**9**

Q4

The overall quality of products/services provided by the firm:

(no label)	**9**

Q5

The ability of the firm to interact with your staff members:

(no label) **9**

Q6

The close out process (invoicing, no unexpected fees):

(no label) **10 - Very Satisfied**

Q7

The ability of the firm to follow your rules, regulations and requirements:

(no label) **10 - Very Satisfied**

Q8

Your overall satisfaction based on performance (comfort in using this firm again in the future):

(no label) **10 - Very Satisfied**

Q9 **Yes**

Is the survey information you have provided related to utility vehicles, tractors, golf carts, grounds maintenance vehicles, equipment and services?

Q10 **Respondent skipped this question**

If you answered no to the previous question, please provide a description of the types of products/services that were provided by the firm you are providing a reference for.

Q11

Do you have any other comments you would be willing to share?

no

Q12

Do you have any other questions, or concerns?

no

#12

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, May 20, 2020 9:08:10 AM
Last Modified: Wednesday, May 20, 2020 9:14:00 AM
Time Spent: 00:05:49
IP Address: 24.121.67.179

Page 1: Mohave Educational Services Cooperative, Inc. Solicitation Reference Collection Survey

Q1

Your Contact Information:

Name	**Scott Vintus**
Agency or Company	**Parker Unified School District # 27**
Position	**Maintenance Supervisor**
Email Address	**svintus@parkerusd.org**
Phone Number	**928-669-0648**

Q2

The name of the vendor which you are providing this vendor performance information:

RDO is a John Deer dealer. (mtb)

Company	**RDO Equipment CO**
Address	**48465 Ehrenberg Parker Hwy**
City/Town	**Ehrenberg**
State/Province	**AZ**
ZIP/Postal Code	**85334**

Q3

The ability to deliver products/provide services per your expectations:

(no label)	**9**

Q4

The overall quality of products/services provided by the firm:

(no label)	**10 - Very Satisfied**

Q5

The ability of the firm to interact with your staff members:

(no label) **10 - Very Satisfied**

Q6

The close out process (invoicing, no unexpected fees):

(no label) **10 - Very Satisfied**

Q7

The ability of the firm to follow your rules, regulations and requirements:

(no label) **10 - Very Satisfied**

Q8

Your overall satisfaction based on performance (comfort in using this firm again in the future):

(no label) **10 - Very Satisfied**

Q9 **Yes**

Is the survey information you have provided related to utility vehicles, tractors, golf carts, grounds maintenance vehicles, equipment and services?

Q10 **Respondent skipped this question**

If you answered no to the previous question, please provide a description of the types of products/services that were provided by the firm you are providing a reference for.

Q11 **Respondent skipped this question**

Do you have any other comments you would be willing to share?

Q12 **Respondent skipped this question**

Do you have any other questions, or concerns?

#15

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, May 21, 2020 1:44:38 PM
Last Modified: Thursday, May 21, 2020 1:48:24 PM
Time Spent: 00:03:46
IP Address: 205.168.30.205

Page 1: Mohave Educational Services Cooperative, Inc. Solicitation Reference Collection Survey

Q1

Your Contact Information:

Name	**Steven Gonzales**
Agency or Company	**Town of Queen Creek**
Position	**Parks maintenance supervisor**
Email Address	**steven.gonzales@queencreek.org**
Phone Number	**4803583781**

Q2

The name of the vendor which you are providing this vendor performance information:

Company	**stotz**
City/Town	**Chandler**
State/Province	**AZ**

Stoz is a John Deer dealer. (mtb)

Q3

The ability to deliver products/provide services per your expectations:

(no label)	**9**

Q4

The overall quality of products/services provided by the firm:

(no label)	**9**

Q5

The ability of the firm to interact with your staff members:

(no label)	**10 - Very Satisfied**

Q6

The close out process (invoicing, no unexpected fees):

(no label) **9**

Q7

The ability of the firm to follow your rules, regulations and requirements:

(no label) **10 - Very Satisfied**

Q8

Your overall satisfaction based on performance (comfort in using this firm again in the future):

(no label) **9**

Q9 **Yes**

Is the survey information you have provided related to utility vehicles, tractors, golf carts, grounds maintenance vehicles, equipment and services?

Q10 **Respondent skipped this question**

If you answered no to the previous question, please provide a description of the types of products/services that were provided by the firm you are providing a reference for.

Q11 **Respondent skipped this question**

Do you have any other comments you would be willing to share?

Q12 **Respondent skipped this question**

Do you have any other questions, or concerns?

- Provide information regarding your authorization to submit a proposal for the specified products/services and confirm that you can provide the products/services if awarded a contract.

  John Deere is the manufacturer of the equipment being offered in this RFP. John Deere has been in business for over 183 years and currently hold approximately 110 government contracts consisting of federal, state, county and cooperative contracts. John Deere has successfully met the needs of its state contract customers. Also, out extensive John Deere dealer network in Arizona enhances our ability to meet the needs of the Mohave members.

  Indicate if you are a:
  X Manufacturer; Authorized Dealer of Multiple Manufacturers.

2. **Place after Tab 2b:** Indicate if any of the products you are offering received any awards or nominations for excellence. Indicate how the products offered in the proposal meet applicable industry standards. List applicable awards and/or standards.

   Relevant Industry Awards and Recognition for Deere & Company include:

   1. Best Global Brand – Interbrand
   2. World's Most Ethical Companies – Ethisphere Institute (12th Year)
   3. Top 10 Innovative Company – American Innovation Index
   4. Corporate Partner of the Year – National Society of Black Engineers
   5. World's Most Admired Companies – Fortune Magazine # 50.
   6. 50 Best Places to Work in the US – Indeed.com

   The American Society of Agricultural and Biological Engineers announced the AE50 Award Winners, representing the best innovations in engineering and technology for agricultural, food and biological systems. Products that were awarded from John Deere include:

   1. The new John Deere Quik-Knect System is compatible with the 1, 2, 3 and 4 Series models of John Deere compact utility tractors. Utilizing one connector for the tractor PTO shaft and another for the implement, Quik-Knect prevents twisting or forcing to line-up the splines when attaching rear implements. Developed to help increase operator ease and enhance productivity, operators can simply slide the tractor and implement connectors together until they click into place.
   2. The triplex mowers are equipped with the proven advanced TechControl system, which is passcode protected and allows superintendents, technicians, and other trusted supervisors to input commands, controlling nearly everything regarding the operator's performance, including frequency of clip, turn speed, clean up pass speed, and how fast the cutting units raise and lower. Engines on all models are electronically controlled, and include an Eco mode, which automatically reduces engine speed when mowing, saving up to 30% in fuel and up to 3 dB(A) in sound levels. The lightweight open platform design with a low center of gravity ensures excellent stability and traction performance. The 2700 and 2750 Triplex Mowers offer a 62-inch (157.5-centimeter) mowing width and mow speeds of up to six mph (9.7 kph) for increased productivity.
   3. The recoil start M Series and electric start R Series Walk Behind Mowers have been a gamechanger for the commercial mowing industry, as the redesigned machines directly address the primary customer needs of productivity, operator comfort, weight distribution, and frame clearance. The six models, including the W36M, W48M, W36R, W48R, W52R and W61R, offer new steering controls, improved hand position and increased frame clearance, along with several other features that reduce operator effort and minimize operator fatigue.
   4. 5R Series Tractors leverage existing technologies normally found in large tractors and feature four models ranging from 90- to 125-engine horsepower. John Deere engineers designed tractor features to provide customers with unrivaled maneuverability, an easy-to-use transmission, increased visibility, loader integration and operator comfort.
   5. The new utility vehicles are designed for customers who need all-day comfort with off-road terrain capability in all seasons. The gas-powered Gator XUV835 and diesel-powered Gator XUV865 offer a quiet cab, three-wide seating, and exceptional heating and air conditioning to maximize productivity and comfort.

3. **Place after Tab 2b:** Identify any past or pending litigation or mediation involving products or services your firm has provided within the last five (5) years.

   Deere & Company is a public company. All financial information, including material liabilities and litigation risk may be viewed in the enclosed Deere & Company's 2019 10K report. See page 19 for details on legal proceedings.

4. **Place after Tab 2b:** Indicate if your firm would qualify as a small or minority owned business. To qualify for ownership as a minority owned business, at least 51% of the firm's ownership must be held by a person, or persons, of a particular group (e.g., Woman owned, Hispanic owned, Native American owned). Proof of ownership is evidenced by the transaction privilege tax license or business privilege license for sole proprietorship; business privilege license **and** written partnership agreement for partnerships; or the Articles of Incorporation, Corporate By-laws **and** stock certificates for corporations.
   NOTE: Businesses have equal opportunity to sign up as a prospective bidder on Mohave's website. If small or minority owned businesses were signed up for a category selected for this solicitation, then they are included in the solicitation notification email list. The information on small and minority owned business are for informational purposes only and shall not be a factor in the evaluation. Mohave cannot ensure that affirmative steps have been used to assure small and minority owned businesses are awarded contracts, as funding sources of our members vary.

   John Deere does not qualify as a minority owned business.

5. An online survey has been created to allow for the collection of reference information from Arizona public agencies where you have successfully sold products or performed services in the past five (5) years, for specific products/services similar to this solicitation. Provide the following link to Arizona public agencies who can provide reference information for your firm: **https://www.surveymonkey.com/r/LWKZQYV**

The above survey is now active and will remain active until the due date and time for this solicitation. It is recommended that you send this link to as many Arizona public agencies as you determine to be appropriate, in order to ensure that Mohave receives a minimum of three (3) completed surveys.

If you cannot provide the link to three (3) Arizona public agencies, provide the link to other public agencies not located in Arizona. If you cannot provide the link to public agencies, do so with private business entities.

Provide a list of Arizona public agencies, other public agencies or private business entitles you have provided the link to:

See Supplement Information in Tab 5 Additional Information; 5b-Online Survey

1) Parker Unified School District (2) City of Yuma (3) Yuma School District (4) Town of Queen Creek
(5) City of Apache Junction (6) Coolidge Unified School District (7) Tempe Union High School District
(8) Pima County Arizona (9) Sacaton School District (10) Salt River Pima Maricopa

6. **Place after Tab 2b:** Provide documentation for the applicable manufacturer(s) that certifies rollover compliance for riding equipment per Specification 1.1.04.

   Rollover compliance documentation is enclosed.

7. **Place after Tab 2d:** Provide a current letter from your financial institution indicating the range of credit available to your firm, (e.g., "credit in the low nine figures" or "credit line exceeding five figures"). Provide a current letter from your financial institution and/or officers of major suppliers, indicating confidence in your firm's stability and payment history. *These letters will only be used to evaluate proposals and will not be made available to the public.*
   Offerors may submit current audited annual financial reports in lieu of letters from financial institutions. However, the annual financial reports must provide essentially the same information as requested from the letters. Offerors are encouraged to highlight the requested information in any audited annual financial report submitted in response to this solicitation. All financial information will be kept confidential.

   Deere & Company's 2019 Annual Report is enclosed. See page 28 for details on lines of credit available to John Deere.

Financial Documents Removed

Agricultural & Turf Division
2000 John Deere Run, Cary, NC 27513 USA
Phone: 919-804-2285 Fax: 309-749-2313
E-mail: GovContractSupport@JohnDeere.com

Andrew Roman
Contract Administration

May 19, 2020

Bidder:	Deere & Company
Due Date:	May 21, 2020
Due Time:	3:00 PM (Arizona Time)
RFP ID:	20E-0521
Event Name:	Utility Vehicles, Tractors, Golf Carts, Grounds Maintenance Vehicles, Equipment and Services

Rollover Compliance of Specification 1.1.04

John Deere's commitment to safety goes beyond simply complying with established regulations and extends to a long legacy of shaping industry safety standards.

In 1966 John Deere introduced the first commercially available rollover protection structure (ROPS) for farm tractors. We initially offered the structure on all current tractor models, and variations have been available ever since.

Not all vehicle standards for the equipment John Deere manufacturers requires ROPS. Depending on the model, vehicle standard compliance for North America is as follows:

1. Utility Vehicles: ANSI/ROHVA-1, ANSI/OPEI B71.9 or SAE J2258
2. Mowing Equipment: ANSI/OPEI B71.1 or ANSI/OPEI B71.4

Whenever the vehicle standard requires ROPS, they are provided and meet one of the following standards:

1. ISO 21299
2. SAE J2194
3. ISO 4371

Regards,

Andrew Roman
Contract Administration
GovContractSupport@JohnDeere.com
800-358-5010, Ext. 2285

TAB 3

Pricing Information

Pricing Information
Pricing Methodology, Volume Discounts,
Quick Pay Discount and Pcards
(Place after Tab 3b)

Pricing Methodology Description

◄ Our pricing methodology is percent of discount off manufacturer's price list or catalog.

☐ Our pricing methodology is fixed pricing.

☐ Our pricing methodology is a combination of percent of discount off manufacturer's price list or catalog and fixed pricing.

Provide a description as to how your pricing will be managed under an awarded contract. If you are using fixed pricing, outline any contingencies for economic price adjustments. Mohave shall make the sole determination whether contingencies for economic price adjustments identified in your proposal are appropriate under an awarded contract. (See **Basis for Pricing** in the Special Terms and Conditions.)

The John Deere Order Processing team audits and processes members purchase orders for accuracy. Auditing includes reviewing the pricing and discount applied to the purchase order. It also involves making sure that the equipment has been awarded on the Mohave contract. The order coordinator will ensure before processing that all purchase orders have been received and reviewed by Mohave.

Volume Discount Description

Provide a description as to how your volume discount (if offered) will be managed under an awarded contract.

John Deere offers a Multiple Unit Discount (MUD) based on the following schedule
3-4 Units – 1%
5-6 Units – 2%
7-8 Units – 3%
9 Units or More – 4%

For sales of three or more like self-propelled equipment sold to one customer on the same purchase order qualifies for an additional discount. Implements and attachments sold with and for self-propelled ride-on machines are also eligible for multi-unit discounts, but do not count towards the total number of ride-on units, which determines the multi-unit discount percentage. Frontier Equipment is excluded from the Multiple Unit Discount.

Quick Pay Discount

Will you offer members a quick pay discount if payment is made within 10 or 20 days?

Yes_____No_**X**_____ If yes, what is the discount for 10 days?_____20 days? _____

Acceptance of Pcards for Payment

Will you accept Pcards as a method of payment? Yes_____No_**X**_____

Pricing Information
Mobilization and Travel Description
(Place after Tab 3c)

Mobilization Description

If mobilization rates are applicable, describe how they are calculated, and when they are necessary, (e.g. 50 miles from origin). Include information regarding what your mobilization rates cover. (See **Pricing: 10.12. Reimbursement for Transportation, Mileage, Lodging, Meals and Incidental Expenses** in the Special Terms and Conditions; and in Tab 3a pricing workbook **Section Two, Mobilization**.)

Mobilization Rates are not applicable in this proposal.

Travel Description

If travel rates are applicable, describe how they are calculated, and when they are necessary, (e.g. 50 miles from origin). Include information regarding what your travel rates cover. (See **Pricing: 10.12. Reimbursement for Transportation, Mileage, Lodging, Meals and Incidental Expenses** in the Special Terms and Conditions; and in Tab 3a **Section Two, Travel/Drive Rates**.)

Travel Rates are not applicable in this proposal.

Used, Reconditioned, Refurbished Equipment and Vehicle Pricing Methodology Description (Place after Tab 3d)

Provide detailed information explaining the methodology to be used to determine Fair Market Value of used, reconditioned, refurbished equipment and vehicles. Values that are more than 90% of the contracted price of the same or similar new model will not be allowed.

Describe in detail if your pricing includes any repairs/parts required to bring the equipment and/or vehicle up to performance and safety standards; and describe how the necessary repairs/parts will be identified to the member. **Pricing for your used, reconditioned, refurbished equipment and vehicles shall be included in the Used Recond Refurb Items worksheet in the pricing workbook "*20E utility grounds equipment and vehicles WB.xlsx.*" or in a separate Excel document**.

Used, reconditioned and refurbished equipment is not offered in this proposal.

TAB 4

Supporting Contract Documents

Supporting Contract Documents
Firm Information, Order Processing, Individual Contact, and Customer Support Information
(Place after Tab 4a)

1. Contact information for firm's headquarters:

   Physical Address 2000 John Deere Run, Cary, NC 27513

   Mail Address, if different

   Main Phone Number 800-358-5010 – Option 2

   Website www.JohnDeere.com

2. Contact information for firm's Arizona branch office:

   Physical Address John Deere does not maintain a branch office in Arizona

   Mail Address, if different

   Main Phone Number

   Website, if different

   Add additional contact information if firm has more than one Arizona branch office.

3. Contact information for purchase orders:

   Physical Address 2000 John Deere Run, Cary, NC 27513 (PO's should be given to selected dealer to be uploaded into John Deere Government Sales system.)

   Email Address CorpAcctGovSupport@JohnDeere.com

   Attention of Order Management

4. Payment remittance address 21748 Network Place

   Attn: Deere & Company Ag & Turf Strategic Account Business Division

   City Chicago State IL Zip 60673-1217

   Telephone (invoice questions) 800-358-5010 – Option 1

5. Provide Arizona Transaction Privilege (sales) Tax License Number: 07 095212-M

Do you collect city, county and/or other local sales tax in Arizona? *Yes* ***X*** *No* ___

If yes, please check one:

☐ Our combined state, city, county and/or other local sales tax rate is % (local rate).

◄ The sales tax rate varies by the location (e.g. ship to rate). Provide additional information below:

John Deere is an out-of-state seller, and collects tax based on the ship-from location, per AZ State statues.

6. Contacts for Mohave:

Main Mohave representative contact: Adrienne Larson
(*Shall be the main point of contact for members and be responsible for member information requests.)*

Title Government Account Manager Email address LarsonAdrienneL@JohnDeere.com

Phone number 989-640-0185 Fax N/A

Contract Administrator contact: Andrew Roman
(*Shall be the main point of contact for contract information requests.)*

Title Contract Administrator Email address GovContractSupport@JohnDeere.com

Phone number 800-358-5010 – Option 2285 Fax 309-749-2313

Accounting contact: Amy Reeves
(*Shall be the main point of contact for accounting issues.)*

Title Accounts Receivables Email address GNSAcctg@JohnDeere.com

Phone number 800-358-5010 – Option 1 Fax 309-749-2061

Open Order/Status Report contact: Order Management
(*Shall be the main point of contact regarding open orders and status reports.)*

Title Order Management Email address CorpAcctGovSupport@JohnDeere.com

Phone number 800-358-5010 – Option 2 Fax 309-749-2313

Audit contact: Andrew Roman
(*Shall be the main point of contact for audit requests and clarifications.)*

Title Contract Administrator Email address GovContractSupport@JohnDeere.com

Phone number 800-358-5010 – Option 2285 Fax 309-749-2313

Reconciliation contact: Andrew Roman
(*Shall be the main point of contact for reconciliation report requests and/or clarifications and payment of administration fees.)*

Title Contract Administrator Email address GovContractSupport@JohnDeere.com

Phone number 800-358-5010 – Option 2285 Fax 309-749-2313

Escalation contact: Shawn Parker
(*Shall be the main point of contact when an issue needs to be escalated above the main contact and/or contract administrator for the RFP/contract.* ***This contact shall be a different individual than those named for the contacts listed above.****)*

Title Manager, Contract Administration Email address GovContractSupport@JohnDeere.com

Phone number 800-358-5010 – Option 2222 Fax 309-749-2313

Marketing contact: Andrew Roman
(*Shall be the main point of contact for providing marketing information for Mohave's website.)*

Title Contract Administrator Email address GovContractSupport@JohnDeere.com

Phone number 800-358-5010 – Option 2285 Fax 309-749-2313

Supporting Contract Documents
Firm Information, Order Processing, Individual Contact, and Customer Support Information
(Place after Tab 4a)

Provide the requested customer support information for warranty and maintenance service offered by your firm, as applicable.

Do you provide warranty and maintenance for the items in the proposal?

◄**Yes,** the following is applicable to our offer. (If yes, please provide the information below.)

☐**No,** the following is not applicable to our offer.

Describe the steps a member should take to activate a warranty and how they obtain warranty and maintenance service.

Warranty is provided by John Deere and is administered by our John Deere dealers. Maintenance is not included in this proposal, however maintenance can be obtained through a John Deer dealer and pricing for maintenance is determined by the dealer.

Provide the name and address of the facility that will provide warranty and maintenance service, under an awarded contract. Additionally, provide a contact person and phone number for warranty and maintenance service. If there is more than one facility, provide the names and addresses for all facilities. Attach a list if necessary.

Please reference the dealer list in Tab 5-Additional Information; 5b-AZ_Dealer_List_Final.pdf. Members may select their preferred dealer for both warranty and maintenance.

Do you provide technical assistance via phone? ◄Yes ☐No If yes, provide a phone number and contact.

The John Deere dealer will be able to conduct some preliminary trouble shooting over the phone.

How many technicians are located at each warranty/service facility that would serve a Mohave contract?

The number of technicians varies at each John Deere dealer location.

What is the value of parts inventory normally on hand at each warranty/service facility that would serve a Mohave contract?

The John Deere dealer will maintain enough parts inventory on hand at each location to meet the warranty and service needs of the Mohave members.

What is your service response time for metropolitan areas (e.g., Phoenix, Tucson) and rural areas?

Service response times vary throughout the season and by dealer location.

Supporting Contract Documents
Sample Supplemental or End User Agreement(s)
(Place after Tab 4b)

Will members be required to sign supplemental or end-user agreements (sales, rental, maintenance)? (See **3.1 Contract vendor documents** in the Special Terms and Conditions)

☐ Yes ◀ No

If yes, review/revise your agreement(s) for terms that conflict with the Mohave terms and conditions. Review for the following common issues:

Acceptable agreements **shall** include:

- Non-appropriations clause;
- Contract or agreement must be governed by the laws of the State of Arizona;
- Net payment is thirty (30) days.

Agreements **shall not** include:

- Terms beyond one year;
- Waiver of right for a jury trial;
- Requirement of upfront payment by member when purchase order is placed;
- Entire agreement language;
- Auto-renewal language.

Attach your reviewed/revised agreement(s). **Unacceptable agreement(s) may render your proposal nonresponsive.** Do not assume a Request for Best and Final Offer will be issued to resolve conflicts within your agreement(s).

Supporting Contract Documents
Extended Warranty and Maintenance Service Plan Information
(Place after Tab 4c)

Do you offer extended warranty or maintenance service plans? ◀Yes ☐No

If yes, provide a summary of the plans here and/or copies of the plans after this page. Include pricing for extended warranty or maintenance service plans in your price schedule after **Tab 4c.**
Place any supplemental end-user agreement forms, which include terms and conditions and/or member signature after **Tab 4b.**

Extended warranty and maintenance service plans are not included in this proposal. However, these services are available directly from John Deere dealers.

John Deere Dealers in Arizona (as of May 15, 2020)

Dealer Name	Address	City	State	Zip Code	Phone	Fax
FLAGSTAFF EQUIPMENT COMPANY	1313 EAST BASELINE	GILBERT	AZ	85233	4805398700	4805398907
A TO Z EQ. RENTALS & SALES	15634 NORTH 32ND STREET	PHOENIX	AZ	85032	6029921150	
A TO Z EQ. RENTALS & SALES	4050 E INDIAN SCHOOL ROAD	PHOENIX	AZ	85018	6029555100	6029559326
FLAGSTAFF EQUIPMENT COMPANY	500 NORTH GRANT	FLAGSTAFF	AZ	86004	9287741969	9287747006
RDO AGRICULTURE EQUIPMENT CO	1091 COMMERCE DRIVE	PRESCOTT	AZ	86305	9287768300	9287768500
RDO AGRICULTURE EQUIPMENT CO	30101 EAST HIGHWAY 80	WELLTON	AZ	85356	9287853391	9287853115
RDO AGRICULTURE EQUIPMENT CO	3050 EAST HIGHWAY 95	YUMA	AZ	85365	9283417100	9283417139
RDO AGRICULTURE EQUIPMENT CO	48465 EHRENBERG POSTON ROAD	EHRENBERG	AZ	85334	9289239611	9289238031
STOTZ EQUIPMENT	11111 WEST MCDOWELL ROAD	AVONDALE	AZ	85392	6239367131	6239362089
STOTZ EQUIPMENT	197 WEST WARNER ROAD	CHANDLER	AZ	85225	4809171540	4809171559
STOTZ EQUIPMENT	225 NORTH FIRST STREET	BUCKEYE	AZ	85326	6233864466	6233861983
STOTZ EQUIPMENT	2457 WEST HIGHWAY 70	THATCHER	AZ	85552	9284281223	9284284449
STOTZ EQUIPMENT	331 W. REX ALLEN DRIVE	WILLCOX	AZ	85643	5207660610	5207660611
STOTZ EQUIPMENT	37021 GILA BEND HWY	STANFIELD	AZ	85172	5204243337	5204243338
STOTZ EQUIPMENT	500 N ELEVEN MILE CORNER RD	CASA GRANDE	AZ	85194	5208367481	5207234780
STOTZ EQUIPMENT	9659 N. TIFFANY LOOP	TUCSON	AZ	85743	5208874121	5202932883

WARRANTY FOR NEW JOHN DEERE AGRICULTURAL EQUIPMENT AND
LIMITED WARRANTY FOR NEW TURF & UTILITY EQUIPMENT (US & CANADA ONLY)

A. GENERAL PROVISIONS – With respect to purchasers in the United States, "John Deere" means Deere & Company, 1 John Deere Place, Moline, IL 61265, and with respect to purchasers in Canada, "John Deere" means John Deere Canada ULC, 295 Hunter Road, P. O. Box 1000, Grimsby, Ontario L3M 4H5. The warranties described below are provided by John Deere to the original purchasers of new Agricultural, Turf and Utility Equipment ("Equipment") purchased from John Deere or authorized John Deere dealers (the "Selling Dealer"). These warranties apply only to Equipment intended for sale in Canada and the US. Under these warranties, John Deere will repair or replace, at its option, any part covered under these warranties which is found to be defective in material or workmanship during the applicable warranty term. Warranty service must be performed by a dealer or service center located in Canada or the US, and authorized by John Deere to sell and/or service the type of Equipment involved (the "Authorized Dealer"). The Authorized Dealer will use only new or remanufactured parts or components furnished or approved by John Deere. Warranty service will be performed without charge to the purchaser for parts and/or labor. However, the purchaser will be responsible for any service call and/or transportation of Equipment to and from the Authorized Dealer's place of business (except where prohibited by law), for any premium charged for overtime labor requested by the purchaser and for any service and/or maintenance not directly related to any defect covered under these warranties. These warranties are transferable, provided an authorized John Deere dealer is notified of the ownership change, and John Deere approves the warranty transfer.

B. WHAT IS WARRANTED – Subject to paragraph C, all parts of any new Equipment are warranted for the number of months or operating hours specified below. Each warranty term begins on the date of delivery of the Equipment to the original purchaser, (except for certain agricultural tillage, planting, cultivating, harvesting, and application Equipment which may have a delayed warranty start date, but only if established by John Deere and noted by Selling Dealer on the Purchase Order). **Included In 5E Series Tractor and Compact Utility Tractor Powertrain Warranty - Engine:** cylinder block, cylinder head, valve covers, oil pan, emissions control components, timing gear covers, flywheel housing, and all parts contained therein. **Powertrain:** transmission, transmission case, differential and axle housings, clutch housings, MFWD front axle assembly, and all parts contained therein (does not include external drivelines, dry clutch parts, or steering cylinders). SWEEPS, SHOVELS, PLOWSHARES, AND DISK BLADES: A replacement part will be furnished without charge if breakage occurs and the amount of wear is less than the wear limits established by John Deere.

AGRICULTURAL EQUIPMENT	WARRANTY TERM
Tractors	24 Months or 2000 Hours, Whichever Comes First
Tractors used in Heavy Duty Land Leveling applications exceeding 150 hours per year	90 Days
9R Series Tractors factory equipped with Option 0574 used in Heavy Duty Land Leveling applications less than half of the annual usage	24 Months or 2000 Hours, Whichever Comes First
9R Series Tractors factory equipped with Option 0574 used in Heavy Duty Land Leveling applications exceeding half of the annual usage	90 Days
Scraper Special Tractors	24 Months or 2000 Hours, Whichever Comes First
5E Series Tractors a) Powertrain on 5E Series Tractors (components as per B above)	24 Months or 2000 Hours, Whichever Comes First 60 Months or 2000 Hours, Whichever Comes First
Scrapers	6 Months for MY14 and earlier 12 Months for D Series and MY15 and later
Frontier™ Equipment	12 months
Sugar Cane Harvesters and Loaders	12 months or 1500 hours, Whichever Comes First
All other Equipment (includes Ag Management Solutions (AMS) products)	12 Months
Premium Balers	24 Months or 12,000 bales, Whichever Comes First; First 12 Months, No Bale Limitation
Large Square Balers a) Powertrain on Large Square Balers	12 Months, No Bale Limitation 24 Months or 20,000 bales, Whichever Comes First
Hagie Manufacturing Company LLC Sprayers and Detasselers	24 Months or 1000 Hours, Whichever Comes First
Engines in Self-Propelled Equipment except Tractors*	24 Months or 2000 Hours, Whichever Comes First

*Engine Items Covered in months 13 through 24 – Engine block, cylinder head, rocker arm cover, timing gear cover, crankcase pan and all parts enclosed within these units. Also included are the fuel injection pump, turbocharger, water pump, torsion damper, manifolds, and engine oil cooler. All other engine related items are not covered in months 13 through 24.

TURF & UTILITY EQUIPMENT	WARRANTY TERM
1) Z200 Series and Z425 EZtrak™ Mowers, Z300 Series and Z525E ZTrak ™ Mowers, and 100 Series Tractors**	24 Months or 120 Hours, Whichever Comes First
2) S200 Series Tractors**	36 Months or 200 Hours, Whichever Comes First
3) X300 Series Tractors; Z400 Series EZtrak™ Mowers and Z500M Series ZTrak™ Mowers (Except Z425 and Z525E)**	48 Months or 300 Hours, Whichever Comes First
4) X500 Series Tractors; Z700E and Z500R Series ZTrak™ Mowers, and Z600 Series EZtrak™ Mowers**	48 Months or 500 Hours, Whichever Comes First
5) X700 Series Tractors**	48 Months or 700 Hours, Whichever Comes First
6) Z700M Series ZTrak™ Mowers**	48 Months or 750 Hours, Whichever Comes First
7) Z700R Series ZTrak™ Mowers**	48 Months or 1000 Hours, Whichever Comes First
8) JS Series Residential Walk-Behind Mowers	24 Months in Private Residential – Personal Use or 90 Days in Any Other Application
9) Wide Area Mowers, Front Mower Traction Units and Mower Decks, QuikTrak™ Mowers, Commercial Walk Behind Mowers	24 Months
10) Z900B, Z900E, and Z900M Series ZTrak™ Mowers	36 Months or 1200 Hours, Whichever Comes First; First 24 Months, No Hour Limitation
11) Z997, Z900A Series and Z900R Series ZTrak™ Mowers	36 Months or 1500 Hours, Whichever Comes First; First 24 Months, No Hour Limitation
12) Compact Utility Tractors a) Powertrain on Compact Utility Tractors (components as per B above) b) Compact Utility Tractor Loaders D120, 120R, 220R, 300E, 300R, 320R, 400E, 440R	24 months or 2000 hours, Whichever Comes First 72 months or 2000 hours, Whichever Comes First 24 Months
13) GATOR™ Utility Vehicles (except CX)	12 Months or 1000 Hours, Whichever Comes First
14) Except as provided above, all other Implements/Attachments sold separately or purchased on the same Purchase Order as Equipment listed in 9 through 13	12 Months
15) CX GATOR™**, All other Turf & Utility Equipment	24 Months in Private Residential - Personal Use or 12 Months in Any Other Application

****Implements/Attachments purchased on the same Purchase Order as the Equipment listed will be covered by the Equipment's warranty terms. Implements/Attachments purchased separately will be covered by the warranty term on line 14.

C. (I) ITEMS COVERED SEPARATELY – (1) Tires, rubber tracks and batteries; (2) John Deere Hand Held-Portable products; (3) John Deere Walk Behind Snowthrowers; (4) When applicable, a separate emissions warranty statement will be provided by Selling Dealer.

(II) WHAT IS NOT WARRANTED – Pursuant to the terms of these warranties, JOHN DEERE IS NOT RESPONSIBLE FOR THE FOLLOWING: (1) Used Equipment; (2) Any Equipment that has been altered or modified in ways not approved by John Deere, including, but not limited to, setting injection pump fuel delivery above John Deere specifications, modifying combine grain tanks, and modifying self-propelled sprayers with unapproved wheels, tracks, tanks or booms; (3) Depreciation or damage caused by normal wear, lack of reasonable and proper maintenance, failure to follow operating instructions/recommendations; misuse, lack of proper protection during storage, vandalism, the elements or collision or accident; (4) Normal maintenance parts and/or service, including but not limited to, oil, filters, coolants and conditioners, cutting parts, belts, brake and clutch linings; (5) Any Utility Vehicle used for racing or other competitive purpose; (6) Chains on Premium Balers.

D. SECURING WARRANTY SERVICE – To secure warranty service the purchaser must, (1) Report the Equipment defect to an Authorized Dealer and request warranty service within the applicable warranty term; (2) Present evidence of the warranty start date with valid proof of purchase; and (3) Make the Equipment available to an Authorized Dealer within a reasonable time.

E. NO IMPLIED WARRANTY, REPRESENTATION OR CONDITION – To the extent permitted by law, neither John Deere nor any company affiliated with it makes any warranties, representations, conditions or promises express or implied as to the quality, performance or freedom from defect of the Equipment covered by these warranties other than those set forth above, AND NO STATUTORY OR IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS ARE MADE.TO THE EXTENT LEGALLY REQUIRED, ANY IMPLIED WARRANTIES OR CONDITIONS SHALL BE LIMITED IN DURATION TO THE APPLICABLE PERIOD OF WARRANTY SET FORTH ON THIS PAGE. THE PURCHASER'S ONLY REMEDIES IN CONNECTION WITH THE BREACH OR PERFORMANCE OF ANY WARRANTY ON JOHN DEERE EQUIPMENT ARE THOSE SET FORTH ON THIS PAGE. IN NO EVENT WILL THE DEALER, JOHN DEERE OR ANY COMPANY AFFILIATED WITH JOHN DEERE BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. (Note: Some jurisdictions do not allow limitations on how long an implied warranty lasts or the exclusion or limitation of incidental or consequential damages so the above limitations and exclusions may not apply to you.) In the event the above warranty fails to correct purchaser's performance problems caused by defects in workmanship and/or materials, purchaser's exclusive remedy shall be limited to payment by John Deere of actual damages in an amount not to exceed the amount paid for the Equipment. This warranty gives you specific legal rights, and you may also have other rights which vary from jurisdiction to jurisdiction.

F. NO DEALER WARRANTY THE DEALER HAS NO AUTHORITY TO MAKE ANY WARRANTY, REPRESENTATION, CONDITION OR PROMISE ON BEHALF OF JOHN DEERE, OR TO MODIFY THE TERMS OR LIMITATIONS OF THIS WARRANTY IN ANY WAY.

G. If further information is desired, contact Selling Dealer or John Deere at 1-866-993-3373 (Agricultural) or 1-800-537-8233 (Turf & Utility Equipment).

WARRANTY FOR NEW JOHN DEERE GOLF & TURF EQUIPMENT

(US & Canada Only)

A. GENERAL PROVISIONS - With respect to purchasers in the United States, "John Deere" means Deere & Company, 1 John Deere Place, Moline, IL 61265 and with respect to purchasers in Canada, "John Deere" means John Deere Canada ULC, 295 Hunter Road, P.O. Box 1000, Grimsby, Ontario L3M 4H5. The warranties described below are provided by John Deere to the original purchasers of new John Deere Golf and Turf equipment ("Equipment") purchased from John Deere or an authorized John Deere dealer or distributor ("Selling Dealer"). These warranties apply only to Equipment intended for sale in the United States and Canada. Under these warranties, John Deere will repair or replace, at its option, any part covered under these warranties which is found to be defective in material or workmanship during the applicable warranty term. Warranty service must be performed by a dealer, distributor or service center authorized by John Deere to sell and/or service the type of equipment involved ("Authorized Dealer"). The Authorized Dealer will use only new or remanufactured parts or components furnished or approved by John Deere. Warranty service will be performed without charge to the purchaser for parts and/or labour. However, the purchaser will be responsible for any service call and/or transportation of Equipment to and from the Authorized Dealer's place of business (except where prohibited by law), for any premium charged for overtime labour requested by the purchaser and for any service and/or maintenance not directly related to any defect covered under these warranties. These warranties are transferable, provided an Authorized Dealer is notified of the ownership change, and John Deere approves the warranty transfer.

B. WHAT IS WARRANTED - Subject to section C, all parts of any new Equipment are warranted for the number of months or operating hours specified below. Each warranty term begins on the date of delivery of the Equipment to the original purchaser.

EQUIPMENT	WARRANTY TERM
1) Aerators: 800, 1000, 1500, 2000*	24 Months/Unlimited Hours
2) Bunker Rakes: 1200A, 1200 Hydro Rake*	
3) Debris Maint: TC125* Collection System	
4) Reel Mowers: 180, 220, 260, 2400, 2500, 2700, 2653, 6000, 7000 & 8000 Series*	
5) Rotary Mowers: 7000,8000 & 9000 Series*	
6) Walk Greens Mower Trailers: 22 Series*	
7) ProGator™:2020A, 2030A, 2020A GPS PrecisionSprayer, 2030A GPS PrecisionSprayer	24 Months/1500 Hours, whichever comes first
8) Turf Gator™: Turf, TX Turf	
9) Sprayer:HD200, HD300	
10) Top Dresser: TD100	
11) E-Gator™: E Gator, TE Gator	

*Including compatible implements/attachments

C. (I) ITEMS COVERED SEPARATELY – Unless listed in the applicable parts catalog, this warranty does not apply to (1) Batteries; (2) Radios; (3) Tires; and (4) Sprayer Controllers which are covered by separate written warranties.

(II) WHAT IS NOT WARRANTED – Pursuant to the terms of these warranties, JOHN DEERE IS NOT RESPONSIBLE FOR THE FOLLOWING: (1) Used Equipment; (2) Any Equipment that has been altered or modified in ways not approved by John Deere, including, but not limited to, setting injection pump fuel delivery above John Deere specifications; (3) Depreciation or damage caused by normal wear, lack of reasonable and proper maintenance, failure to follow operating instructions/recommendations; misuse, lack of proper protection during storage, vandalism, the elements or collision or accident; (4) Normal maintenance and replacement of maintenance and wear items, such as oil, filters, coolants and conditioners, blades and other cutting/mowing parts, belts, brake and clutch linings, spark plugs, hoses, tires and batteries.

D. SECURING WARRANTY SERVICE – To secure warranty service, the purchaser must, (1) Report the Equipment defect to an Authorized Dealer and request warranty service within the applicable warranty term; (2) Present evidence of the warranty start date with valid proof of purchase; and (3) Make the Equipment available to the Authorized Dealer within a reasonable time.

E. NO IMPLIED WARRANTY, REPRESENTATION OR CONDITION – To the extent permitted by law, neither John Deere nor any company affiliated with it makes any warranties, representations, conditions or promises, express or implied, as to the quality, performance or freedom from defect of the Equipment covered by these warranties other than those set forth above, AND NO STATUTORY OR IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS ARE MADE. TO THE EXTENT LEGALLY REQUIRED, ANY IMPLIED WARRANTIES OR CONDITIONS SHALL BE LIMITED IN DURATION TO THE APPLICABLE PERIOD OF WARRANTY SET FORTH ON THIS PAGE. THE PURCHASER'S ONLY REMEDIES IN CONNECTION WITH THE BREACH OR PERFORMANCE OF ANY WARRANTY ON JOHN DEERE EQUIPMENT ARE THOSE SET FORTH ON THIS PAGE. IN NO EVENT WILL THE DEALER, JOHN DEERE OR ANY COMPANY AFFILIATED WITH JOHN DEERE BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

F. NO DEALER/DISTRIBUTOR WARRANTY –THE SELLING DEALER HAS NO AUTHORITY TO MAKE ANY WARRANTY, REPRESENTATION, CONDITION OR PROMISE ON BEHALF OF JOHN DEERE, OR TO MODIFY THE TERMS OR LIMITATIONS OF THIS WARRANTY IN ANY WAY AND MAKES NO WARRANTY ON ANY OTHER ITEM UNLESS IT DELIVERS TO THE PURCHASER A SEPARATE WRITTEN CERTIFICATE SPECIFICALLY WARRANTING THE ITEM.

8. C.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Mark Wilson, Deputy Fire Chief
Co-Submitter:	Emily Markel
Date:	01/12/2023
Meeting Date:	01/17/2023

TITLE:

Consideration and Approval of Contract: Approve the Cooperative Purchase Contract for a Velocity Aerial Bucket Quint Unit with Hughes Fire Equipment, Inc. in the total amount of $1,960,222.66.

STAFF RECOMMENDED ACTION:

1. Approve the Cooperative Purchase Contract with Hughes Fire Equipment, Inc. through the Sourcewell Agency Cooperative Contract for a new Velocity Aerial Bucket Quint Unit in the total amount of $1,960,222.66; and
2. Authorize the City Manager to execute the necessary documents.

Executive Summary:

The purchase of the Velocity Aerial Bucket Quint Unit will be an additional new Quint, giving the Flagstaff Fire Department (FFD) three total Quints with one being placed in a reserve capacity. Having a reserve Quint is very important as there has been an increased development of multi-story buildings in the community. The addition to the Fire fleet assures better coverage for these higher risk needs.

A Velocity Aerial Bucket Quint Unit is different from an Engine because it has the following: 1) water; 2) pump; 3) hose; 4) ground ladders; and 5) an aerial ladder – for higher facility access – usually over 100'.

This Velocity Aerial Bucket Quint Unit was part of the current Development Fees adopted by Council. This Velocity Aerial Bucket Quint Unit would go into one of the three heaviest call volume districts in the City's central corridor. It will be used in a co-staffed capacity but will be strategically placed in the areas seeing the largest influx of elevated structures in the City for standards of cover needs.

Hughes Fire Equipment, Inc., is a fully authorized dealer of Pierce Manufacturing, Inc. products such as the Velocity Aerial Bucket Quint Unit. Pierce Manufacturing, Inc. has cooperative purchase contract #113021-OKC with Sourcewell to purchase their products at a reduced rate and authorizes Hughes Fire Equipment, Inc. to sell those products.

(This Staff Summary has been revised to reflect use of Development Fees.)

Financial Impact:

The purchase of the Velocity Aerial Bucket Quint Unit is part of the City Manager's proposed budget that was presented to Council at the April Budget Retreat. Development Fees were determined an allowable source to fund the expansion of the Fire Departments Quint fleet due to our growing community. The amount of the purchase is budgeted in account 003-03-051-0203-2-4101.

In addition to the purchase of this equipment, separate contracts will likely be brought forward for the purchase of new equipment at a later date.

Hughes Fire Equipment, Inc. may request full or partial payment as part of our commitment to the purchase. If funds are provided in fiscal year 2022-2023, that will be placed in a prepaid expense account and then expensed on delivery of the vehicles through a carry forward process.

Policy Impact:

By purchasing an additional Velocity Aerial Bucket Quint Unit, it improves FFD's ISO (Insurance Services Office rating) and standards of cover needs to support new development.

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

Priority Based Budget Key Community Priorities and Objectives

Safe & Healthy Community - Provide public safety with the resources, staff and training to respond to community needs. High Performing Governance - Serve the public by providing high quality internal and external service.

Regional Plan

Goal PF.3. Provide high-quality emergency response and public safety services including law enforcement, fire, medical, and ambulance transport service.
Policy PF.3.1. Maintain high-quality effectiveness and efficiency in law enforcement, fire, and emergency services to the extent that is consistent with governmental operations, plans, public policies, population served, and monies available.

Has There Been Previous Council Decision on This:

No.

Options and Alternatives:

1. Approve the Cooperative Purchase Contract with Hughes Fire Equipment, Inc. for the Velocity Aerial Bucket Quint Unit; or
2. Reject the Cooperative Purchase Contract and direct Staff to conduct an independent procurement; or
3. Reject approval of the Cooperative Purchase Contract and continue to utilize older units, which may result in decreased service levels and increased breakdowns.

Background/History:

The City has seen an increase in the number of multi-story buildings in our community. The increase in these types of structure require the appropriate type of fire apparatus for response. In addition, expanding the Fire Department fleet to three Quints, assure better coverage in the city when one quint is being put out of service for maintenance. The City identified the need to expand the number of Quints in the most recent Land Use Assumptions, Infrastructure Improvement Plan and Development Fee Report.

FFD has chosen to use the Pierce products sold by Hughes Fire Equipment, Inc. as the fire engine manufacturer due to longevity, quality, maintenance, and overall fleet consistency for operational use.

Purchasing staff reviewed the agency contract and amendment to confirm validity of the terms and similar scope. The Cooperative Purchase Contract from Sourcewell conforms with City procurement rules. Purchasing staff worked with Hughes Fire Equipment, Inc. to develop the draft City of Flagstaff Cooperative Purchase Contract attached herein.

Key Considerations:

By purchasing this additional Velocity Aerial Bucket Quint Unit, FFD will increase capacity in our current fleet in order to better meet the national standards for protection of life and property within the ever-growing community. This need includes servicing elevated buildings and increased higher risk developments that can be provided by the Velocity Aerial Bucket Quint Unit.

Expanded Financial Considerations:

The City Budget Team provided direction to FFD staff to seek the addition of one Quint to the Fire Department fleet and the purchase of a new Velocity Aerial Bucket Quint Unit. Funding was set aside from Development Fees in the FY22-23 Budget.

By approving the purchase in January, FFD will be ahead of the anticipated 3-6% increase from Pierce in February of 2023 for this same unit.

Management Services reviewed the Lease-Purchase financing option and determined the use of balance in the Developmen Fee Fund would be adequate and woudl avoid up to $150,000 in financing costs.

Community Benefits and Considerations:

Purchasing a new Velocity Aerial Bucket Quint Unit allows response efforts to be consistent in meeting the FFD mission and the community expectations for public safety response. This will also reduce the amount of time FFD will have to put crews responding to emergency incidents. As the community moves into higher density and elevated footprints, having multiple operational Quints is critical to support the changing infrastructure demands within the City.

Attachments: Contract 2023-83
Exhibit A
Exhibit B - Agency Contract

COOPERATIVE PURCHASE CONTRACT

Contract No. 2023-83

This Cooperative Purchase Contract is made and entered into this _____ day of _____, 2023 by and between the City of Flagstaff, Arizona, a political subdivision of the State of Arizona ("City") and Hughes Fire Equipment, Inc., an Oregon Corporation ("Contractor").

RECITALS:

A. Contractor has Contract #113021-OKC with Sourcewell to supply materials and/or services ("Agency Contract"), which was awarded through a competitive and open procurement process; and

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

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

AGREEMENT:

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

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

One (1) Velocity 100' Ascendant Tower EM717

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 shall be **one million nine hundred sixty thousand two hundred twenty-two dollars and sixty-six cents ($1,960,222.66) including other fees and taxes**; made in accordance with the price list and terms set forth in the Agency Contract.

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

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

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

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

CONTRACTOR:

By:_____

Title:_____

CITY OF FLAGSTAFF

By:_____

Title:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney's Office

EXHIBIT A

AGENCY CONTRACT PRICING

EM717 Quote dated December 15, 2022. (Attached)

EXHIBIT B

AGENCY CONTRACT

Sourcewell Oshkosh Contract 113021. (Attached)

December 15, 2022

Flagstaff Fire Department, AZ
One (1) Velocity 100' Ascendant Tower EM717
Build Location: Appleton, WI

Proposal Price	$1,950,882.00	
Arizona State Sales Tax @ 5.60%		109,249.39
Phoenix Sales Tax @ 2.70%		52,673.81
PHX Transportation Plan Tax @ 0.3% of $11,631.00		34.89
Total Bid Price Including Sales Tax		*$2,112,840.09*
Less chassis progress payment discount	(17,456.00)	
Less aerial device progress payment discount	(10,006.00)	
Less payment upon completion @ factory discount	(22,476.00)	
Less 100% pre-payment discount	(90,983.00)	
Subtotal including all pre-pay discounts	$1,809,961.00	
Arizona State Sales Tax @ 5.60%		101,357.82
Phoenix Sales Tax @ 2.70%		48,868.95
PHX Transportation Plan Tax @ 0.3% of $11,631.00		34.89
Total Bid Price Including Pre-Pay Discounts & Sales Tax		*$1,960,222.66*

Terms:

Price Expiration: The above pricing is valid until January 24, 2023.

Component Price Volatility: Company shall not be responsible for any unforeseen price increase enacted by the suppliers of major components of the Product (including but not limited to engine, transmission, and fire pump) after the execution of contract. Any price increase major components of the product will be passed through to the Customer and will be documented on a Change Order.

Delivery: Based on Pierce's current delivery schedule the apparatus would be ready for delivery from factory within 36 to 40 months after contract execution. Delivery is subject to change pending Pierce's delivery schedule at time of order. This time does not include any possible delays that may be caused by national disasters or pandemic.

Payment Terms:

a. If pre-payment discount options are elected, the following terms will apply:

i. Chassis Progress Payment Discount: The chassis progress payment in the amount of **$581,871.00** will be due three (3) months prior to the ready for pick up from the factory date. If elected, an invoice will be provided 30 days prior to the chassis payment due date. If payment is not made when due the discount total will be added back to the final invoice.

ii. Aerial Device Progress Payment Discount: The aerial device payment in the amount of **$500,301.00** will be due two (2) months prior to the ready for pick up from the factory date. If elected, an invoice will be provided 30 days prior to the aerial device due date. If payment is not made when due the discount total will be added back to the final invoice.

iii. Payment Upon Completion at Factory Discount: If elected, final payment is due prior to apparatus leaving the factory for delivery. If payment is not processed upon receipt of invoice the discount total will be required in addition to the invoice amount.

iv. 100% Pre-Payment Discount: If elected, an invoice will be provided upon order processing for the 100% pre-payment. Upon receipt of invoice, payment must be made within thirty (30) days. If this option is elected, the discount is in addition to the chassis progress payment discount, aerial device progress payment discount, and the payment upon completion at the factory discount. If payment is not made when due, the above mentioned pre-payment discounts or a portion thereof, will be added back to the final invoice. Final payment, including any changes made during manufacturing, is due upon completion of the Product at the factory and prior to delivery from the factory. The 100% pre-payment discount is valid for 90 days from quote unless interest rates change; at which time a notification of change will be given and a new quote will be issued.

b. If pre-payment discount options are not elected standard payment terms will apply: Final payment will be due 30 days after the apparatus leaves the factory for delivery. If payment is not made at that time a late fee will be applicable.

c. Payments made for apparatus using a credit card will be applicable to a credit card convenience fee.

Consortium Purchase: The proposal is based on the apparatus being purchased through Sourcewell utilizing Contract No. 113021-OKC-1 valid until 2/10/2026. It is the purchaser's responsibility to determine if the use of consortiums meets their purchasing requirements.

Performance Bond: A performance bond is included in the above price and will be provided after order placement. Due to global supply chain constraints, any delivery date contained herein is a good faith estimate as of the date of this order/contract, and merely an approximation based on current information. Delivery updates will be made available, and a final firm delivery date will be provided as soon as possible. If customer elects to remove the performance bond **$5,176.00** may be deducted from the purchase price.

Transportation: Transportation of the apparatus to be driven from the factory to the customers location is included in the above pricing. However, if permits are not obtainable, due to the weight of the apparatus, and the apparatus must be transported on a flat bed, additional Transportation charges will be the responsibility of the customer. We will provide pricing at that time if necessary. If customer elects to drive the apparatus from the factory, **$5,800.00** may be deducted from the purchase price. if this option is elected payment in full and proof of insurance must be provided prior to leaving the factory and the customer is responsible for compliance with all state, local and federal DOT requirements including the driver possessing a valid CDL license.

Inspection Trips: Two (2) factory inspection trips for **four (4)** customer representatives is included in the above pricing. The inspection trips will be scheduled at times mutually agreed upon between the manufacture's representative and the customer, during the window provided by the manufacturer. Airfare, lodging and meals while at the factory are included. In the event the customer is unable to travel to the factory or the factory is unable to accept customers due to the restrictions caused by a national disaster or pandemic then the Dealership reserves the right to use forms of electronic media to accomplish the intention of the inspection trips. Every effort will be made to make the digital media as thorough as possible to satisfy the expectations of the of the customer. If the customer elects to forgo an inspection trip $2,025.00 per traveler (per trip) will be deducted from the final invoice.

Acceptance of Proposal: If the customer wishes to purchase the proposed apparatus Hughes Fire Equipment will provide the Customer its form of Purchase Agreement for the Customer's review and signature. If the Customer desires to use its standard form of purchase order as the Purchase Agreement, the purchase order is subject to review for any required revisions prior to acceptance. **All purchase orders shall be made out to Hughes Fire Equipment Inc.**

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

Sourcewell

Solicitation Number: RFP #113021

CONTRACT

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Oshkosh Corporation, 1917 Four Wheel Dr., Oshkosh, WI 54902 (Supplier), and Supplier's consolidated subsidiaries as defined in the Proposal.

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Firefighting Apparatus and Fire Service Vehicles from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

A. EFFECTIVE DATE. This Contract is effective upon the date of the final signature below.

B. EXPIRATION DATE AND EXTENSION. This Contract expires February 10, 2026, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.

C. SURVIVAL OF TERMS. Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All other rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

A. EQUIPMENT, PRODUCTS, OR SERVICES. Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above.

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out, refurbished, or remounted Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. WARRANTY. Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. DEALERS, DISTRIBUTORS, AND/OR RESELLERS. Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. SHIPPING AND SHIPPING COSTS. All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

apparent at the time of delivery, Supplier must permit the Equipment and Products to be returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. SALES TAX. Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Change Request Form will become an amendment to this Contract and will be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be negotiated directly between the Participating Entity and the Supplier. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. GOVERNING LAW AND VENUE. The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. PRIMARY ACCOUNT REPRESENTATIVE. Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Supplier must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcewell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcewell, the Supplier will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Supplier may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Supplier will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. AUDIT. Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. ASSIGNMENT. Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. AMENDMENTS. Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. WAIVER. Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

E. CONTRACT COMPLETE. This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. RELATIONSHIP OF THE PARTIES. The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:
   a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use thetrademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.
   b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.
2. *Limited Right of Sublicense*. The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers,

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

resellers, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. *Use; Quality Control.*

a. Neither party may alter the other party's trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.

b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's trademarks only in good faith and in a dignified manner consistent with such party's use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. As applicable, Supplier agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Supplier in violation of applicable patent or copyright laws.

5. Termination. Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. PUBLICITY. Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. MARKETING. Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

D. ENDORSEMENT. The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. PERFORMANCE. During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending*. Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. DEFAULT AND REMEDIES. Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*
Workers' Compensation: As required by any applicable law or regulation.
Employer's Liability Insurance: must be provided in amounts not less than listed below:
Minimum limits:
$500,000 each accident for bodily injury by accident
$500,000 policy limit for bodily injury by disease
$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.
Minimum Limits:
$1,000,000 each occurrence Bodily Injury and Property Damage
$1,000,000 Personal and Advertising Injury
$2,000,000 aggregate for Products-Completed operations
$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:
$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:
$2,000,000

Failure of Supplier to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier.

D. WAIVER OF SUBROGATION. Omitted.

E. UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION. The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. LAWS AND REGULATIONS. All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

B. LICENSES. Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcewell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcewell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier’s Equipment, Products, or Services with United States federal funds.

A. EQUAL EMPLOYMENT OPPORTUNITY. Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 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 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

B. 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 C.F.R. § 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 C.F.R. § 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. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.

C. 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 C.F.R. § 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. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of "funding agreement" under 37 C.F.R. § 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,

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 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. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of $150,000 require 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). Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 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. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have 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. Suppliers must 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. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the 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.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier not use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by an Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

22. CANCELLATION

Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

** Remainder of page intentionally blank **

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

Sourcewell

DocuSigned by:
By: Jeremy Schwartz
C0FD2A139D06489...
Jeremy Schwartz
Title: Chief Procurement Officer

4/5/2022 | 4:53 PM CDT
Date: _____

Oshkosh Corporation

By: _____
James W. Johnson
Title: Executive Vice President and President
Fire & Emergency Segment

Date: APRIL 5 '22

Approved:

DocuSigned by:
By: Chad Coauette
7E42B8F817A64CC...
Chad Coauette
Title: Executive Director/CEO

4/5/2022 | 4:54 PM CDT
Date: _____

DocuSign Envelope ID: D25090FC-AF48-43B3-93AB-F3879467CBE8

RFP 113021 - Firefighting Apparatus and Fire Service Vehicles

Vendor Details

Company Name:	Pierce Manufacturing
Does your company conduct business under any other name? If yes, please state:	WISCONSIN
Address:	2600 American Drive Appleton , WI 54914
Contact:	Michelle Swokowski
Email:	mswokowski@piercemfg.com
Phone:	920-832-3272
Fax:	920-740-6252
HST#:	

Submission Details

Created On:	Monday October 18, 2021 12:41:15
Submitted On:	Tuesday November 30, 2021 16:18:31
Submitted By:	Michelle Swokowski
Email:	mswokowski@piercemfg.com
Transaction #:	724f061f-10fb-4d93-bd02-b5afd9c2b906
Submitter's IP Address:	198.190.231.15

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	Oshkosh Corporation
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	Pierce Manufacturing Inc. Oshkosh Airport Products, LLC
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	As used herein, the "Company," "we," "us" and "our" refers to Oshkosh Corporation and its consolidated subsidiaries. "Oshkosh" refers to Oshkosh Corporation, subsidiaries, Pratt & Miller Engineering & Fabrications, LLC (Pratt Miller), Pierce Manufacturing Inc. (Pierce), McNeilus Companies, Inc. (McNeilus) and its wholly owned subsidiaries, Oshkosh Airport Products, LLC (Airport Products), Kewaunee Fabrications, LLC (Kewaunee (IMT) or any other subsidiaries. Other assume names herein are often identified to be Frontline Communications, ARFF, Airport , Pierce.
4	Proposer Physical Address:	Oshkosh Corporation 1917 Four Wheel Dr. Oshkosh WI, 54902 Pierce Manufacturing Inc. 2600 American Dr. Appleton WI, 54914 Oshkosh Airport Products, LLC. 1515 County Rd. O Neenah WI, 54956
5	Proposer website address (or addresses):	www.oshkoshcorp.com www.Piercemfg.com, www.frontlinecomm.com, www.oshkoshairport.com,
6	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	James W. Johnson Executive Vice President and President, Fire & Emergency Segment Pierce Manufacturing Inc. 2600 American Drive Appleton, WI 54914 Email: jjohnson@piercemfg.com Phone: 920-832-3000 Refer to authorized signers for Oshkosh Corporation, Pierce Manufacturing and Oshkosh Airport Products in additional documents.
7	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Michelle Swokowski Sales Operations Manager, Pierce Manufacturing Inc. 2600 American Drive Appleton WI 54914 Email: mswokowski@piercemfg.com Phone: 920-832-3272
8	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Brianna Propson, Sales Representative, Oshkosh Airport Products, LLC. 1515 County RD O Neenah WI, 54956 Email: bpropson@airport.oshkoshcorp.com Phone: 920-215-5135

Table 2: Company Information and Financial Strength

Line Item	Question	Response *

9	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	Oshkosh Corporation Overview Oshkosh Corporation was founded in 1917, driven by a breakthrough four-wheel drive system that gave people the courage and confidence to go places they never thought they would. Today, more than 14,000 Oshkosh team members are putting over 850 active patented technologies to work serving, developing, and connecting communities around the world. Oshkosh Corporation is a leading manufacturer and marketer of access equipment, specialty vehicles and truck bodies for the primary markets of access equipment, defense, fire & emergency and municipal, refuse hauling, concrete placement as well as airport services. s. Oshkosh products can be found in more than 150 countries under the brands of JLG®, Pierce®, Oshkosh® Defense, McNeilus®, IMT®, Jerr-Dan®, Frontline™, Oshkosh® Airport Products, and London™ and Pratt Miller. Pierce and Airport Products are subsidiaries of Oshkosh and are part of the Fire & Emergency Segment of Oshkosh. We believe in advancing the world around us through building, serving, and protecting people and communities. We are united by a common purpose: to make a difference in people's lives. Our values are the belief system that helps us ensure our behaviors are aligned with our purpose and drive us to do great work for great people. Oshkosh Core Values: WE PUT PEOPLE FIRST • We treat people how they need to be treated. • We keep people safe, within our walls and those using our products. • We care for the emotional, physical, and financial wellbeing of our people. • We celebrate what makes each of us unique. • We value other's words and ideas. • We respect the impact we have on each other; on the people we serve and in communities around the world. WE DO THE RIGHT THING • We do the right thing, the right way, for the right reasons. • We take responsibility for our actions. • We speak up and share our thoughts and concerns. • We keep our promises. • We respect our environment: both where we work and the planet we rely on. WE PERSEVERE • We push the bounds of technology and engineering to bring value to our customers and those who count on us. • We challenge the impossible to make a difference every day. • We are courageous and steadfast. • We strive to overcome obstacles and achieve our goals. WE ARE BETTER TOGETHER • We welcome ideas different from our own. • We rely on diversity to drive innovation. • We create an inclusive, empowering environment for all. • We work together across geographies, platforms, business units and functions to help our company reach its fullest potential. Business Philosophy: Our strategy is "Innovate. Serve. Advance." We innovate customer solutions by combining leading technology and operational strength to empower and protect the everyday hero. We serve and support those who rely on us with a relentless focus throughout the product lifecycle. We advance by expanding into new markets and geographies to make a difference around the world. As a corporation, our culture is one committed to conducting business with integrity, in accordance with the highest ethical standards and in compliance with applicable laws and regulations. The guidelines, laws, regulations, policies, and procedures that govern our conduct as employees and contractors of Oshkosh Corporation are embodied in our Code of Ethics & Standards of Conduct - The Oshkosh Way. Business Longevity: Pierce was founded in 1913 and is the leading domestic designer and manufacturer of fire apparatus assembled on custom chassis, designed, and manufactured to meet the special needs of firefighters. Pierce also designs and manufactures fire apparatus assembled on commercially available chassis, which are produced for multiple end-customer applications. Pierce's engineering expertise allows it to design its vehicles to meet stringent industry guidelines and government regulations for safety and effectiveness. Pierce primarily serves domestic municipal customers, but also sells fire apparatus to the DoD, airports, universities, and large industrial companies, and in international markets. Pierce's history of innovation, research and development in consultation with firefighters has resulted in a broad product line that features a wide range of innovative, high-quality custom and commercial firefighting equipment with advanced fire suppression capabilities. In an effort to be a single-source supplier for its customers, Pierce offers a full line of custom and commercial fire apparatus and emergency vehicles, including pumpers, aerial platform, ladder and tiller trucks, tankers, light-, medium- and heavy-duty rescue vehicles, wildland	*

		rough terrain response vehicles, mobile command and control centers, bomb squad vehicles, hazardous materials control vehicles and other emergency response vehicles. Refer to "Pierce Timeline.pdf" in Financial Strength and Stability folder. Oshkosh Airport Products is a leader in the design and sale of ARFF vehicles to domestic and international airports. These highly specialized vehicles are required to be in service at most airports worldwide to support commercial airlines in the event of an emergency. Our first Aircraft Rescue and Fire Fighting (ARFF) vehicle was delivered to the U.S. Navy in 1968. We are able to attract and retain new customers because we take pride in a quality product we build and provide second to none in service and support nationwide. We are the leading manufacturer of fire apparatus because of this – our loyal customers! Refer to "9. Oshkosh Corporation 2020 Annual Report.pdf", "9. Oshkosh Strategy Innovate Serve Advance Strategy.pdf", "9. The_Oshkosh_Way_English.pdf", "9. 2020_Sustainability_Report.pdf", and "9. Equal Employment Opportunity.pdf" in Financial Strength and Stability folder for more information.	
10	What are your company's expectations in the event of an award?	The Sourcewell consortium program will extend another avenue for the fire industry customer base to purchase a fire apparatus efficiently and effectively through a proven program. The Sourcewell consortium will be a nationwide including Canada avenue that is promoted across the Pierce sales force that consists of 23 authorized Pierce Dealers and their respective team members. The fundamental expectation is around education and promotion. The Pierce Dealer network and Airport Products sales team is expected to understand our product and the tools available to the customer to achieve what is in the best interest of the customer.	*
11	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Pierce Manufacturing Inc. and Oshkosh Airport Products, LLC are subsidiaries of Oshkosh Corporation, which is a publicly traded company. We have attached our annual report, SEC Filings along with the Dunn & Bradstreet report often used by lenders and investors to determine a company's eligibility for credit. This report along with any of the financial statements demonstrate Oshkosh Corporation and its subsidiaries to be financially sound. For additional information please refer to the below path. http://investor.oshkoshcorporation.com/investors/overview/ Oshkosh Corporation maintains an investment grade credit rating. The rating agencies periodically update the Company's credit ratings as events or changes in economic conditions occur. As of September 30, 2021, the long-term credit ratings assigned to the Company's senior debt securities by the credit rating agencies engaged by the Company were as follows: Fitch Ratings BBB-; Moody's Investor Services, Inc. Baaa3; Standards & Poor's BBB. Refer to "11. Oshkosh Corp Q4 and-Full-Year-Results-2021.pdf", "11. Oshkosh Corporation Form 10-K.pdf", "11. D&B Finance Analytics Report.pdf", "11. Bank of America. Oshkosh Reference.pdf", "11. Pierce Manufacturing Certificate of Status 062021.pdf", and "11. Oshkosh Airport Products Certificate of Status July 2021.pdf" in Financial Strength and Stability folder for more information.	*

12	What is your US market share for the solutions that you are proposing?	Pierce is the leader in domestic market share of fire apparatus. Oshkosh Corporation is traded on the New York Stock Exchange since 2002. Financial information can be obtained by visiting the below link. http://investor.oshkoshcorporation.com/investors/financial-information/annual-and-quarterly-reports/default.aspx Fire & Emergency segment. Through Pierce, the Company is the leading domestic designer and manufacturer of fire apparatus assembled on custom chassis, designed and manufactured to meet the special needs of firefighters. Pierce also designs and manufactures fire apparatus assembled on commercially available chassis, which are produced for multiple end-customer applications. Pierce's engineering expertise allows it to design its vehicles to meet stringent industry guidelines and government regulations for safety and effectiveness. Pierce primarily serves domestic municipal customers, but also sells fire apparatus to the DoD, airports, universities and large industrial companies, and in international markets. Pierce's history of innovation, research and development in consultation with firefighters has resulted in a broad product line that features a wide range of innovative, high-quality custom and commercial firefighting equipment with advanced fire suppression capabilities. In an effort to be a single-source supplier for its customers, Pierce offers a full line of custom and commercial fire apparatus and emergency vehicles, including pumpers, aerial platform, ladder and tiller trucks, tankers, light-, medium- and heavy-duty rescue vehicles, wildland rough terrain response vehicles, mobile command and control centers, bomb squad vehicles, hazardous materials control vehicles and other emergency response vehicles. The Company, through Airport Products, is a leader in the design and sale of ARFF vehicles to domestic and international airports. These highly specialized vehicles are required to be in service at most airports worldwide to support commercial airlines in the event of an emergency. Many of the largest airports in the United States, including LaGuardia International Airport, John F. Kennedy International Airport, O'Hare International Airport, Denver International Airport, Baltimore-Washington International Airport, Dallas/Fort Worth International Airport, Tampa International Airport, Philadelphia International Airport and San Francisco International Airport, are served by the Company's ARFF vehicles. The U.S. government also maintains a fleet of ARFF vehicles that are used to support military operations throughout the world. Internationally, the Company's vehicles serve, among others, Beijing, China and more than fifty other airports in China; Singapore; Indonesia; Quebec, Canada; Abu Dhabi, UAE; and Birmingham, Cardiff, Manchester and Liverpool, United Kingdom. In addition, the Company has recently delivered ARFF vehicles to airports in Mexico, Japan, Egypt, Nepal, Iraq and the British Virgin Islands. The Company believes that the performance and reliability of its ARFF vehicles contribute to the Company's strong position in this market. The Company, through its Frontline brand, is a leading manufacturer, system designer and integrator of broadcast vehicles, including electronic field production trailers, satellite news gathering and electronic news gathering vehicles for broadcasters and command trucks for local and federal governments along with being a leading supplier of military simulator shelters and trailers under the Oshkosh Specialty Vehicles (OSV) brand. The Company's vehicles have been used worldwide to broadcast the NFL Super Bowl, the FIFA World Cup and the Olympics.	*
13	What is your Canadian market share for the solutions that you are proposing?	Pierce along with their strong dealer sales and service network that has driven increase Canadian market share. The Pierce Canadian dealer consist of 3 dealers that lead multiple service locations. We also partner with MAXI-METAL Inc leveraging the MAXI Saber program since 2016 and US Contender since 2017. Each Dealer has a signed dealer agreement to sell Pierce fire apparatus in the designated territory awarded to them. They are Prime on contracts and are supported by the 2500+ Pierce employees.	*
14	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No	*

15	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	Pierce and Airport Products are best described as manufacturers. Pierce and Airport Products are best described as manufacturers. The Pierce Dealer network consists of 20 US based Dealers and 3 Canadian based Dealers. Each Dealer has a signed dealer agreement to sell Pierce fire apparatus in the designated territory awarded to them. They are Prime on contracts and are supported by the 2500+ Pierce employees. The Company believes the geographic breadth, size and quality of its Pierce fire apparatus sales and service organization are competitive advantages in a market characterized by a few large manufacturers and numerous small, regional competitors. Pierce's fire apparatus is sold through an extensive network of independent sales and service organizations with over 300 hundred sales representatives in the U.S. and Canada, which combine broad geographical reach with high frequency of contact with fire departments and municipal government officials. These sales and service organizations are supported by product and marketing support professionals and contract administrators at Pierce. The Company believes high frequency of contact and local presence are important to cultivate major, and typically infrequent, purchases involving the city or town council, fire department, purchasing, finance and mayoral offices, among others, that may participate in a fire apparatus bid and selection process. After the sale, Pierce's nationwide local parts and service capability is available to help municipalities maintain peak readiness for this vital municipal service. Oshkosh Airport Products The Company markets its Oshkosh-branded ARFF vehicles through a combination of direct sales representatives domestically and an extensive network of representatives and distributors in international markets, including Canada. Certain of these international representatives and distributors also handle Pierce products and will follow the same process as noted above. For service, we support both with internal service support which is available 24/7/365 via our support line at 1-800-222-6635 and external sales representatives. Refer to "15. Pierce. Airport Manufacturer. Products.pdf" in Company Information and Financial Strength folder for an overview of our manufacturing capabilities and product offerings.	*

16	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	Pierce Manufacturing Inc. holds state licensing for Sales, Manufacturing, Motor Vehicles, and dealer license used accordance to the state laws. The Pierce Dealer network licenses independently holds as required by law in the state in which they sell. Airport Products holds manufacturer's license, where required. We also hold our Vendors accountable to the utmost standards. Beyond ISO certifications and compliance, we require our supply chain of major components to obtain a score of 80% or above on a supplier quality audit performed by Oshkosh Corporation supplier quality. ISO 9001:2015 Certification: Pierce Manufacturing Inc. was the first single-source manufacturer of custom fire apparatus in North America to achieve ISO 9001 certification. Pierce has achieved ISO 9001:2015 certification which covers all aspects of our business life cycle, from engineering and manufacturing to customer service. ISO 9001 certification demonstrates a company's commitment to quality. To keep their ISO 9001 registered status, companies are re-audited twice per year through third-party verification to prove they are maintaining good practices. ISO 9001 certification further assures customers that a fundamental quality system is in place. It's a solid foundation for continuous improvement always striving to get even better. An ISO-certified manufacturer, like Pierce, accepts nothing but the best from its suppliers. Pierce asks its suppliers to meet many of the same stringent quality requirements and works with them to improve their quality systems as well. Refer to "16. ISO 9001.2015 Pierce Mfg and entities.pdf" in Financial Strength and Stability folder for certificate. UL/ULC: Pierce is the first fire apparatus manufacturer to be both third party certified to NFPA 1901-2013 edition and ULC listed to Canada ULC-S515-04 standard. Third Party Vehicle Inspection Program by Underwriters Laboratories to ensure our products are 100% N.F.P.A. compliant to 1901 standards. The certification includes all design, production, operational and performance testing of the complete apparatus. All products must pass all tests before a truck is released into Canada. This commitment to quality applies to trucks sold in the U.S. as well. Refer to "16. Sample UL Certs 35796 Pump Line Voltage Aerial Cert.pdf" in Financial Strength and Stability folder for sample certificate. ISO 14001:2015 Certification: Our Neenah facility is also ISO 14001:2015 certified for our Environmental Management System. Various Pierce and Airport Products vehicles are manufactured in this space. Refer to "16. ISO 14001 Oshkosh Airport Products.pdf" in Financial Strength and Stability folder for certificate.	*
17	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	Neither Oshkosh Corporation or subsidiary such as Pierce Manufacturing and Airport Products have suspension or debarment that applies within the past 10 years.	*

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *	
18	Describe any relevant industry awards or recognition that your company has received in the past five years	Oshkosh Corporation is honored to be named and recognized for the following awards and recognitions. World's Most Ethical Companies in 2016, 2017, 2018, 2019, 2020 and 2021. Oshkosh is one of only 124 companies, representing 52 industry sectors in 19 countries on five continents named to this prestigious list. We were the only company selected in the "Trucks and Other Vehicles" category, underscoring our commitment to leading ethical business standards and practices. This achievement is only possible with a commitment to sustainability, connecting with our communities and strong ethical culture and team members who believe in doing the right thing. Link: https://investors.oshkoshcorp.com/news/news-details/2021/Oshkosh-Corporation-named-one-of-the-Worlds-Most-Ethical-Companies-for-sixth-consecutive-year/default.aspx FORTUNE's World's Most Admired Companies in 2019 and 2020. Oshkosh Corporation is one of 330 companies to achieve this honor, as ranked by industry peers, highlighting some of the most respected and successful companies from around the world. https://investors.oshkoshcorp.com/news/news-details/2021/Oshkosh-Corporation-named-one-of-the-Worlds-Most-Admired-Companies-by-FORTUNE/default.aspx	

In 2020 and 2021, the company was awarded one of America's Most Responsible Companies by Newsweek. Oshkosh has earned this award for two consecutive years and is ranked #159 out of 399 companies on the list. America's Most Responsible Companies were defined based on key performance indicators around environmental, social and corporate governance areas. For more info please refer to the link below: https://www.oshkoshcorp.com/en/news/12-23-20-most-responsible-newsweek

Oshkosh Corporation was named a Military Friendly Company in 2017, 2018, 2019, 2020 and 2021. Being named a Military Friendly Company highlights our commitment to caring for our team member and having a culture where veterans can thrive. . Please reference the link for additional detail: https://www.oshkoshcorp.com/en/news

Oshkosh Corporation has been listed on the Dow Jones Sustainability World Index in 2019, 2020 and 2021. Please review the link below for additional info. https://investors.oshkoshcorp.com/news/news-details/2020/Oshkosh-Corporation-Named-to-the-Dow-Jones-Sustainability-World-Index-for-Second-Consecutive-Year/default.aspx

Oshkosh Corporation is honored to be named and recognized for the following awards and recognitions.
World's Most Ethical Companies in 2016, 2017, 2018, 2019, 2020 and 2021. Oshkosh is one of only 124 companies, representing 52 industry sectors in 19 countries on five continents named to this prestigious list. We were the only company selected in the "Trucks and Other Vehicles" category, underscoring our commitment to leading ethical business standards and practices. This achievement is only possible with a commitment to sustainability, connecting with our communities and strong ethical culture and team members who believe in doing the right thing.
Link: https://investors.oshkoshcorp.com/news/news-details/2021/Oshkosh-Corporation-named-one-of-the-Worlds-Most-Ethical-Companies-for-sixth-consecutive-year/default.aspx

FORTUNE's World's Most Admired Companies in 2019 and 2020. Oshkosh Corporation is one of 330 companies to achieve this honor, as ranked by industry peers, highlighting some of the most respected and successful companies from around the world. https://investors.oshkoshcorp.com/news/news-details/2021/Oshkosh-Corporation-named-one-of-the-Worlds-Most-Admired-Companies-by-FORTUNE/default.aspx

In 2020 and 2021, the company was awarded one of America's Most Responsible Companies by Newsweek. Oshkosh has earned this award for two consecutive years and is ranked #159 out of 399 companies on the list. America's Most Responsible Companies were defined based on key performance indicators around environmental, social and corporate governance areas. For more info please refer to the link below: https://www.oshkoshcorp.com/en/news/12-23-20-most-responsible-newsweek

*

Oshkosh Corporation was named a Military Friendly Company in 2017, 2018, 2019, 2020 and 2021. Being named a Military Friendly Company highlights our commitment to caring for our team member and having a culture where veterans can thrive. . Please reference the link for additional detail: https://www.oshkoshcorp.com/en/news

Oshkosh Corporation has been listed on the Dow Jones Sustainability World Index in 2019, 2020 and 2021. Please review the link below for additional info. https://investors.oshkoshcorp.com/news/news-details/2020/Oshkosh-Corporation-Named-to-the-Dow-Jones-Sustainability-World-Index-for-Second-Consecutive-Year/default.aspx

Oshkosh was named one of the "World's Best Employers" by Forbes in 2020. The 2020 results included 750 multinational and large corporations across 45 countries. Oshkosh is ranked #76 out of 750.
Please refer to the link: https://www.oshkoshcorp.com/en/news/12-11-20-forbes

Oshkosh is one of Barron's 100 Most Sustainable Companies for the years 2019, 2020 and 2021. Please review the link for additional information. https://investors.oshkoshcorp.com/news/news-details/2021/Oshkosh-Corporations-focus-on-sustainability-earns-recognition-from-Barrons-and-SP-Global/default.aspx

Pierce's focus on energy efficiency is focused on being good stewards of company resources, budgets, and the company's ecological footprint. This earned them the recognition for Focus on Energy 2020 Energy Efficiency Excellence Award https://www.piercemfg.com/pierce/blog/pierce-recognized-with-focus-on-energy-excellence-award

		Pierce also Achieved TRUE (Total Resource Use and Efficiency) Zero Waste Certification at the Gold level. TRUE certification is administered by Green Business Certification Inc. (GBCI), an organization that independently recognizes excellence in green business industry performance and practice globally 2021 Sterling Manufacturing Business Excellence Award - Florida facility has been awarded the 2021 Sterling Manufacturing Business Excellence Award at the Gold Level! This award went out to the company that was found to be a high performing manufacturer in seven categories. Pierce Bradenton demonstrated outstanding leadership and management systems to meet the need of customers and stakeholders https://www.facebook.com/Pierce/posts/10165217512965527 Pierce was awarded the "Above and Beyond Award" by ESGR August of 2021. Pierce was 1 of 3 large companies in Wisconsin recognized for their outstanding support of our Guard and Reserve forces. Oshkosh Corporation has been named one of the "Best Managed Companies" by the Wall Street Journal in 2018 and 2019. Please visit the link for additional detail: https://www.businesswire.com/news/home/20191209005496/en/Oshkosh-Corporation-Named-One-of-the-%E2%80%9CBest-Managed-Companies-of-2019%E2%80%9D-by-the-Wall-Street-Journal ISO 14001:2015 Environmental Management System To further solidify and standardize our environmental performance, Pierce Manufacturing and the Airport Products Group are in the first domestically of formalizing an Environmental Management System for our Neenah manufacturing facility in accordance with ISO 14001:2015 for all of Oshkosh Corporation Recognized by RobecoSAM with the Industry Mover Award for critical steps taken to propel corporate sustainability by measuring impact and disclosing results. Oshkosh Corporation has achieved many awards throughout the years. Many of the awards highlight specific subsidiaries such as Pierce and Airport Products. There are many more that have not been incorporated but are incorporated on our websites. We are proud and work hard to maintain these achievements. Refer to "18. TRUE CERTS-ID 1000128616.pdf" in Additional Documents folder for certificate.	
19	What percentage of your sales are to the governmental sector in the past three years	Oshkosh has great relationship with various governmental sectors throughout the organization. We are a publicly traded company therefore the information available does not include specific sales detail.	*
20	What percentage of your sales are to the education sector in the past three years	Pierce and Airport on occasion will sell to education sectors such as Universities, Colleges, High Schools, or Fire schools. The market for our product in this group is limited.	*
21	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	Pierce Manufacturing participates in nationwide and state-level contracts. All programs are aligned to offer the best solutions on a consistent platform. Contracts with an asterisk (*) also have contracts held by Airport Products. 1. Sourcewell* 2. H-GAC* 3. NASPO Value Point 4. NPPGov 5. Lamas 6. BuyBoard 7. Florida Sherriff's 8. Ohio State 9. Costars	*
22	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	Current GSA (General Services Administration) contract is GS30F021DA	*

Table 4: References/Testimonials

Line Item 23. Supply reference information from three customers who are eligible to be Sourcewell participating entities.

Entity Name *	Contact Name *	Phone Number *	
Knoxville Fire Department	Bobby Palmer	865-595-4474	*
Howell Fire District #3	Louis Memmolo,III	732-905-8530	*
Clark County	Riccardo Terzo	702-455-8341	*
Tampa International Airport	Oren Hanson	813-267-0335	

Table 5: Top Five Government or Education Customers

Line Item 24. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
U.S. Army	Government	District of Columbia - DC	Pumpers, rescues, aerials	N/A	N/A	*
U.S. Air Force	Government	District of Columbia - DC	Pumpers, rescues, aerials	N/A	N/A	*
Bureau of Land Management	Government	District of Columbia - DC	Wildland pumpers	N/A	N/A	*
U.S. Navy	Government	District of Columbia - DC	Pumpers, rescues, aerials	N/A	N/A	*
U.S. Marine Corps	Government	District of Columbia - DC	Pumpers, rescues, aerials	N/A	N/A	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcewell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *	
25	Sales force.	Pierce Manufacturing has an inside sales force that manages a given territory The support can range from dealers, customer request, trade shows, warranties, specifics support within the bids, managing the sale and configuration The inside sales folks work with internal Pierce contacts to ensure a successful build and delivery to our preferred dealer network. The Oshkosh Airport Products sales force consists of 2 regional sales managers who are direct employees of Oshkosh Airport Products. Our sales team is committed to the full customer lifecycle, from initial contact throughout the vehicle life. In addition, our internal sales managers coordinate with our Canadian dealership to support the customer relationship. Refer to "25. 26. 27. Directory - Pierce Dealership Territories Map.pdf", "25. 26. Pierce Authorized Dealer_2021_Listing.pdf", "25. ARFF RSM Map Nov 2021.pdf", and "25. Pierce and Airport Internal Contacts Org Chart.pdf" in the Additional Documents folder for more information.	*
26	Dealer network or other distribution methods.	Pierce product is sold via the authorized Pierce Dealer network of 300+ sales representatives that are located across the US and Canada and are backed by the Pierce factory support of 2500+ employees to assist with product, quality, and service. In addition, the sales force is comprised of legacy tenure as well as new generations. Many of our sales representatives came from or are still part of the fire industry in some way. There are Dealers located across the US and Canada that have been assigned territory to provide Sales, Service, and aftermarket support 24/7 365 days of the year. The dealer network has invested in on hand inventory as well as the factory and dedicated aftermarket inventory available online for them to utilize and drop ship to the end customer's location. As previously mentioned, we also partner with MAXIMETAL to support our Canadian customers by being a distributor for MAXIMETAL products. Oshkosh Airport Products sells direct domestically and partners with dealer organizations internationally, including Canada. Refer to "25. 26. 27. Directory - Pierce Dealership Territories Map.pdf" and "25. 26. Pierce Authorized Dealer_2021_Listing.pdf" in the Additional Documents folder for more information.	*

27	Service force.	Pierce and its dealer network offer a wide variety of Aftermarket services to help customers maintain their Pierce branded fire apparatus. 70+ service centers throughout North America are dedicated to servicing Pierce apparatus thru its industry-leading, independently owned & managed dealer network. 20 United States & 3 Canadian dealerships support our wide array of service centers. Pierce authorized service centers offer: • Dedicated Service Professionals • Nearly 250 mobile service vehicles, strategically located throughout North America • Offer scheduled & unscheduled maintenance services • 24/7 access to Pierce Technical Support Hot-Line, • Ability to execute warranty-related repairs, in accordance with the Pierce limited warranty statement. Pierce also offers a full line of spare parts, available for purchase thru its dedicated dealer network. The spare parts warehouse, located in Appleton, Wisconsin, boasts over 100,000 sq. ft. of storage space, all of which supports Pierce fire apparatus. Key facts about the warehouse include: • Dedicated and committed on-hand spare parts inventory • Management of over 100,000 unique spare part numbers (inventory, min/max, pricing, country of origin, etc.) • Same-day & next-day shipping services from UPS, FedEx, and XPO • 24/7 website to locate and check pricing & availability of spare parts by authorized dealer • Tens of thousands of digital photographs & 3D artwork of replacement parts for fast & easy identification Pierce offers a complete set of training classes, for both operators & maintainers, to keep your Pierce apparatus running at peak performance. • Regional & Corporate training events held throughout the calendar year • Instructors with over 100 combined years of Pierce & industry expertise • Innovative "Training Truck"; key technology mounted on stand-alone truck to simulate any key system • Technology training on key components such as Pierce Ultimate Configuration (PUC™) water pumps, TAK-4® independent suspension systems, Husky™ Foam systems, and Command Zone™ III • Operation overview of foam & aerial devices Attached you will find a summary per authorized dealer mobile vehicles and acknowledgment of service technicians along with dealer contact and the territory they cover. Oshkosh Airport Products employs full time Field Service Representatives to provide vehicle in-service, training, and service work. We also rely on support from organizations across the US and have service provider agreements to provide local support to our customers as well. In addition, we are supported through Oshkosh Corporation's training center to provide world-class maintenance and operations training. These trainings are designed specifically for our ARFF products and are available to our dealers and customers alike. Refer to "25. 26. 27. Directory - Pierce Dealership Territories Map.pdf", "27. Pierce Dealer Service & Sales Coverage.pdf", and "27. ARFF Service Providers Map.pdf" in the Additional Documents folder for more information.
28	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	When the customer works with the Pierce authorized dealer they will accept all purchase orders; however, every sale is configured in the Pierce customized truck configurator, Pulse. This sales tool includes the corresponding cooperative procurement option applicable to the sale. This option is used to generate monthly audits that Pierce performs with their dealer network as well as generate the quarterly required reports sent direct to the contracting agency. The authorized Dealer network utilizes the customized apparatus specification software (PULSE) to configure to the customer's expectations and is used internally throughout the supply chain of the order from booking the order to engineer the final product. The tool is supported with internal communication tools such as workflow, Communication Central, online scheduling, Build Status, and a complete Truck Library. This provides our Dealer network a direct link to the factory to accurately communicate details to the end user. Airport Products will be the primary point of contact for sales inquiries, except where we have an authorized dealer. With complexity of ARFF vehicles, our team will work directly with the customer to customize their truck configuration using the base vehicle as a starting point. Options will be added to the base price with the Sourcewell discount. This quotation will be used by the customer to issue a purchase order or contract which will be reviewed by Airport Products and accepted. Airport Products will then be responsible for manufacture of the vehicle.
29	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives	AFTERMARKET PIERCE MODEL Pierce service after the sale is where we truly are set apart from others. The Pierce Dealer network spans across the US and Canada and each have made investment in facilities, inventory, staff, and training. The Dealer is the first point of contact for the customer however all customers can access Pierceparts.com to aid in any

	that help your providers meet your stated service goals or promises.	service needs they may have. TEAM MEMBERS Pierce Service Brigade An army of 600 service technicians across the US and Canada. Certified Master Technicians We specifically created the Pierce Certified Master Technician program to ensure that our Service Brigade professionals possess the highest level of proficiency with today's sophisticated emergency vehicles, including non-Pierce apparatus. The Right Attitude and the Right Tools Our team members take pride in going home at the end of each day knowing they made a difference. The mobile training unit takes Customer Service training to another level and brings training to the customer. This mobile unit has built-in training tools and props that are configurable to the training needs of our customers. It allows the technician to troubleshoot, dismantle, and most importantly, provide the hands-on training customers ask for. INVENTORY As the manufacturer, facilities are available in Appleton, WI, Weyauwega, WI, and Bradenton, FL. These facilities are equipped with factory personnel and committed healthy stock of inventory dedicated to service and replacement parts to ensure quick response and minimize down time. Furthermore, Pierce Manufacturing Inc. houses inventory in a dedicated facility, with a dedicated shipping area that ensures service parts are given priority and extends a customized, Pierce aftermarket website for authorized Dealers to conduct business in real-time. FACTORY HOURS OF OPERATION Pierce Manufacturing Inc. and Oshkosh Airport products also maintains a 24 hour/ 7 day a week, toll free emergency hot line and employs a staff of dedicated individuals to troubleshooting and parts support. Pierce Customer Service core hours of operation are Monday – Friday, 7:30 a.m. – 4:00 p.m. CST. We also have Pierce factory technicians on call for after-hours support available 24 hours a day, seven days a week. PROBLEM IDENTIFICATION & RESOLUTION As product or service issues are identified by the customer, they are to contact their local Pierce authorized dealer since they are the customer's first point of contact. All issues are documented, resolved, and archived for future reference by the local dealership. If there is an issue that needs elevated assistance, the dealership will contact the Pierce customer service account representative for assistance. Parts identification is provided to both the dealer and the Fire Department through an on-line web-based application for the specific truck. Access will be granted using the specific VIN number of the vehicle and the online web application provides the ability to view complete bills of materials, digital photographs, parts drawings, assembly drawings, and access to all current operation, maintenance, and service publications. The end user can access this information via the Guest Login. TECHNICAL SERVICE SUPPORT Both Pierce and their authorized Dealers can provide both in-house and on-site service for the apparatus along with training per request. Replacement parts and various levels of service after delivery are available from your local Pierce authorized dealer, including but not limited to those shown below: SERVICE: Warranty repair for Pierce product line for all items except for those that must be handled directly by an authorized component manufacture such as engine and transmission. Direct access to Pierce technical support Routine preventative maintenance Annual aerial ladder testing Pump testing Ground ladder testing NFPA 1911 annual inspections maintenance and testing Repairs from small minor issues to major overhauls and many other services Dealer repair services extend to most other fire and emergency rescue product lines in addition to Pierce Manufacturing Service provided by EVT, ASE, Pierce and industry specific certified technicians All Pierce authorized sales and service dealers have access to Pierce's extensive level of technical and customer service support staff PARTS: Pierce authorized dealers maintain a large assortment of products supplied with fire	*

		apparatus. Including, but not limited to, the most commonly required parts and components required for apparatus repair. This level of inventory enables “out of service” time to be kept to a bare minimum. All Pierce authorized sales and service dealers have access to Pierce’s extensive level of replacement parts inventory, which is more than $15M as well as any Pierce required fabrication services. Oshkosh Airport Products partners with Pierce Manufacturing's internal customer support team to provide the same superior service for municipal products with the smaller scale of ARFF products. We maintain a 24 hour/ 7 day a week, toll free emergency hot line with core hours of operation being Monday through Friday, 7:30 a.m. – 4:00 p.m. CST. We also have Pierce factory technicians on call for after-hours support available 24 hours a day, seven days a week via our service support line 1-800-222-6635	
30	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	Pierce Manufacturing Inc has 20 US based authorized dealers, each which has an establishes sales and service infrastructure to support the sale of our whole goods from time of sale through its lifecycle. We are committed to support the customer by educating them in all possible avenue to ensure they know the benefits of Sourcewell. Pierce will be able to support the entire US including Hawaii and Alaska along with Canada regions. Our established dealer network includes assignment for these territories. Airport Products is able and willing to provide our products and services to participating entities in the United States.	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	Pierce Manufacturing Inc has 3 US based authorized dealers, each which has an establishes sales and service infrastructure to support the sale of our whole goods from time of sale through its lifecycle. Pierce Manufacturing Inc. has three Dealers that cover the Canadian territories – Commercial Emergency Equipment, Safety Source, and L ’Arsenal. Commercial Emergency Equipment is the largest of those exclusive dealers. They cover Western Canada (BC, AB, SK, MB), Ontario, as well as the Northern Territories (YT, NWT, NT). Pierce brands the MAXI Saber custom-chassis fire apparatus which are also marketed in Canada. Pierce is our authorized dealers are in exclusive product partnership since 2016 with MAXIMETAL. Pierce is committed to growing the market in Canada while also providing service support. Airport Products will work in conjunction with our authorized dealer(s), and together we are able and willing to provide our products and services to participating entities in Canada.	*
32	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	There are no geographic areas in the US or Canada that we will not be fully servicing through the proposed contract. Pierce and Airport Products are proud to provide excellent coverage across the nation. There are no areas throughout US or Canada that we are not able to fully support either through our dealer network or direct coverage through coverage.	*
33	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	There are no defined sectors that Pierce or Airport Products would not be willing and able to sell to and extend the after the sale service and support we pride ourselves on.	*
34	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	Pierce and Airport Products is not aware of any specific contract requirements or restrictions that apply to members. Those territories determine what contracts they support and allow to be used.	*

Table 7: Marketing Plan

Line Item	Question	Response *	
35	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	The marketing strategy we have taken with all the awards has begun with marketing to our sales force. The initial launch provides the sales team: • Overview of the contract and what differentiates it from the others • Training and updating internal User Guide/Handbook • Adding the contract option to our custom truck configurator Pulse • Adding the contract to the internal communication portal • Update www.piercemfg.com and www.oshkoshairport.com website with the addition of the new contract • Develop a flyer or FAQ to provide sales reps and customers as a takeaway • Including a Sourcewell purchased truck at Pierce shows. The Sourcewell consortium logo is noted on the configuration that is displayed on the truck. Refer to "35. Pierce Example Marketing.pdf" in the Marketing Plan/Samples folder. Additional marketing brochures available in the Marketing Plan/Samples folder. Please refer to these files for current representative material.	*
36	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	Pierce has a dedicated marketing team that manages our website and social media; we also have 23 Dealers that have established websites and utilize social media platforms such as twitter, Instagram, and Facebook to share messaging. We are able to track engagement and metadata on our followers through these platforms. Not only is our marketing team well versed in looking at industry trends, we also partner with external organizations for a more robust approach to technology. Both Pierce and Airport Products' websites will include award and have a direct link to the Sourcewell website were facts and information can be obtained. Airport Products also utilizes Showpad for organization and distribution of marketing material which is available to our domestic and international sales team. This tool allows us to share information across the globe, including information on available purchasing consortiums. This tool allows users to track customer engagement with the material.	*
37	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	Sourcewell's role in promoting the Fire Apparatus contract is primarily accessibility to customers and/or their procurement officials. Sourcewell' s role is to be partner with the awarded vendors and understand the product on the contract so that as a joint effort, end users can be informed and educated on cooperative procurement and how this contract best fits them. This may include training creation, networking at a specific show or dealer location. Cooperative procurement needs to fold into the sales process shortly after introductions. A Sales representative should understand what programs the customer has been a part of and/or what they know about cooperative procurement programs available. That basic understanding is a must have from the onset. This program won't determine what apparatus they buy or what customization they can have – this program provides them the avenue to get what they need through an efficient procurement process. For the Airport direct sales team, all opportunities that are not competitively bid will be provided information on the Sourcewell contract as an avenue for purchase.	*
38	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	We do not offer an e-procurement ordering process due to the complexity of our product. We have determined this platform does not fit in our business model.	*

Table 8: Value-Added Attributes

Line Item	Question	Response *	

39	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	Training is offered in several different ways: • A customer can request factory personnel to provide training and it will be added to the sale or available at a later date. • The dealer may have a training program to offer that introduces the customer to the dealer's support team • The customer may choose to attend regional training classes offered throughout the year. All customers receive a Delivery Orientation class prior to placing the apparatus in service. Other training is often customized to the customer's needs and scheduled around their calendars. Factory and/or Dealer training may include Operation, Maintenance, Foam training, Aerial training, Customer Mechanics, or customizable. On-site training during vehicle in-service is standard. This provides a basic vehicle operations and maintenance overview. This training is consistent with industry standards. Refer to "39. Pierce Training Offerings.pdf" in Additional Documents for more information on Pierce training. We also offer additional training through our Oshkosh Product Training Center. We have two rigorous courses focused on the vehicles chassis and firefighting systems. The cost of additional maintenance or operations courses are not included and schedule and pricing is available on our training website. Specialized training can also be requested and will be quoted at time of request. https://oshkoshcorporation.csod.com/LMS/catalog/Welcome.aspx. Refer to "39. Striker Chassis and Firefighting Maintenance Training Outline.pdf" in Additional Information folder for ARFF training outline.	*

40	Describe any technological advances that your proposed products or services offer.	Oshkosh Corporation a leader in innovation and each of our products and technologies is designed with customers and end-users in mind, including advances in electrification, autonomy and active safety and intelligent products. Leveraging the latest in technology for today and tomorrow across the different markets we serve differentiates us and helps us remain market leaders and stay ahead of the competition. Advancing our company into new markets and categories will support continued growth for the company. Through this contract, we offer numerous proprietary features that standout from others and not limited to: • Electric Vehicles - Pierce Manufacturing and Oshkosh Airport Products have introduced the Volterra™ platform of electric vehicles for the fire and emergency market, with the first municipal truck already in service with the City of Madison, Wisconsin. The Striker® Volterra performance hybrid Aircraft Rescue and Fire Fighting (ARFF) vehicle is available for demonstration, as available, at customer locations. Refer to "40. Volterra Press Release.pdf" in Additional Documents folder for more information. • Idle Reduction Technology (IRT) - Power NFPA 1901 required devices, user-defined mission critical on-scene loads, and HVAC climate control with the main chassis engine shut down for one hour of run time at 150 amps. Featuring built-in safety interlocks and Pierce Command Zone™ auto-start for battery power monitoring and engine re-start, departments can work more safely and efficiently without a second thought. Pierce Idle Reduction Technology is an option on new apparatus and as an aftermarket solution Refer to "40. Pierce-Manufacturing-Idle-Reduction-Technology-6-21.pdf" in Additional Documents folder for more information. • Ascendant® class of aerial products – Pierce patented design that offers 107' of vertical reach and 100' of horizontal reach; rated at a 750 lb (dry) / 500 lb (wet) tip load capacity with an additional 100 lb equipment allowance; flow up to 1,500 gpm and is capable of a store front blitz feature as standard. • Pulse - Customized in-house truck configurator that allows us to build to the customer's level of customization • TAK-4® Suspension – offers shorter stopping distance, no brake steer, improved ride quality, and proven technology used by the US military. • Command Zone™ III electronics – provides vehicle reliability, easy serviceability, 5-yr standard warranty • Pierce Ultimate Configuration (PUC™) - Eliminates the pumphouse so you can build your apparatus around your needs and not the pump. It minimizes vehicular space used for fire suppression and maximizes space for equipment while still providing big pump, foam and CAFS capabilities. • Husky™ foam systems - Hydraulic drive powered; Single point, direct injection, flow-based system using digital technology to indicate pump position and a flow meter; a built-in flush system, equipped with an auxiliary foam pick-up; a foam tank refill system is available to fill the foam tank(s) from the ground. • Snozzle® HRET – The Snozzle High Reach Extendible Turret is available is a 50 ft or 65 ft configuration. Our HRET is available on the Oshkosh Striker 4x4, 6x6 and 8x8. • Eco EFP™ Foam Measurement System – Measure foam percentages from every discharge on the vehicle without using foam on the Oshkosh Striker vehicles. Eco EFP measures both the solution and foam flows on the vehicle, and even archives the testing data with a time and date stamp for three years. Refer to "40. Eco EFP Brochure.pdf" in Additional Documents folder for more information. The Company's advanced design and engineering capabilities have contributed to the development of innovative and/or proprietary, severe-duty components that enhance vehicle performance, reduce manufacturing costs and strengthen customer relationships. The Company's advanced design and engineering capabilities have also allowed it to integrate many of these components across various segments and product lines, which enhances its ability to compete for new business and reduces its costs to manufacture its products compared to manufacturers who simply assemble purchased components. The Company has been a supplier of electric-powered products for more than 20 years and recently launched several new products that leverage zero emissions electrification for mobility across all segments.	*

41	Describe any “green” initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	Oshkosh Corporation, including Pierce and its sister segments, have Environmental Policies & Procedures including, but not limited to, an Environmental Protection Policy and an Energy Management Policy. Please refer to our response in question 18 on our recent award achievements as well. Refer to "9. 2020_Sustainability_Report.pdf" in the Financial Strength and Stability folder. Pierce Sustainability Efforts Sustainability is defined as “meeting the needs of the present without compromising the ability of future generations to meet their own needs.” Pierce is continuously improving how we make and distribute products. It’s about reducing the environmental impact of our products and production, improving workplace conditions, reducing costs, increasing value, and being active in our communities. Pierce has established waste and energy Key Performance Indicators (KPIs) and are developing and implementing plans to meet these goals month over month. KPIs are tracked, recorded, and shared monthly with the teams and our sister segments including Corporate. Oshkosh Corporation conducts internal environmental audits using a third-party environmental auditing tool. These audits are completed on all sites on a rotating basis. Each facility is audited at least once every three years. Pierce is an active member of the Dow Jones Sustainability Index (DJSI). The Dow Jones Sustainability Indices (DJSI) launched in 1999, are a family of indices evaluating the sustainability performance of the largest 2,500 companies listed on the Dow Jones Global Total Stock Market Index. Department of Energy’s Better Buildings, Better Plants Program Pierce along with the other Oshkosh segments demonstrate our commitment to improving energy performance by signing a voluntary pledge to reduce our energy intensity by 25% over a ten-year period with the U.S. Department of Energy’s Better Buildings, Better Plants Program. Leading manufacturers and industrial-scale energy using organizations implement cost-effective energy efficiency improvements that save energy and improve competitiveness. ISO 14001:2015 Environmental Management System To further solidify and standardize our environmental performance, Pierce Manufacturing and the Airport Products Group are in the process of formalizing an Environmental Management System for our Neenah manufacturing facility in accordance with ISO 14001:2015. Refer to "16. ISO 14001 Oshkosh Airport Products.pdf" in Financial Strength and Stability folder. Community – Goodwill Pierce works with the local Goodwill in many different facets. One is the reuse of our safety glasses. Our friends at Goodwill clean and repackage the glasses for reuse at our facilities. It is a cost savings, but most importantly it is helping our community and reducing waste to landfill.	*

42	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	Pierce Manufacturing has received certifications and awards towards our commitment to energy efficiency, conservation, and sustainability. All certifications and awards are driven through Key performance Indicators (KPIs), auditing and continuous performance throughout the Pierce family and Oshkosh Corporation. Certifications and awards are attached and linked for reference. CERTIFICATIONS: ISO 14001:2015 Certification Our Neenah, WI facility has received the ISO 14001:2015 certification, demonstrating our strong commitment to performance, implementation of a world-class environmental management system, and completion of a rigorous third-party evaluation. TRUE Zero Waste Certification The Total Resource Use and Efficiency (TRUE) Zero Waste certification program, administered by Green Business Certification Inc., provides rigorous third-party certification for zero waste goals. Facilities earn credits toward certification for activities in redesigning processes, reducing waste, reusing materials, and finding solutions other than landfill for waste. Our Neenah, WI facility has achieved TRUE certification at the Gold Level. AWARDS: The advances Pierce has made in sustainable practices thus far have been recognized by numerous agencies, both governmental and private. Additionally, we have obtained certifications and joined programs which serve as pledges to our continuous improvement in sustainability and environmental stewardship. The majority of the awards referenced below you will also find in the table 3 question 18. Energy Efficiency Excellence Award The Energy Efficiency Excellence Award recognizes business participants of Focus on Energy, Wisconsin's statewide energy efficiency and renewable resources program, who have demonstrated an outstanding commitment to reducing energy waste by implementing energy-saving upgrades in their facilities and operations. In 2020, Pierce was honored with this award for our efforts in reducing energy in our products and production. Wisconsin Recycling Excellence Award The Department of Natural Resources recognizes outstanding recycling and waste minimization efforts through its annual Recycling Excellence Award program. Pierce received the Overall Program Award in 2020 for our diverse and extensive waste reduction efforts. GREEN / SUSTAINABILITY: Dow Jones Sustainability Index Our sustainability efforts have been recognized through our inclusion on the Dow Jones Sustainability World Index (DJSI). The DJSI, is a family of best-in-class benchmarks which track the stock performance of the world's leading companies in terms of economic, environmental, and social criteria. 2021 marked the third consecutive year we were named to the Index, highlighting our commitment to sustainable business practices. World's Most Ethical Companies In 2021, we celebrated our sixth consecutive year being named one of the World's Most Ethical Companies by Ethisphere™. The assessment considers over 200 data points on culture, environmental and social practices, ethics and compliance activities, diversity and inclusion, and initiatives to support a strong value chain. Green Masters The Green Masters Program is an assessment and recognition program for Wisconsin businesses interested in improving and being recognized for their sustainability initiatives. 2021 marked the seventh consecutive year we were deemed a Green Master, indicating that we are in the top 20% of companies evaluated.	*
43	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	Oshkosh Corporation is a large publicly traded company and does not qualify for diversity certifications. However, as an organization Oshkosh is a member of National Minority Supplier Development Council (NMSDC). At Oshkosh Corporation we are about building, protecting and serving communities throughout the globe. We are committed to working with a diverse supply base that is representative of our customers and the communities we serve. Refer to "43. Oshkosh Supplier Diversity.pdf" in Additional Documents for more information.	*
44	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	Oshkosh Corporation is a trusted partner with over 100 years in business, focused on innovation with the customer in mind. With our work in electrification and intelligent products, we will continue to lead in the specialty truck manufacturing market. Our customers benefit from the size and scale of a large organization yet receive focused attention from our subsidiaries and their respective dealerships. Pierce is a leading manufacturer of customized fire apparatus with a dealer network second to none. The longevity, stability, and family tradition in the fire industry that is threaded throughout our dealer network sets us apart from others. Our partnership with the other segments within the Oshkosh Corporation and the backing of our parent company, Oshkosh Corporation leverages innovation and financial strength. Pierce understands the customer's needs and provides the detail, the commitment, and the follow through long after the apparatus is delivered. Oshkosh Airport Products completes the full products supported by this contract through its Oshkosh Striker ARFF. Airport Products is dedicated to leading the way in technology, product support and customer service in the ARFF market.	*

Table 9: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
45	Do your warranties cover all products, parts, and labor?	Yes, Our one-year bumper to bumper warranty covers all product, parts, and labor. Pierce, the “manufacturer”, warrants each newly manufactured fire apparatus to the original end user/purchaser of specified periods stated below from the date of delivery. The standard Cab & chassis warranty provides a one-year warranty that warrants against defects in product, workmanship, and/or design. This warranty shall apply provided the vehicle is properly maintained. Nothing contained in this warranty shall make the Manufacturer liable beyond the express limitations hereof, for loss, injury, or damage of any kind to any person or entity resulting defect or failure of the product (except as covered by Product liability insurance). Refer to "45. 01-WA0008 100208 Pierce 1 year.pdf" and "45. Oshkosh 1 Year Basic Vehicle Warranty.pdf" in the Warranty folder for our standard 1 year warranty. The Manufacturer’s warranty shall not apply to the following: • Wear items • Normal adjustments and maintenance services. • Failures resulting from the product being operated in a manner not in accordance with the operation manual or for a purpose not recommended by the Manufacturer. • Any product which shall have been repaired, modified, or altered in any way to have been adversely affected the unit’s stability or reliability. • Items subjected to misuse, negligence, accident, or improper maintenance. • Loss of time or use of the product, inconvenience, or other incidental expenses. The authorized Pierce dealer manages all warranty issues on behalf of the end customer. The Pierce dealer utilizes an online claim filing system known as One Warranty for claim processing. Pre-approval for a claim or request for credit (post- correction claim) can be filed via the One Warranty system in the event a warrantable failure is found. All Standard and Extended Warranty claims are subject to specific Standard and Extended Warranty guidelines. Specific warranties exist for particular makes, models, chassis, options, etc. for Pierce products. Specific warranty bulletins are provided at time of sale to the end customer. Refer to a sampling of our other warranty statements and manufacturers' statements on engines, transmissions, water pump, etc. in the Warranty folder. A summary of warranty is also available "45. Warranty Overview.pdf".	*
46	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	We do have some base and extended warranties that have mileage limitations set to them. Limitations varies based on the options of the vehicle. Examples of base warranties are our structural warranties which carry a 100,000-mile limit. Extended warranties carry various mileage limits based on the specific coverage. Paint warranties are prorated based on age of the unit.	*
47	Do your warranties cover the expense of technicians’ travel time and mileage to perform warranty repairs?	We pride ourselves with the coverage we have across the nation. There are no areas that we do not have coverage throughout US or Canada. Warranty is managed through our Pierce authorized dealers and dealer travel expenses are covered per our established internal One Warranty guidelines. Airport Products warranty is managed through authorized service representatives or our internal resources. Travel expenses are covered per our established internal one Warranty guidelines.	*
48	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	Pierce prides themselves in the coverage we have across the nation. Pierce requires a certified technician for each area Therefore we are to support all regions throughout US or Canada. Airport Products will provide service through internal or external service representatives.	*

49	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	Major components installed but not manufactured by Pierce or Airport Products are covered under original equipment manufacturer's warranties passed through to end user/customer. These include, but are not limited to, engine, transmission, water pump, ABS, and axles. Component Warranties In some cases, suppliers will offer warranties beyond the Pierce or Airport Products one-year warranty. Warranties provided by individual suppliers other than Pierce or Airport Products apply after the one-year vehicle warranty. The administration of individual supplier warranties, per the supplier, are to be addressed directly with the supplier themselves.	*
50	What are your proposed exchange and return programs and policies?	Pierce offers a return/exchange program for aftermarket parts only to the purchaser (Pierce dealer) and the dealer may extend this and other terms and conditions to the end customer. Aftermarket Parts Warranty Pierce and Airport Products warrants the purchaser that the parts sold by aftermarket be free from defects in product and workmanship for the period of six months from the delivery of the product. This Parts Warranty does not include freight, labor, travel, or markup. It is a part warranty only. Return of Defective Parts If parts used in the repair of an apparatus are required to be returned to Pierce, Dealers will receive notification. Dealers have up to 30 days to return the defective component or the warranty claim will be rejected.	*
51	Describe any service contract options for the items included in your proposal.	Authorized Pierce dealers may offer service contracts for preventative maintenance purposes. No service contracts are included in this proposal.	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
52	Describe your payment terms and accepted payment methods.	All sales of Pierce apparatus are sold through the authorized Pierce dealers. Payment terms are Cash on Delivery (COD) or prepayment unless otherwise agreed upon by the Pierce dealer. Oshkosh Airport Products' standard payment terms are net 30 days after delivery of vehicle. Accepted payment methods include check and wire transfer.	*
53	Describe any leasing or financing options available for use by educational or governmental entities.	The same logic behind our custom chassis applies to our financial services: Tailor the product to the department, not the other way around. The Company offers two- to fifteen-year municipal lease financing programs to its Fire & Emergency segment customers in the U.S. through the Pierce Financial Solutions program, provided by PNC Equipment Finance. Programs include competitive lease financing rates, creative and flexible finance arrangements and the ease of one-stop shopping for customers' equipment and financing. The Company executes the lease financing transactions through a co-branded arrangement with an independent third-party finance company. The Company typically provides credit support in connection with these financing and leasing arrangements With industry-leading tax-exempt rates, zero documentation fees, flexible payment plans and quick approvals that can bypass voter referendums, we make it easy to get behind the wheel of your new Pierce. Refer to "53. Pierce Financial Solutions Testimonials.pdf" and "53. Financial_Solutions.pdf" in the Additional Documents folder.	*
54	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	Pierce has a variation of standard warranty documents. Sample documents are included in the warranty document uploads. No standard transaction documents are being requested to use in connection with an awarded contract. No service contracts are included in this proposal. Authorized Pierce dealers may offer service contracts for preventative maintenance purposes.	*
55	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Pierce, Airport Products, and their independent dealers do not find that P-card procurement and payment feasible due to the size and build complexity of our products	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *	
56	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Combination of line item and percentage discount are provided in an attached PDF document identified as follows • Product Category • Identification ID# • Product Description • List Price • Percentage off per product • Line Item (Contract) Price The Percentage Discount items are also applicable to the unpublished options added to the published base specification with a standard discount off of List contingent on the product.	*
57	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	The pricing presented in this proposal represents a 5.5% discount from Pierce's list price for unpublished options. ARFF products (Airport Products) represents a 7% discount off of list price.	*
58	Describe any quantity or volume discounts or rebate programs that you offer.	Multi-Unit Purchase Discount: Additional discounts may be available for identical multi-unit purchases. Discount varies dependent upon the number of identical units, the configuration of the units, and will be handled on a case-by-case basis. Pre-Payment Discount Discount amount varies dependent upon apparatus price, delivery schedule, extent of pre-payment, and applicable rate. If elected, payment for the entire contract amount is due within thirty (30) days of contract execution. This deduction is in addition to all other discounts listed above. If this option is elected, final payment for any changes processed during manufacturing is due prior to the unit leaving the factory for delivery. Payment & pricing options: Chassis Progress Payment Discount: Discount of approximately 3% of the custom chassis price is offered if a chassis progress payment is made three (3) months prior to the RFP (ready for pick up from the factory) date. Example: Chassis progress payment in the amount of $220,714.00 could earn a discount of ($6,621.00). This discount is not available for Commercial chassis products. Aerial Device Progress Payment Discount: Discount of approximately 2% of the aerial device price is offered if an aerial device progress payment is made two (2) months prior to the RFP (ready for pick up from the factory) date. Example: Aerial device progress payment in the amount of $310,385.00 could earn a discount of ($6,207.00).	*
59	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	Sourced or open market items may be provided by the Pierce authorized dealer and would be quoted at time of request.	*

60	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	Pre-Delivery Expenses Dealer provided options can be added to the apparatus contract upon request and will be handled by the Pierce authorized dealer. Dealer provided options can vary depending upon the customer's request and can include but are not limited to the items listed below. Pricing will be provided to each customer upon request and varies by dealership and customer location. Factory inspection trips Weekly construction photo progress reports Orientation DVD specific to your apparatus Loose Equipment Engine and or transmission diagnostic software Loose equipment (open market items) such as but not limited to monitors, hose, intercom system, radio equipment, and rescue tools and equipment Pre-delivery service consisting of basic fluids and filters Custom fabrication for tool mounting and communication equipment Other items as requested by customer and deemed sourced or open market Delivery Sales and other taxes, license, handling, or title fees are also not included.	*
61	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	Transportation Expenses Prices quoted in RFP #113021 are FOB Manufacturer's facility. Transportation of the apparatus from the factory to the customer's facility can be added to the contract. In most cases the apparatus is delivered to the Pierce authorized dealer facility in the area for a Pre-Delivery inspection and the installation of any dealer provided options, if applicable. If there is not a Pierce authorized dealer facility near the customer location, the apparatus may be delivered directly to the facility. The cost for this transportation varies dependent upon the type of apparatus and the proximity of your facility to the location of the manufacturer's facility. Delivery is conducted in accordance with DOT regulations. Delivery charges can vary based on the logistic or shipping location and requirements for example, more if flatbed, barge, or container ship transport is required.	*
62	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	Shipping and Delivery programs for areas such as Alaska, Hawaii, or any offshore delivery requires coordination of different transit methods. Most often the apparatus is flatbed to the port destination, prepared for ocean transit, and travel to final destination (roll-on/roll off vessel is preferred). This unique shipping and delivery requirements are priced on a case-by-case basis as required. Shipping within the contiguous US states and Canada, shipping is calculated using numerous factors including but not limited to the type of apparatus which impacts permits as well as the distance to destination. Shipping expenses are not included in the base specifications cost.	*
63	Describe any unique distribution and/or delivery methods or options offered in your proposal.	For ARFF vehicles, due to size and weight restrictions all trucks will be transported via low-boy or flatbed. All required licenses and permits will be obtained prior to shipment.	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
64	b. the same as the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	Pierce will not favor one GPO over another. Therefore, pricing model is consistent across all.

Table 13: Audit and Administrative Fee

Line Item	Question	Response *	
65	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	Pierce takes pride in upholding the integrity of the programs and contracts we participate in. System software changes have been built to facilitate the information gathered throughout any of our programs to efficiently run reports on demand. These reports are run at a minimum monthly for internal audit purposes and quarterly for contract requirements. All base specifications and additional upgrade options have been created in our customized truck configurator tool, PULSE so that a Dealer can copy that base specification to confirm line-item pricing. Any changes made to the base specification is then controlled and captured in a Change Report that can be validated to honor the Percentage Discount on options added. The process (see additional documents) outline shows that Pierce has a closed-loop process that provide checks and balances for all involved. Our reporting capabilities for other contracts have been noted to be timely, thorough, and accurate. The volume of sales under our consortium programs requires Pierce to have a well-defined and efficient process Awarded contracts are audited on product cost, labor efficiencies, product margin and customer satisfaction. Refer to "Table 13. Question 65 Audit and Administrative Fee.pdf" in Pricing folder.	*
66	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	On a monthly basis Pierce will provide the percentage of Sourcewell orders to each authorized dealer in which they can compare to the prior year, this is provided in their monthly dashboards.	*
67	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	The Administrative Fee that Pierce will pay to Sourcewell for this proposed contract is aligned with the other contracts awarded to Pierce to create alignment and consistency. That fee will be a flat $2000.00 USD per customer purchase order or separate contract.	*

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *	
68	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	Pierce is offering an array of fire apparatus to meet the customer's needs across the US and Canada, including Hawaii and Alaska. Authorized Pierce dealers may offer service contracts for preventative maintenance purposes. Our product portfolio includes the industry standard categories: Custom and Commercial Pumper products Aerial products, Command, ARFF, Rescue products, Tanker products, and Specialty vehicles. CUSTOM AND COMMERCIAL PUMPER PRODUCTS Pumper products include commercial and custom chassis with varying body sizes, pump rates, water tank capacity, and pump module style. AERIAL PRODUCTS Aerial products include ladders, platforms, and tillers. These provide ladder lengths ranging from 61' – 110'. Selections will include various axle configurations, pumping rates, ladder styles, and material. EMERGENCY RESPONSE VEHICLES - Designed to support the demands of emergency response. Many models fall under this category such as large mobile command, mid-size command vehicle, small mobile command, and cru 22mobile command vehicle. RESCUE PRODUCTS Rescue products will include commercial and custom chassis offerings along with a walk-in or non-walk-in style. The configuration capabilities vary but includes capacity to integrate complex A /V, network and radio systems, air tool systems, breathing air systems with compressors, hydraulic rescue tool systems and winching capabilities, crew seating with storage, and custom fabricated shelves and trays. TANKER PRODUCT Tanker products offer a dual role of water transport and on-the-spot firefighting. Pierce offers Elliptical tankers, Tanker/Pumper models, Dry side and Wet side styles to choose from. Each tanker is custom designed to accommodate the fire department's water, foam and equipment storage needs. Pierce Tankers feature solid, lightweight, corrosion-free polypropylene tanks. The tanks are form-fitted specifically for Pierce vehicles and come with a lifetime warranty. SPECIALTY VEHICLES Specialty vehicles are those unique vehicles that have a purpose in which just one may be needed. Specialty vehicles may range from a mini pumper to a Wildland Type III vehicle or a Industrial Fire Fighting Vehicle. Maxi-Metal Partnership MAXIMETAL PRODUCTS- are distributed in the USA through PIERCE MANUFACTURING and the dealer network under the brand name "CONTENDER BY MAXIMETAL. The "Contender by MAXIMETAL" product line will be submitted by MAXI-METAL for consideration. Aircraft Rescue and Fire Fighting Vehicles (ARFF) – Airport Products offers the Oshkosh Striker 4x4, 6x6 and 8x8 along with the Stinger Q4 RIV (Rapid Intervention Vehicle). The ARFF vehicle will be equipped to meet NFPA 414 requirements with optional equipment and configurations to meet individual airport needs.	*
69	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	Please see question 68 subcategories as they are described. There is also literature included to provide the breath of products we sell, service and support. No service contracts are included in this proposal. Example below of subcategories Category - Emergency Response Vehicles , ARFF, Aerial, Pumper, Rescue, Tanker, Specialty Subcategory - Ladder, Pumpers, Walk In, Pumper Tanker, Wildland, Platforms, Rescue -Pumper, Non Walk-In Dry-side Tanker, Mini-Pumper, Command	*

Table 14B: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments	
70	Firefighting apparatus and service vehicles, of all types, such as: pumper/engine, initial attack, mobile water supply, aerial, quint, special service, mobile foam, command and communications, and purpose-built firefighting or rescue trailers	(•) Yes ( ) No	Frontline leads service on command and communications.	*
71	Wildland fire apparatus, of all types, such as: fire suppression equipment, mobile water supply, and crew carriers	(•) Yes ( ) No	N/A	*
72	Aircraft rescue and firefighting vehicles	(•) Yes ( ) No	Oshkosh Airport Products	*
73	Purpose-built chassis and vehicle components for firefighting apparatus and fire service vehicles	(•) Yes ( ) No	Pierce has a variety of custom built chassis that you will find within the documents	*
74	Equipment, options, accessories, and supplies complementary or incidental to the purchase of a turnkey or complete unit of the types described in Lines 70-72 above	(•) Yes ( ) No	Can be open source Offering is only in conjunction with a new order.....	
75	Services related to the offering of the solutions described in Lines 70-74, including installation, customization, remount, refurbishment, inspection, repair, maintenance, training, and support	(•) Yes ( ) No	We are required to provide training of our vehicle per compliance with NFPA. We do provide options within our proposals for this, and extended durations that have added cost associated.	*

Table 15: Industry Specific Questions

Line Item	Question	Response *	
76	Describe available service and repair options for the equipment and products offered in your proposal.	Pierce Master Technician Program The Pierce Master Technician Program is focused on recognizing service technicians throughout the dealer network for their knowledge and ability to provide expert service on Pierce apparatus. With this tiered level program, a technician can work their way up from having one certification to the level of Master Technician. Active participation in the ASE & EVT programs is encouraged. A Pierce Master Technician must successfully complete the defined core classes dedicated to exclusive Pierce products. A cumulative final exam is taken upon completion of the core classes to obtain a Pierce Master Technician status. Pierce has over a 150 Master Technicians certified.	*
77	Describe available remount or refurbishing services included within your proposal, the pricing method for such services, and any related order processes.	Remount and refurbished services are offered however each job is quoted independently from one another. This is required due to the complexity to refurb or remount. Refurb and remount pricing will not be part of this submission however pricing can vary depending on the repair or service needed.	
78	Describe your compliance with US standards for the equipment and products offered in your proposal, including applicable federal and state requirements.	Pierce fire apparatus are built with pride and dedication to a product that helps save lives. We have many internal quality check points throughout the build process and before the fire apparatus can be delivered it must go through third party testing by Underwriters Laboratories (UL). Pierce contracts with Underwriter's Laboratories to inspect Pierce apparatus for compliance to NFPA standards. Every NFPA 1901 apparatus manufactured in the Appleton facility is reviewed by a UL certified inspector after it is completed. Each apparatus is subjected to a visual inspection of construction and installed components such as chassis, driving and crew compartments, body compartments, steps, warning lights, reflective trim, warning, and instructional labels, etc. The inspection checklist, based on apparatus type, may have over 100 items to check. Once the UL inspection is complete a certification of NFPA compliance is provided to the customer upon delivery of their fire apparatus. Oshkosh ARFF products comply with latest edition of NFPA 414 and the Federal Aviation Administration Advisory Circular (AC) 150/5110-10E.	
79	Describe your compliance with Canadian standards for the equipment and products offered in your proposal, including applicable federal and provincial requirements.	CERTIFIED: UL/ULC NFPA 1901 UL Certification & UL Canada (ULC) Certification Pierce is the first fire apparatus manufacturer to be both 3rd party certified to NFPA 1901-2009 edition and ULC listed to Canada ULC-S515-04 standard by Underwriters Laboratories. Stages of testing include road, pump, weight, brake, performance and aerial application. All products must pass all tests before a truck is released into Canada. This commitment to quality applies to trucks sold in the U.S. as well. All chassis' comply with Canadian Motor Vehicle Safety Standards CMVSS. Oshkosh ARFF products comply with latest edition of NFPA 414 and the Federal Aviation Administration Advisory Circular (AC) 150/5110-10E. We will work with the customer on specific Canadian requirements to ensure compliance as needed.	

Exceptions to Terms, Conditions, or Specifications Form

Only those Proposer Exceptions to Terms, Conditions, or Specifications that have been accepted by Sourcewell have been incorporated into the contract text.

Documents

Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.

2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.

3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.

4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."

- Pricing - Table 12. Pricing.zip - Tuesday November 30, 2021 15:16:30
- Financial Strength and Stability - Table 2. Financial Strength and Stability.zip - Tuesday November 30, 2021 14:31:23
- Marketing Plan/Samples - Table 7. Marketing Plan.Samples.zip - Tuesday November 30, 2021 13:40:24
- WMBE/MBE/SBE or Related Certificates (optional)
- Warranty Information - Table 9. Warranty Information.zip - Tuesday November 30, 2021 13:41:02
- Standard Transaction Document Samples - SALES_TEMPLATE_Sales Proposal Order Form .pdf - Tuesday November 30, 2021 13:43:12
- Upload Additional Document - Additional Documents.zip - Tuesday November 30, 2021 16:02:10

Addenda, Terms and Conditions

PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.

2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.

3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.

4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.

5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.

6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.

7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.

8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.

9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.

10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.

11. Proposer its employees, agents, and subcontractors are not:
    1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: https://www.treasury.gov/ofac/downloads/sdnlist.pdf;

    2. Included on the government-wide exclusions lists in the United States System for Award Management found at: https://sam.gov/SAM/; or

    3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated

by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☑ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Michelle Swokowski, Sales Operations Manager, Oshkosh Corporation/ Pierce Manufacturing/ Oshkosh Airport Products

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

○ **Yes** ◉ **No**

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "**I have reviewed this addendum"** below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_4_Fire_Apparatus_RFP_113021 Sat November 20 2021 12:53 PM	☑	5
Addendum_3_Fire_Apparatus_RFP_113021 Thu November 11 2021 02:09 PM	☑	1
Addendum_2_Fire_Apparatus_RFP_113021 Fri October 29 2021 09:20 AM	☑	1
Addendum_1_Fire_Apparatus_RFP_113021 Fri October 29 2021 09:20 AM	☑	1

9. A.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Robert Wallace, Open Space Specialist
Co-Submitter:	Rebecca Sayers
Date:	01/12/2023
Meeting Date:	01/17/2023

TITLE:

Consideration and Approval of Grant Agreement: Grant Agreement between the City of Flagstaff and the Arizona Department of Forestry and Fire Management for Invasive Plant Grant (State) - Observatory Mesa Invasive Plant Prevention and Control.

STAFF RECOMMENDED ACTION:

Approve the Grant Agreement #IPG 22S-702 with the Arizona Department of Forestry and Fire Management, for Observatory Mesa Invasive Plant Prevention and Control Grant in the amount of $97,000, with a city match of $11,260 to support the maintenance of the Observatory Mesa Natural Area open space.

Executive Summary:

This project will support forest and woodland health through the prioritization of invasive plant prevention and control within the Observatory Mesa, Flagstaff, AZ focus area. This diverse location consists primarily of ponderosa pine overstory with small pockets of Gambel oak. Understory shrubs and grasses are diverse and support forest health. The area is an important component of the Flagstaff-area ecosystem. Several drainages and seeps join the Rio de Flag watershed, and the area is an important wildlife corridor that provides habitat for large mammals traveling between the San Francisco Peaks and Mogollon Rim.

This project will target invasive plant prevention and control, and revegetation to maintain the forest health of the area. The project will focus on two adjoining locations: Observatory Mesa (2,200 acres) and Thorpe Park (172.9 acres). The project will treat 74 infested acres for two years. Following the two-year treatments, 31 acres will be seeded with native species, including Blue Grama, Bottlebrush Squirreltail, Arizona Fescue, Slender Wheatgrass, Muttongrass, and Spike Muhly. This part of the project will include soil preparation, seed mix formulation, seeding, and erosion control.

This project will also accomplish educational objectives. It will initiate partner meetings (Coconino National Forest, Lowell Observatory, COF Parks) to discuss future management strategies for the area with the intent of expanding invasive plant awareness and treatment areas. The project will expand the recruitment of volunteers for monitoring & weeding to complete the project and to help maintain the area moving forward. Project leads will partner to host an invasive weed workshop once a year for two years. Through the invasive weed workshops, events, website, print, and social media awareness of invasive weed issues and community solutions will be expanded.

Financial Impact:

Grant funds will provide $97,000, with a participant match of $11,260, for a total project cost of $108,260. The City of Flagstaff Open Space program will provide a $2,500 in-kind cash match, and a volunteer time in-kind match of $8,760. The project will be completed by 03/31/2025. While this grant was not budgeted for in FY2022-23, Open Space has other grants in its budget appropriation to cover the FY2022-23 expenses and will budget the remaining balance of the grant in the FY2023-24 budget.

Policy Impact:

Overview:

- Supports all 7 PBB Priorities
- Upholds our Quadrant 2 level PBB programming
- Supports objectives of the Carbon Neutrality Plan

Open Space Program Goals:

- Supports customer service objectives
- Maintains open space for the community
- Supports educational and recreational activities
- Facilitates continued partnerships
- Secures funding through grant opportunity

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

Top Supported Priority Based Budget Key Community Priorities and Objectives

- Environmental Stewardship:
  - Promote, protect and enhance a healthy, sustainable environment and its natural resources.
  - Engage community members through education and volunteer opportunities
  - Strengthen Flagstaff's resilience to climate change impacts on built, natural, economic, health, and social systems
- Livable Community:
  - Provide amenities and activities that support a healthy lifestyle

Carbon Neutrality Plan

The top aligned CNP carbon neutrality plan number is Priority four: Commitments - Healthy Forests and Open Spaces; HF-1 Protect existing forests, resources, and meaningful open spaces.

Regional Plan Support

Vision: In 2030, the Flagstaff region maintains a healthy system of open lands supporting the natural environment and our quality of life through stewardship by regional stakeholders. Top supported regional plan goals and policies include:

- Goal E&C.6. Protect, restore and improve ecosystem health and maintain native plant and animal community diversity across all land ownerships in the Flagstaff region.
  - Policy E&C.6.3. Promote protection, conservation, and ecological restoration of the region's diverse ecosystem types and associated animals.
  - Policy E&C.6.7. Use best practices to control the spread of exotic and invasive plants, weeds, and animals, and eradicate where possible.
- Goal E&C.10. Protect indigenous wildlife populations, localized and larger-scale wildlife habitats, ecosystem processes, and wildlife movement areas throughout the planning area.
  - Policy E&C.10.2. Protect, conserve, and when possible enhance and restore wildlife habitat on public land.

Has There Been Previous Council Decision on This:

Consideration and Adoption of *Resolution* No. 2020-46: A *resolution* adopting the *Management Plan for Legally-Designated Open Space* Properties.

Options and Alternatives:

Option A - Approve the grant agreement that allows staff to implement invasive plant prevention and management and native plant restoration. Option B – Do not approve the grant agreement.

Background/History:

The City of Flagstaff's Open Space Program was founded in 1998 as an outgrowth of the Flagstaff Area Open Space and Greenways Plan. The Program exists to protect and restore Flagstaff's natural, cultural, and scenic resources to enhance recreational and educational opportunities for residents and visitors. Open Space properties managed by the program serve as a land resource, recreational destination, wildlife habitat, and transportation corridors while protecting other natural resources.

The City of Flagstaff acquired Observatory Mesa Natural Area in December 2013 with funding from the 2004 voter-approved Open Space bond and a 2013 Arizona State Parks Growing Smarter grant. Observatory Mesa serves as an important wildlife corridor for large mammals traveling between the San Francisco Peaks and the Mogollon Rim. Forest thinning efforts may have introduced invasive species that are now affecting native vegetation and ecosystem health. To work towards returning the area to a healthier condition this project is needed, and funding is necessary to manage the property. Given that the City purchased this property using funding from the Arizona State Parks Growing Smarter grant, the City is required to manage it as a non-motorized property to protect the conservation values associated with the property.

Key Considerations:

The Management Plan for open space provides a framework for managing the natural, ecological, historical, and recreational resources to minimize conflict and degradation, and serves as a resource to guide decision-making processes for designated open space properties.

The Plan identifies five overarching management goals for designated open space properties, which are listed below. This resolution and grant agreement directly support all the goals.

1. To maintain, restore, and enhance the natural ecosystem processes of these properties, including watershed health (including intermittent streams), forest structure, native plant communities, and rare habitat types.
2. To protect cultural resources present within these properties.
3. To maintain and protect diverse and healthy wildlife populations.
4. To provide opportunities for public use of these properties through passive recreational use, resource interpretation, education, scientific research, and other compatible activities in a manner that is consistent with the preservation of the conservation values of the site and the management goals.
5. To maintain and develop partnerships that facilitate resource management, stewardship, and conservation.

Expanded Financial Considerations:

On-going funding for maintenance and conservation are needed to keep up the Natural Area. This work is funded by two primary sources. Some projects are included in the Open Space base budget of $47,000. Additionally, volunteer groups donate their time to complete projects at no cost to the city. Though these means support maintenance needs, they do not cover all demands. This funding will allow the Open Space program to make progress toward addressing backlogged maintenance needs for invasive weed management.

Community Benefits and Considerations:

This funding will permit the continuation of our current level of service.
The Open Space program works hard to provide recreational opportunities and maintain open space but does not have the capacity to meet all needs.

- We offer the community great places to walk, bike, run, and participate in other outdoor activities.
- We are receiving the highest ever visitation. Trail counters installed at various locations at our three main regional preserves indicate that for FY 2021-22, we received over 99,000 visitors.
- We provided science programs (e.g., forest ecology, plants, astronomy, and wildlife) for students and visitors at multiple open space properties and in classrooms. Programming reached approximately 775 students and 382 adults for FY 2021-22.

The Open Space Stewards program has 30 core year-round volunteers. During FY 2021-22 we also coordinated an additional 147 volunteers who provided trash clean-up, graffiti mitigation, input on projects, and trail work for our open space, contributing 1,061 hours of volunteer time.

Community Involvement:

This application for the Invasive Plan Grant was supported by:

- The Arboretum at Flagstaff
- Arizona Native Plant Society
- Lowell Observatory
- USFS Coconino National Forest
- Picture Canyon Working Group
- Open Spaces Commission
- Willow Bend Environmental Center

Expanded Options and Alternatives:

n/a

Attachments: Grant Agreement
Project Location Map
Presentation

Arizona Department of Forestry and Fire Management
Grant Agreement No. IPG 22S-702
Invasive Plant Grant Program

This grant agreement ("Agreement") is entered into by and between the ("Grantee") Arizona Department of Forestry and Fire Management ("State Forestry" or "State") and ("Sub-grantee"), **City of Flagstaff (UEI #XMMUMPKTLVQ3),** pursuant to authorities granted under Arizona Revised Statute 37-1302.

I. PURPOSE OF AGREEMENT

State Forestry is the recipient of funds provided by the State of Arizona for the purpose of hazardous vegetation mitigation projects within the State of Arizona.

The objective of this funding is to assist communities, which have been identified as having wildfire hazard potential, with fire prevention, critical infrastructure protection, and forest and watershed restoration. This agreement is a sub-award of these State funds.

II. SCOPE OF WORK

Compensation is contingent upon Sub-grantee fulfilling the Scope of Work and project commitments as identified in the Grant Application (Attachment A) and as amended by the approved Detailed Project Plan (Attachment B).

III. PROGRAMMATIC CHANGES

Sub-grantee shall obtain prior approval for any changes to the scope of objectives of the approved project, key personnel, or transfer of substantive programmatic work to another party.

IV. TERM OF AGREEMENT

This Agreement shall be effective immediately upon signature by all parties and will terminate on **December 31, 2024** unless otherwise terminated or modified pursuant to the terms herein.

V. COMPENSATION AND MATCHING INVESTMENT

Grant funds may be utilized for up to **90%** of the total cost of this program.
A contribution by the Sub-grantee for an additional **Cost Share Match of 10%** of the total cost of the program is required (including contributions of third parties). Support documentation outlining project costs including cost share match is required.

Compensation under this agreement shall be on a reimbursement basis, shall not exceed the total eligible costs of the project, and total compensation (State Forestry grant portion) **shall not exceed $97,000.00**

Only costs for those project activities approved in (1) the initial award, or (2) approved modifications thereto, are allowable. All payments are contingent upon the availability of State funds. Reimbursement payments will be made to the Sub-grantee normally within ninety days after receipt of the reimbursement request and required documentation.

VI. ELIGIBLE COSTS

Eligible costs must be incurred during the Term of the Agreement, conform with the General Provisions of this Grant Agreement (Attachment C) and all other provisions identified herein, and be submitted to State Forestry along with detailed supporting documentation. This is a reimbursable grant program for actual costs incurred on project work. Support documentation must show dates and amounts of all expenses (See Attachment D).

Reimbursement for purchase of Capital Equipment (equipment costing more than $5,000 per unit price) is **NOT allowed** under this agreement. Capital Equipment may only be used as match with prior approval from State Forestry.

VII. ADMINISTRATIVE AND ACCOUNTING REQUIREMENTS

It shall be the responsibility of the Sub-grantee to establish and document both accounting and administrative control procedures for their organization. Such procedures shall be followed to ensure grant funds are being tracked and spent in accordance with all applicable laws and within the terms of the grant agreement/award. Sub-grantee accepts full liability for resources administered through the grant.

VIII. AUDIT REQUIREMENTS

ARS 35-181.03. Sub-grantee must also comply with applicable ARS 35-181.03 provisions for financial and compliance audits.

In the event that an audit determines that unallowable costs have been charged to the grant and funds have been disbursed to the Sub-grantee, then the Sub-grantee accepts full liability and must pay back all costs incurred and deemed unallowable. The Sub-grantee shall, upon request of the State, participate with State personnel in performing interim and/or final inspections.

IX. PROCUREMENT REQUIREMENTS

The Sub-Grantee shall comply with all applicable provisions of State laws and regulations in regard to procurement of goods and services, and to contracts for repair or restoration of public facilities.

The Sub-grantee shall not enter into cost-plus-percentage-of-cost contracts for completion of disaster restoration or repair work. The Sub-grantee will not enter into contracts for which payment is contingent upon receipt of State funds. Sub-grantees are responsible for developing, documenting, and adhering to their own established procurement activities that include both administrative and accounting controls.

X. REPORTING REQUIREMENTS

Sub-grantee shall monitor the performance of the grant activities to ensure that performance goals are being achieved. Sub-grantee shall provide detailed grant/project accomplishments in quarterly reports to State Forestry no later than 30 days after the end of each calendar quarter, or as requested by State Forestry. Quarterly performance reports shall follow the format identified in Attachment E or as may be revised by State Forestry. Reports (quarterly and final reporting) will contain information on the following: (1) A comparison of actual accomplishments to the goals established for the period and for the entire program or project, (2) Output of the project that can be readily expressed in numbers, such as acres of forest treatment, number of citizens served, or other similar

activities. A computation of cost per unit of output may be required where applicable, (3) Reason(s) for delay if established goals were not met. (4) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs. (5) Before and after pictures (required for final report and optional for quarterly reporting). (6) Mapping in the form of a pdf/paper map and matching shapefiles (if required for final reporting; see Section XI below).

Financial/Reimbursement requests may be submitted as often as monthly. Reimbursement requests shall follow the format as identified in Attachment E or as may be revised by State Forestry. Reimbursement requests submitted with documentation (grant share or match) that is older than 6 months will not be accepted without prior approval.

Cumulative match share must accrue proportionally with reimbursable costs. Each reimbursement request must have the minimum required match share included and documented (minimum cumulative match must reflect equal proportion to the cumulative total amount). It is allowed to document match over the required match share in each reimbursement request and to use this towards the total grant match requirement.

Financial/Reimbursement requests may be held for processing until quarterly accomplishment/performance reports are current.

A final accomplishment report and all financial/reimbursement requests and required documentation shall be provided at completion of the grant project, but no later than 30 days after the end of the grant term. Final financial reimbursement may be held until all accomplishment reporting is complete and submitted to State Forestry.

All accomplishment and financial reports shall be submitted to the State Forestry contact as identified below in Section XIII (PRINCIPLE CONTACTS).

Sub-grantee shall immediately notify State Forestry of developments that have a significant impact on the activities supported under this grant. Also, notification shall be given in case of problems, delays or adverse conditions that materially impair the ability to meet the objectives of the agreement. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

Any change to the original grant application scope of work or approved detailed project plan must have prior written State approval. Incurring costs without prior written approval may result in loss of funds reimbursed.

XI. MAPPING (CHECK ONE) __X__ Required _____ Not Required

Project Center Coordinates (in Decimal Degrees):

Latitude (y-coordinates) 33.53157 Longitude (x-coordinates) -111.66895

Center coordinates are required for all projects, regardless of mapping requirements. If the project requires a mapping component, both a 1-page PDF map and matching GIS (Geographic Information System) polygon data are required prior to project start date and at the time of final accomplishment report submission. Data files (Shapefiles, File Geodatabase, or KML polygons) created using GIS applications, must be submitted showing treatment/project area(s) and their name(s) or parcel number(s). GIS acres must match projected and actual treatment acres.

XII. COMPLIANCE AND PERMITS

Grantee agrees that it is responsible for acquiring all permits required by applicable federal, state, and local jurisdictions, prior to treatment. Grantee also agrees that is responsible for adherence to all applicable statutes, regulations, ordinances, and codes promulgated by applicable federal, state, and local jurisdictions, including but not limited to environmental regulations concerning the presence, existence, discharge, emission, or removal of any substances such as by-products, wastes, pollutants, and hazardous and toxic materials.

XIII. PRINCIPAL CONTACTS

NOTE: Principal contact should be one contact person responsible for overseeing all elements of the grant project including but not limited to accounting, administrative and field portions of the project.

Each party certifies that the individuals listed below are authorized to act in their respective areas for matters related to this instrument.

Principal Sub-grantee Contact (Field Operations):

Robert Wallace
Open Space Supervisor
3200 W. Route 66, Building 6
Flagstaff, AZ 86001
928-213-2154
robert.wallace@flagstaffaz.gov

Secondary Sub-grantee Contact (Grant and Financial Administration):

Stacey Brechler-Knaggs
Grants, Contracts and Emergency Management Director
211 W. Aspen Ave.
Flagstaff, AZ 86001
928-213-2227
sknaggs@flagstaffaz.gov

Principal Arizona State Forestry Contact:

Willie Sommers
Invasive Plant Program Coordinator
1110 W. Washington, Suite 500
Phoenix, AZ 85007
602-319-6818
wsommers@dffm.az.gov

XIV. NOTICES

Any and all reports, notices, requests or demands given or made upon the parties hereto, pursuant to or in connection with this Agreement, unless otherwise noted, shall be delivered in person, sent by electronic mail, or sent by United States Mail, postage prepaid, to the parties at their respective addresses as set forth immediately below:

STATE FORESTRY	**SUB-GRANTEE**
John Richardson Assistant State Forester for Forestry Programs Arizona Department of Forestry and Fire Management 1110 W. Washington, Suite 500 Phoenix, AZ 85007 602-771-1420 jrichardson@dffm.az.gov	Greg Clifton City Manager 211 W. Aspen Ave. Flagstaff, AZ 86001 928-213-2053 greg.clifton@flagstaffaz.gov

XV. AWARD CLOSEOUT

Sub-grantee shall close out the grant within 30 days after expiration or notice of termination. If this award is closed out without audit, Arizona State Forestry reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

XVI. AUTHORITY

Sub-grantee shall have the legal authority to enter into this agreement, and shall have the institutional, managerial, and financial capability to ensure proper planning, management, accounting and completion of the project, which includes funds sufficient to pay the nonfederal share of project costs, when applicable.

XVII. ATTACHMENTS

The following Attachments are part of this Agreement:

- **A**. Project Application
- **B**. Detailed Project Plan
- **C**. General Provisions
- **D**. Documentation of Expenses
- **E**. Quarterly Report and Reimbursement Forms

XVIII. IN WITNESS WHEREOF, the parties agree to execute this agreement as of the last date written below.

STATE FORESTRY	**ACCEPTED BY SUB-GRANTEE**
Arizona Department of Forestry and Fire Management 1110 W. Washington, Suite 500 Phoenix, AZ 85007	City of Flagstaff 211 W. Aspen Ave. Flagstaff, AZ 86001

_____
Signature

_____
Print or Type Name

Arizona State Forester

Date: _____

_____
Signature

_____
Print or Type Name

_____
Title

Date: _____

_____
Signature

_____
Print or Type Name

Assistant State Forester for Forestry Programs

Date: _____

ATTACHMENT A

Project Application
(Cover Sheet)

Observatory Mesa Invasive Plant Prevention and Control

Profile : sknaggs@flagstaffaz.gov

1. Application/Project Title (100 character max) : Observatory Mesa Invasive Plant Prevention and Control

2. Organization Name (100 character max) : City of Flagstaff (COF), Open Space program

3. Project Lead (100 characters max) : Robert Wallace

4. Program/Project Congressional District (check all that apply) :

1

5. Program/Project Legislative District (check all that apply) :

6

6. Target Species (100 character max) : Scotch thistle, bull thistle, musk thistle, diffuse knapweed, field bindweed.

7. Acres to be Treated (Number) : 458

8. Treatment polygon (Yes/No) : Yes

9. Match Contribution (Number) : 11

10. Grant Theme (0 -10 points, 1,000 character max) : This project will support the forests and woodlands grant theme through the prioritization of invasive plant prevention and control within a northern Arizona ponderosa pine forest. The Observatory Mesa focus area is a diverse location that consists primarily of ponderosa pine overstory with small pockets of Gambel oak. Understory shrubs and grasses are diverse and support forest health. Observatory Mesa is an important component of the Flagstaff-area ecosystem. Several drainages and seeps join the Rio de Flag watershed. It is located within an important wildlife corridor that provides habitat for large mammals traveling between the San Francisco Peaks and Mogollon Rim. The City of Flagstaff initiated an invasive weed survey during the summer of 2021, that mapped Class A and B species from the Arizona State Noxious Weed List for 2,200 acres. This survey will guide work for invasive plant prevention and control, and revegetation to maintain ponderosa pine forest health.

11. Project Overview and Area Description (0-15 points, 1,500 character max) : The Observatory Mesa project location is a 2,373-acre area. The property is bound on the northern, eastern, and southern boundaries by private development (primarily single-family homes), with Forest Service property immediately adjacent on the western property boundary, and a centrally owned section. The project consists of 2 sites in the City of Flagstaff (COF). ~92% (2,200 acres) COF natural open space & 8% (172.9 acres) Thorpe Park. NEED. Seedbanks of bull and musk thistle are extensive. Scotch thistle and diffuse knapweed are increasing. The three main invasive plant species for focus are musk, bull, and Scotch thistle. These thistles are considered invasive and typically grow in disturbed areas, create dense monocultures, and are prolific seed producers. These species severely inhibit the growth of native species. Given their biannual growth pattern, it is necessary to treat the plants for at least two years in a row, and it’s beneficial to reseed. The City of Flagstaff has been utilizing volunteers to manually control localized weed populations. An invasive weed survey was completed in 2021 that mapped Class A and B species from the Arizona State Noxious Weed List. Invasive weed populations were determined to be more extensive than previously known. The spreading populations threaten the continued health and biodiversity of the forest. Additional efforts are required to keep invasives in check.

12. Project Goals and Objectives (0-10 points,1,000 character max) : Goals: • Manage vegetation by maintaining & encouraging desirable native species, restoration, & controlling invasive species • Maintain & develop partnerships for resource management, stewardship, and conservation Objectives: • Maintain treatment to gain

ground against seedbanks & expand work to previously untreated areas • Chemically treat ~453 acres/yr. Mechanically treat ~5 acres/yr. at Thorpe Park. Total 458 acres • Seed total 31.5 acres • Meet with partners (Coconino National Forest, Lowell Observatory, COF Parks) to discuss future management strategies • Expand awareness through events, Invasive Weed Workshops, website, print & social media • Expand recruitment of volunteers for monitoring & weeding • Expand and deepen partnerships with stakeholders Costs: • Chemical treatments - max of $150/acre; Seeding - $2,000 - $3,000/acre; Manual treatments $500/acre (or $29.95/hr. federal volunteer rate)

13. Scope of Work (0-15 points, 2,000 character max) : Work Performed & Who will Implement Grant This collaborative proposal fosters a unified weed control effort with the City of Flagstaff (COF), Coconino National Forest (CNF), & Lowell Observatory (LO) • Robert Wallace, COF Open Space (OS), will manage the grant • COF Parks staff will continue weed mitigation in Thorpe Park • OS will carry out volunteer events • OS will work with partners to develop a strategy for managing adjacent land • OS will partner with the Arboretum to host educational events • OS will expand public awareness through events, 2 invasive weed workshops, website, print & social media • OS will recruit volunteers for monitoring & weeding • Arizona Native Plant Society, the Friends of the Rio de Flag, & the Open Space Stewards program will continue to assist in recruiting volunteers Control Methods Herbicide Treatments • Grant funds will be used for herbicide treatments and seeding. Contract with a licensed herbicide applicator/vegetation specialist • Cash match will treat weeds in the project area, treatment of ~50 acres. $15,000 (cash match) Mechanical Treatments • Volunteers (in-kind match), coordinated by the Open Space program, will monitor and pull invasive plants in the project area (50 hrs./year at $29.95/hr. federal rate = $1,497.50 x 2 = $2,995). • Parks staff will provide weed mitigation for Thorpe Park ~40 hr./year at $1,500 x 2 years = $3,000 (in-kind staff time). Seeding • COF will use grant funds to seed native grasses in weedy areas that lack vegetation in Observatory Mesa and Thorpe Park Inventory, Mapping and Monitoring • A property survey for Observatory Mesa was completed in 2021. OS will collaborate with land managers to determine partner strategies for LO & CNF, a total of 1,255 acres Environmental Clearances • State Historic Preservation Office clearance required for groundbreaking activities (seeding) Education and Outreach • OS will partner to host an invasive weed workshop once a year for 2 years.

14. Project Timeline (0-10 points, 1,000 character max) : • 2-year project, Mar 2023 - Dec 2024 • Treatment timing weather dependent, typical dates for Flagstaff provided • Plan for seeding, herbicide & mechanical treatments in March of 2023 & 2024 • Meet with stakeholders to determine partner strategies for neighboring lands, Spring 2023 • Pre/post treatment photos spring/fall of each season • Invasive Weed Workshop July 2023 & 2024 • Herbicide treatments will occur May-Aug in 2023 & completed by June in 2024 to accommodate seeding • Hand pulling will occur May-Aug for 2023, & 2024 • Soil prep for seeding will occur Apr-Nov (all in 2024) • Seeding will occur June-Nov (all in 2024) • Reports completed quarterly • Milestones/accomplishments o 2023: treat 458 acres & collaborate with partners to determine management strategies for neighboring property o 2024: treat 458 acres, prepare and seed 31.5 acres, create management strategies for project sustainability, & complete final report

15. Collaborative Elements & Partners (0-10 points, 1,000 character max) : • COF Open Space & Parks will collaborate to implement the grant. Unsurveyed areas will be inventoried & a strategy developed for treating the additional land to prevent spread between boundaries. • Robert Wallace, COF Open Space Specialist, will manage the grant. • COF Parks staff will continue weed mitigation throughout Thorpe Park proper, including weed surveying/monitoring & manual weed control. • Volunteer weed pull events will be hosted to address unmanaged locations in Thorpe. • Open Space (OS) will collaborate with land managers from Lowell Observatory & Coconino National Forest to develop a partnership & strategy for weed mitigation on neighboring property, total 1,255 acres. • OS will partner with The Arboretum at Flagstaff to host two Invasive Weed Workshops. • The nonprofit Arizona Native Plant Society, the Friends of the Rio de Flag, & the Open Space Stewards program will continue to assist COF in recruiting volunteers for manual treatments.

16. Evaluation Plan (0-10 points, 1,000 character max) : Short-term success will be determined by the completion of the project goals and objectives including expansion of treatments to previously untreated areas, expansion of the area surveyed for invasive weeds in partnership with stakeholders, the number of acres treated, number of acres seeded, number of volunteer hours, & in-kind volunteer/cash match. Photo points will be established before treatment and repeated at the conclusion of the project to document the anticipated decrease in the density of the targeted invasive species. Yearly visual inspection and evaluation of treatments, including seeding, will occur at all project areas and will be recorded in the City's GIS database to direct further management. During future management efforts, the project area will be observed and locations of weeds and approximate numbers will be recorded. Standards to achieve will include treatment of 90% of target species, 90% treatment success rate, and organic herbicide for Thorpe Park.

17. Sustainability Plan (0-10 points, 1,000 character max) : • Monitoring and weed treatment will be needed at Observatory Mesa (OM) and Thorpe Park sites for many years. Grant partners + growing public interest in volunteer weeding will gradually diminish weed seedbanks in project areas. • Open Space will manage OM in perpetuity, focusing on the highest priorities that can be achieved within annual funding. • Parks will continue to monitor and treat weeds within Thorpe Park and will complete all that can be achieved within annual funding. • Open Space will post community reminders for volunteer weed events on their social media. • Open Space will continue to work with all stakeholders to build a long-lasting coalition with annual reminders for collaboration on weed maintenance for at least 4 years following grant completion.

Upload Budget Form (0- 5 points) : 2022_IPG Budget_Observatory Mesa Invasive Control.pdf

Upload Project Overview Map (0- 5 points) : Overview Map_Observatory Mesa Invasive Plant Prevention and Control.pdf

Letters of Support (optional) : Letters of Support_ Observatory Mesa Invasive Plant Control Project.pdf

Upload Project Shape Files (optional) :

Average Score :

# of Reviews : 0

# of Denials : 0

Created by : zengine+34759@srm.ecivis.com

Record ID # : 40085031

Last change : 2022-07-28T23:04:33+0000

Project: Observatory Mesa Invasive Plant Control

Total Project Budget (by expense type)				
Budget Detail	**Grant Share** ($ Amount Requested)	**Match**		**TOTAL**
		Dollars	**In-Kind**	
Administrative Labor:	**$0**	**$0**	**$2,566**	**$2,566**
Project Labor:	**$0**	**$0**	**$5,995**	**$5,995**
Fringe Benefits:	**$0**	**$0**	**$0**	**$ 0**
Travel:	**$0**	**$0**	**$0**	**$ 0**
Equipment:	**$0**	**$0**	**$0**	**$ 0**
Supplies:	**$0**	**$0**	**$300**	**$ 300**
Contractual:	**$199,705**	**$15,000**	**$0**	**$214,705**
Other:	**$0**	**$0**	**$0**	**$ 0**
TOTAL:	**$199,705**	**$15,000**	**$8,861**	**$223,566**

Budget Narrative

Provide a brief explanation of each budget item. Include an explanation for items that will be reimbursed by grant funds and those that will be provided as project match.

Grant Share:

• Contractual:

Chemical treatments for the project area. Cost max of $150/acre; chemical treatment will include 403.18 acres x $150 = $60,477 x 2 years = $120,954. Invasive plant infestations to be treated include: Cirsium vulgare (bull thistle) = 403.18 acres.

Seeding for project area will include soil preparation, seed mix, seeding, erosion blankets/mulch. Cost $2,000-3,000/acre; seeding will include ~31.5 acres x $2,500/acre = $78,750

Seeding areas include:

- Onopordum acanthium (Scotch thistle) = 1.976 acres
- Cirsium vulgare (bull thistle) = 20 acres
- Carduus nutans (musk thistle) = 2.45 acres
- Centaurea diffusa (diffuse knapweed) = 2 acres
- Convolvulus arvensis (field bindweed) .042 acre
- Miscellaneous species in project area = 5 acres

Total grant share contractual = $199,705

Budget Narrative - Continued

Use this additional space to provide a brief explanation of each budget item. Include an explanation for items that will be reimbursed by grant funds and those that will be provided as project match.

Match (DOLLARS):

• Contractual:
Treatments for the project area. Cost max of $150/acre; treatment (chemical & manual) will include 50 acres x $150 = $7,500 x 2 years = $15,000
Invasive plant infestations to be treated include:

- Onopordum acanthium (Scotch thistle) = 1.976 acres
- Cirsium vulgare (bull thistle) = 40 acres
- Carduus nutans (musk thistle) = 2.45 acres
- Convolvulus arvensis (field bindweed) = .042 acre
- Miscellaneous = 5.532 acres

Total acres: 50

Total cash dollar match for contractual = $15,000 (cash match)

Match (IN-KIND):

• Administrative Labor:
Staff time for grant, partner, & volunteer coordination; full burden rate: $42.76/hr. x 30 hr. = $1,282.80 x 2 years = Total $2,565.60 (in-kind staff time).

• Project Labor:
Mechanical treatment – Parks staff will provide weed mitigation for Thorpe Park ~40 hr./year at $1,500 x 2 years = $3,000 (in-kind staff time). Total = $3,000

Mechanical treatment – Volunteers will remove Centaurea diffusa (diffuse knapweed) from 5 acres at Thorpe Park, and miscellaneous locations. $29.95/hr. federal volunteer rate x 50 hr/yr x 2 years = $2,995 (in-kind volunteer time). Total = $ 2,995

• Supplies:
Supplies provided by Open Space program. Weed bags = $200; Volunteer support (water, snacks) = $100. Total = $300

Total IN-KIND MATCH = $8,861
Total IN-KIND/CASH MATCH = $23,861
Total Project Cost = $223,565

ATTACHMENT B
(Cover Sheet)

Detailed Project Plan – Subject to State Approval
(Include specific planned accomplishments, detailed project budget, and time line)

PROGRAM:
Arizona Department of Forestry and Fire Management - 2022 Invasive Plant Grant Program.

PROJECT TITLE:
Observatory Mesa Invasive Plant Prevention and Control

FUNDING:
The total grant amount of $97,000 (State)
(See also grant IPG 22-701 for additional invasive plant prevention and control work at Observatory Mesa)

PROJECT SCOPE:

What will be accomplished:
This project will support forest and woodland health through the prioritization of invasive plant prevention and control within the Observatory Mesa, Flagstaff, AZ focus area. This diverse location consists primarily of ponderosa pine overstory with small pockets of Gambel oak. Understory shrubs and grasses are diverse and support forest health. Observatory Mesa is an important component of the Flagstaff-area ecosystem. Several drainages and seeps join the Rio de Flag watershed, and the area is an important wildlife corridor that provides habitat for large mammals traveling between the San Francisco Peaks and Mogollon Rim. The City of Flagstaff recently completed an invasive weed survey that mapped Class A and B species from the Arizona State Noxious Weed List for 2,200 acres. This survey documented over 400 acres of invasive thistle and numerous acres of other invasive plant species. This project will target invasive plant prevention and control, and revegetation to maintain the forest health of the area. The project will focus on two adjoining locations Observatory Mesa (2,200 acres) and Thorpe Park (172.9 acres). This project will treat 74 infested acres for two years. Following the two-year treatment, 31 acres will be seeded with native species including Blue Grama, Bottlebrush Squirreltail, Arizona Fescue, Slender Wheatgrass, Muttongrass, and Spike Muhly. This part of the project will include soil preparation, seed mix formulation, seeding, and erosion control.

This project will also accomplish educational objectives. It will initiate partner meetings (Coconino National Forest, Lowell Observatory, COF Parks) to discuss future management strategies for the area with the intent of expanding invasive plant awareness and treatment areas. The project will expand the recruitment of volunteers for monitoring & weeding to complete the project and to help maintain the area moving forward. Project leads will partner to host an invasive weed workshop once a year for two years. Through the invasive weed workshops, events, website, print, and social media awareness of invasive weed issues and community solutions will be expanded.

How it will be accomplished:
This project will be accomplished through multiple means over the two-year project. To utilize grant funds and in-kind cash match the City of Flagstaff will partner with a contractor to complete bull thistle treatment (69 acres). The city will also work with a contractor to complete the seeding of 31 acres. In-kind match will provide administrative support for grant, partner, and volunteer coordination. Parks staff will also provide in-kind weed mitigation for Thorpe Park. Volunteers will be recruited and coordinated to remove invasive plants such as Scotch thistle, Bull thistle, and Diffuse knapweed from Thorpe Park.

MAJOR PROJECT TASKS & COMPONENTS:

Planning:
Open Space Supervisor, Robert Wallace, will have the lead role in planning project components and will oversee the following:

- The production of a work plan for herbicide and manual treatments in March of 2023 & 2024
- The production of a work plan for seeding 2024
- Meet with stakeholders to determine partner strategies for neighboring lands, Spring 2023
- Work with the selected contractor to arrange pre/post treatment photos spring/fall of each season

- Volunteer recruitment for monitoring & weeding
- Coordinate volunteers and partners to hold an educational Invasive Weed Workshop July 2023 & 2024
- Herbicide treatments and seeding work
- Volunteer coordination for community weed pulls

- **Procurement/Contracting:**
  - Staff will work with the City of Flagstaff, Contract and Grant Administrative office to obtain the necessary approval for the grant agreement from the Flagstaff City Council, prepare a scope of work, and initiate a formal contract.
    - Programmatic Contact:
      Robert Wallace
      Open Space Supervisor
      Robert.wallace@flagstaffaz.gov
      928.213.2154
    - Fiscal Contact & Grant Administration Compliance:
      Stacey Brechler-Knaggs
      Grants and Contracts Manager
      Flagstaff City Hall
      211 West Aspen
      Flagstaff, AZ 86001
      sknaggs@flagstaffaz.gov
      928.213.2227

- **Hiring:**
  - Staff will work with the City of Flagstaff, Contract and Grant Administrative office to follow city procurement guidelines and code to select the most qualified applicant for the project.

- **Outreach:**
  - Arizona Native Plant Society, the Friends of the Rio de Flag, and the Open Space Stewards program will assist in recruiting volunteers
  - The Open Space section will expand public awareness by holding two invasive weed workshops
  - The Open Space section will use its website, print, and social media to expand awareness of invasive weeds

- **Fieldwork:**
  - Fieldwork will include controlling invasive species and encouraging desirable native species
  - The project will treat 69 infested acres for two years
  - Chemically treat ~69 acres/yr. Manually treat ~5 acres/yr. at Thorpe Park. Total 74 acres
  - City of Flagstaff Parks staff will provide weed mitigation in Thorpe Park
  - The Open Space section will organize and coordinate volunteer events to mitigate weeds and enhance native vegetation
  - Following the two-year treatment, 31 acres will be seeded. This will include soil preparation, seed mix formulation, seeding, and erosion control

- **Partner Collaboration:**
  - The Open Space Section will work with partners to develop a strategy for managing adjacent land. This will include meeting with partners (Coconino National Forest, Lowell Observatory, COF Parks) to discuss future management strategies

- **Inspection:**
    - Short-term success will be determined by the completion of the project goals and objectives including expansion of treatments to previously untreated areas, expansion of the area surveyed for invasive weeds in partnership with stakeholders, the number of acres treated, the number of acres seeded, the number of volunteer hours, & in-kind volunteer/cash match. Photo points will be established before treatment and repeated at the conclusion of the project to document the anticipated decrease in the presence of the targeted invasive species.
    - A yearly visual inspection and evaluation of treatments, including seeding, will occur at project areas and will be recorded in the City's GIS database to direct further management. During future management efforts, the project area will be observed, and locations of weeds and approximate numbers will be recorded.
    - Treatment standards will work to achieve treatment of 90% of target species, 90% treatment success rate, and will use an organic herbicide (Cheetah Pro, https://nufarm.com/usturf/product/cheetahpro/) for Thorpe Park.
    - Milestones/accomplishments
        - 2023: treat 74 acres & collaborate with partners to determine management strategies for neighboring property
        - 2024: treat 74 acres, prepare and seed 31 acres, and complete final report

- **Sustainability Plan:**
    - Monitoring and weed treatment will be needed at Observatory Mesa (OM) and Thorpe Park sites for many years. Grant partners and growing public interest in volunteer weeding will gradually diminish weed seedbanks in project areas
    - The Open Space section will manage Observatory Mesa in perpetuity, focusing on the highest priorities that can be achieved with annual funding appropriated for weed control
    - Parks will continue to monitor and treat weeds within Thorpe Park and will complete all that can be achieved with annual funding appropriated for weed control
    - Open Space will continue to work with all stakeholders to build a long-lasting coalition with annual reminders for collaboration on weed maintenance for at least 4 years following grant completion

- **Reporting:**
    - Robert Wallace, Open Space Supervisor, will complete quarterly reports
    - The City of Flagstaff, Contract and Grant Administrative office will submit reimbursement requests and supporting documentation for completed work

- **Measurable Outcomes:**
    - Acres to be treated in 2023: 74 acres (treatment 1 of 2)
    - Acres to be treated in 2024: 74 acres (treatment 2 of 2)
    - Acres to be seeded in 2024: 31 acres
    - Meet with partners Coconino National Forest, Lowell Observatory, COF Parks to discuss invasive weed management strategies
    - Complete two Invasive Weed Workshops (July 2023 and 2024)
    - Contribute $11,260 in match towards project completion.

PROJECT SCHEDULE:

Quarter	Project Components 2022
Q4 October – December	1. Draft scope of work and contract 2. Draft a match tracking sheet 3. Request a bid following the City's guidelines for the procurement of contractual services 4. Work with a City Purchasing Buyer regarding procurement matters and the completion of a service contract with a selected contractor 5. Submit project for state review to gain clearance required for groundbreaking activity 6. Submit quarterly financial and performance report

Quarter	Project Components 2023
Q1 Jan. - March	1. Review invasive plant survey with the contractor and create a work plan for treatment 2. Create a work plan for volunteers a. Recruit participants, advertise to public, schedule events, and implement invasive weed pulls 3. Send out communication update to partners 4. Submit quarterly financial and performance report
Q2 April - June	1. Determine locations for pre-treatment photos at a minimum of 4 fixed locations within focus area and take pictures (spring 2023) 2. Work with the contracted company to execute workplan a. Certified contractors will conduct herbicide treatments on identified sites 3. Work with volunteers to execute in-kind workplan schedule to conduct manual weed pull events in target areas and record and submit time 4. Use website, print, and social media to expand awareness of invasive weeds 5. Plan invasive weed workshop 6. Meet with Parks staff regarding Thorpe Park invasive weed management 7. Meet with partners to determine partner strategies for neighboring lands 8. Submit quarterly financial and performance report
Q3 July - Sep.	1. Work with the contracted company to execute workplan 2. Work with volunteers to execute in-kind workplan 3. Use website, print, and social media to expand awareness of invasive weeds 4. Coordinate invasive weed workshop 5. Meet with Parks staff regarding Thorpe Park invasive weed management 6. Submit quarterly financial and performance report
Q4 Oct. – Dec.	1. Take post-treatment photos at the 4 fixed locations in the treatment area 2. Conduct an inspection and evaluation of treatments and prepare report 3. Send out communication update to partners. 4. Submit quarterly financial and performance report

Quarter	Project Components 2024
Q1 Jan - March	1. Send out communication update to partners. 2. Review invasive plant survey with the contractor and create a work plan for seeding 3. Submit quarterly financial and performance report

Q2 April - June	1. Take pre-treatment photos at the 4 fixed locations within focus area (spring 2024) 2. Work with the contracted company to execute workplan 3. Work with volunteers to execute in-kind workplan 4. Use website, print, and social media to expand awareness of invasive weeds 5. Plan an invasive weed workshop 6. Meet with Parks staff regarding Thorpe Park invasive weed management 7. Submit quarterly financial and performance report
Q3 July - Sep.	1. Work with the contracted company to execute workplan 2. Work with volunteers to execute in-kind workplan 3. Use website, print, and social media to expand awareness of invasive weeds 4. Coordinate invasive weed workshop 5. Meet with Parks staff regarding Thorpe Park invasive weed management 6. Submit quarterly financial and performance report
Q4 Oct. - Dec.	1. Work with the contracted company to execute workplan 2. Work with volunteers to execute in-kind workplan 3. Take post-treatment photos at the 4 fixed locations 4. Conduct an inspection and evaluation of treatments and prepare report 5. Evaluate project (Progress, pre- and post-treatment photos, a summary of challenges and successes experienced) 6. Send out communication update to partners 7. Financial and Programmatic Closeout Report 8. Closeout the grant

Quarter	Project Components 2025
Q1 Jan - March	1. Monitoring and weed treatment will be needed at Observatory Mesa (OM) and Thorpe Park sites for many years. Grant partners and growing public interest in volunteer weeding will gradually diminish weed seedbanks in project areas 2. Prepare an outline for continuing weed treatment for Observatory Mesa, focusing on the highest priorities that can be achieved with annual funding appropriated for weed control and volunteer support 3. Share outline with partners and encourage a joint plan for the Greater Observatory Mesa area as a part of the Observatory Mesa Trail plan implementation

PROJECT BUDGET:

See attached Project Budget Worksheet

Project: City of Flagstaff --- state funding w/ 10% match

Total Project Budget (by expense type)

Budget Detail	Grant Share ($ Amount Requested)	Match		TOTAL
		Dollars	In-Kind	
Administrative Labor:	**$0**	**$0**	**$2,565**	**$2,565**
Project Labor:	**$0**	**$0**	**$5,995**	**$5,995**
Fringe Benefits:	**$0**	**$0**	**$0**	**$ 0**
Travel:	**$0**	**$0**	**$0**	**$ 0**
Equipment:	**$0**	**$0**	**$0**	**$ 0**
Supplies:	**$0**	**$0**	**$200**	**$ 200**
Contractual:	**$97,000**	**$2,500**	**$0**	**$99,500**
Other:	**$0**	**$0**	**$0**	**$ 0**
TOTAL:	**$97,000**	**$2,500**	**$8,760**	**$108,260**

Budget Narrative

Provide a brief explanation of each budget item. Include an explanation for items that will be reimbursed by grant funds and those that will be provided as project match.

Grant Share STATE (reimbursement)
Contractual:
Chemical treatments for the project area. Cost approximately $150/acre; chemical treatment will include ~60.83 acres x $150 = $9,124.50 x 2 years = $18,249. Invasive plant infestations to be treated include: Cirsium vulgare (bull thistle) = ~60.83 acres.

Seeding for project area will include soil preparation, seed mix, seeding, erosion blankets/mulch. Cost approximately $2,000-3,000/acre; seeding will include ~31.5 acres x $2,500/acre = $78,750
Seeding areas include:

- Onopordum acanthium (Scotch thistle) = 1.976 acres
- Cirsium vulgare (bull thistle) = 20 acres
- Carduus nutans (musk thistle) = 2.45 acres
- Centaurea diffusa (diffuse knapweed) = 2 acres
- Convolvulus arvensis (field bindweed) .042 acre
- Miscellaneous species in project area = 5 acres

Total grant share (contractual reimbursement) = $97,000

Budget Narrative - Continued

Use this additional space to provide a brief explanation of each budget item. Include an explanation for items that will be reimbursed by grant funds and those that will be provided as project match.

Match (DOLLARS):
Contractual: Treatments for the project area. Cost approximately $150/acre; treatment (chemical & manual) will include ~8.33 acres x $150 = $1,249.50 x 2 years = $2,499. Invasive plant infestations to be treated include: Cirsium vulgare (bull thistle) = 8.33 acres.
Total acres: 8.33

Total cash dollar match for contractual = $2,500 (cash match)

Match (IN-KIND):

- Administrative Labor: Staff time (Robert Wallace, Open Space Supervisor, full burden rate) for grant, partner, & volunteer coordination: $42.76/hr. x 30 hr. = $1,282.80 x 2 years = Total $2,565.60 (in-kind staff time).

- Project Labor: Mechanical treatment:

Parks staff will provide weed mitigation for Thorpe Park. Flatbed (1 ton) truck plus one staff member equals $33.72/hr., FEMA cost code 8701. $33.72/hr x 45 hrs./yr. = $1,500 x 2 years = $3,000 (in-kind staff time). Total = $3,000.
Mechanical treatment will include volunteer work to remove Centaurea diffusa (diffuse knapweed) from 5 acres at Thorpe Park, and miscellaneous locations. Hours will be tracked with a volunteer sign-in sheet. $29.95/hr. federal volunteer rate x 50 hr/yr x 2 years = $2,995 (in-kind volunteer time). Total = $ 2,995

Total (administrative & project labor) = $5,995

- Supplies: Supplies provided by Open Space section. Weed bags = $200. Total = $200

Total in-kind match for administration, project labor, and supplies = $8,760 (in-kind)

Total IN-KIND & CASH MATCH = $11,260 (10% of total project cost)

ATTACHMENT C
General Provisions

ADMINISTRATIVE AND ACCOUNTING REQUIREMENTS

It is the Sub-grantee's responsibility to develop, document, administer and manage the appropriate accounting and administrative procedures for managing the grant in accordance with all applicable State laws.

If any program income is generated as a result of this grant/agreement, the income earned during the term of this agreement shall be applied using the deductive method as described in 2 CFR 200.307 ; the deductive alternative is the preferred method, unless specifically authorized by the Signatory Official. Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award/agreement and they comply with the applicable Cost Principles.

HATCH ACT

The Sub-grantee shall comply with provisions of the Hatch Act limiting the political activities of public employees.

NEPA

The Sub-grantee shall comply with applicable State and Federal laws regarding the environment (NEPA; National Environmental Protection Act).

COVENANT AGAINST CONTINGENT FEES

The Sub-grantee warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Sub-grantee, to solicit or secure this agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the State shall have the right to annul this agreement without liability, or, in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

MODIFICATIONS

Modifications within the scope of this award shall only be made by mutual consent of both parties, by issuance of a written amendment signed and dated by all properly authorized signatory officials prior to any changes being performed. Requests for modification shall be made, in writing, at least thirty (30) days prior to the implementation of the requested change. Any change to the original grant application scope of work or approved detailed project plan must have prior written State approval. Incurring costs without prior written approval may result in loss of funds reimbursed.

EXTENSIONS

Timely completion of this project is required. If this agreement is extended by mutual written consent of the parties, all terms, conditions and provisions of the original agreement shall remain in full force and effect and apply during any extension period. Any extension of time granted shall not constitute or operate as a waiver by the State of any of its rights herein. Extensions will only be considered and/or made if the Sub-grantee has demonstrated reasonable efforts to complete the grant project as defined in the original detailed project plan and has a clear and specific plan for completion of the project within the extended time period.

RESPONSIBILITY FOR CLAIMS AND LIABILITIES

The Sub-grantee agrees to assume all risk of loss to indemnify and hold the State, its officers, agents and employees, harmless from and against any and all liabilities, demands, claims, suites, losses, damages causes or action, fines or judgments, including costs, attorney's and witnesses' fees and expenses incident thereto, for injuries or death to persons and for loss of, damage to, theft of or destruction of any property including loss of use thereof arising out of or in connection with the performance of duties required by agreement, all whether or not authorized or agreed to by the State or Sub-grantee.

RETENTION OF RECORDS

The Sub-grantee and any subcontractor shall maintain and store all documents, papers, accounting records; other evidence pertaining to costs incurred for this work, and shall make all such materials available at any reasonable time during the term of work and for five (5) years from the date of final payment to the Sub-grantee. The Sub-grantee may be required to provide such records as necessary to any auditing agent. Inability to provide such records may result in unallowable costs to the grant and any funds disbursed to the Sub-grantee may have to be paid back to the State and/or Federal government.

EQUAL OPPORTUNITY/NON-DISCRIMINATION

The Parties agree to comply with Chapter 9, Title 41, Arizona Revised Statutes (Civil Rights), Arizona Executive Order 2009-09 and any other federal or State laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.

The Sub-grantee shall comply with Arizona Executive Order 75-5 and as amended by Arizona Executive Order 2009-09 relating to non-discrimination in employment by government contractors and subcontractors. These regulations are herein incorporated by reference and made a part of this agreement.

ARBITRATION

To the extent required by A.R.S. §12-1518 and 12-133, the parties agree to use arbitration, after exhausting applicable administrative review, to resolve disputes arising out of this agreement.

ANTITRUST VIOLATIONS

The Sub-grantee and the State recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by the purchaser or ultimate user. Therefore, Sub-grantee acting as a vendor, hereby assigns to State any and all claims for such overcharges.

TERMINATION BY MUTUAL AGREEMENT

This award may be terminated, in whole or part, as follows:

- When the State and Sub-grantee agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
- By thirty (30) days written notification by the Sub-grantee to the State setting forth the reasons of termination, effective date, and in the case of partial termination, the portion to be terminated.
- If, in the case of a partial termination, the State determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the State may terminate the award in its entirety.

Upon termination of an award, the Sub-grantee shall not incur any new obligations for the terminated portion of the award after the effective date, and shall cancel as many outstanding obligations as possible. The State shall allow full credit to the Sub-grantee for the United States Federal share of the non- cancelable obligations properly incurred by the Sub-grantee up to the effective date of termination. Excess funds shall be refunded within sixty (60) days after the effective date of termination.

CANCELLATION FOR CONFLICT OF INTEREST

Pursuant to A.R.S. §38-511, the state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

TERMINATION FOR CONVENIENCE

The Office of the State Forester, by written notice, may terminate this contract, in whole or in part, when it is deemed in the best interest of the State. If this agreement is so terminated, Sub-grantee will be compensated for work performed up to the time of the termination notification. In no event shall payment for such costs exceed the current grant amount.

NON-AVAILABILITY OF FUNDS

This agreement shall be subject to available funding, and nothing in this agreement shall bind the State to expenditures in excess of funds appropriated and allotted for the purposes outlined in this agreement.

FEDERAL IMMIGRATION AND NATIONALITY ACT

By entering into the Agreement, the Sub-grantee warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Sub-grantee shall obtain statements from its contractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Grant. I-9 forms are available for download at USCIS.GOV.

The State may request verification of compliance for any Sub-grantee, contractor or subcontractor performing work under the Grant. Should the State suspect or find that the Sub-grantee or any of its contractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Agreement for default, and suspension and/or debarment of the Sub-grantee or Contractor. All costs necessary to verify compliance are the responsibility of the Sub-grantee. The parties agree to comply with A.R.S. §41-4401, the provisions of which are hereby incorporated.

SUSPENSION OR DEBARMENT

The Sub-grantee shall not enter into any contract or agreement with any party which is debarred or suspended from participating in State assistance programs.

Submittal of an offer or execution of a contract shall attest that the sub-grantee or contractor is not currently suspended or debarred. If the Sub-grantee or any of its contractors become suspended or debarred, the Sub-grantee shall immediately notify the State. The State may, by written notice to the Sub- grantee, immediately terminate this Agreement if the State determines that the Sub-grantee or their contractors have 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.

GOVERNING LAW

This AGREEMENT is made under, and is to be construed in accordance with, the laws of the State of Arizona.

INVALIDITY OF PART OF THIS AGREEMENT

The parties agree that should any part of this AGREEMENT be held to be invalid or void, the remainder of the AGREEMENT shall remain in full force and effect and shall be binding upon the parties.

COUNTERPARTS

This AGREEMENT may be executed in any number of duplicate originals, photocopies or facsimiles, all of which (once each party has executed at least one such duplicate original, photocopy, or facsimile) will constitute one and the same document.

INTERPRETATION

This AGREEMENT is not to be construed or interpreted for or against either of the parties on the grounds of sole or primary authorship or draftsmanship.

PARAGRAPH HEADINGS

The paragraph headings in this AGREEMENT are for convenience of reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this AGREEMENT or any of its provisions.

ENTIRE AGREEMENT

This AGREEMENT contains the entire agreement and understanding of the parties hereto. There are no representations or provisions other than those contained herein, and this AGREEMENT supersedes all prior agreements between the parties, whether written or oral, pertaining to the same subject matter of this AGREEMENT.

UNIQUE ENTITY IDENTIFIER (UEI) AND SYSTEM FOR AWARD MANAGEMENT REGISTRATION REQUIREMENT (SAM)

Sub-grantee shall maintain current information in the System for Award Management (SAM) until receipt of final payment. This requires review and update to the information at least annually after the initial registration, and more frequently if required by changes in information or award term(s). For purposes of this award, System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a Cooperative. Additional information about registration procedures may be found at the SAM Internet site at www.sam.gov.

PUBLICATION REQUIREMENTS

ACKNOWLEDGEMENT IN PUBLICATIONS. Sub-grantee shall acknowledge Arizona
Department of Forestry and Fire Management in any publications, audiovisuals, and electronic media developed as a result of this award.

ATTACHMENT D

Grant Reimbursement and Documentation Requirements

Arizona State Forestry grants are based on reimbursement for *actual costs incurred*. Actual costs may vary slightly from the project plan budget, but must be used to calculate final reimbursement amounts. Sub-grantees are typically required to provide a portion of the total project cost as MATCH contribution to show local investment in the project or program. Match investment cannot be used as a match for any other State or federal cost-share programs. Specific match amount is identified in each grant agreement. All costs and match should conform to the approved project plan and budget contained in the grant agreement – and all reimbursements are subject to Arizona State Forestry approval.

Only project expenses incurred during the term of the signed grant agreement are eligible. (See Term of Agreement)

All documentation submitted for reimbursement must have the correct project name and/or State Forestry grant number, date work was completed, and proof of payment from the Sub-grantee.

All reimbursements to Sub-grantees shall be calculated on the "Grant Reimbursement Form" (Attachment E2). By signing the form, the Sub-grantee assumes full and implied responsibility for all grant costs incurred and submitted on the form. By signature, the Sub-grantee accepts full liability that the work and costs incurred were in accordance with the agreed scope of work and/or approved detailed project plan and in accordance with all applicable Federal and State laws. By signing the "Grant Reimbursement Form", the Sub-grantee is claiming that costs were incurred following the established procurement process for its own organization and that their process is documented, administered and managed with the correct accounting and administrative procedures and is in accordance with all applicable Federal and State laws.

INELIGIBLE COSTS – Any expenses submitted for reimbursement that are not properly documented shall not qualify for reimbursement. It shall be the Sub-grantee's sole responsibility to submit the required and accurate support documentation for all project costs. In the event an audit determines that ineligible costs were charged to the project, the Sub-grantee accepts full liability for such costs.

- Expenses not included in an approved project plan or that are unnecessary for the completion of the project are ineligible for reimbursement or as match.
- NO FOOD or BEVERAGE purchases or donations to others are eligible for reimbursement or as match, unless included in the project plan as budgeted travel costs, and pre-approved by State.
- Capital Equipment costing $5,000 or more per unit cannot be included as reimbursable costs, but may be included as match with prior approval. State Forestry recommends renting equipment as needed.
- NO purchase of equipment or supplies for individuals are eligible for reimbursement or as match (though purchase of supplies and small equipment by the Sub-grantee organizations for ongoing community use may be eligible).
- Poorly documented match or volunteer hours with insufficient support documentation will not count towards the required match. It is the Sub-grantee's responsibility to keep all project/grant records pertaining to matching requirements. In the event an audit determines that ineligible match was credited to the project, the Sub-grantee accepts full liability for such costs.

ATTACHMENT D

Grant Reimbursement and Documentation Requirements

REIMBURSABLE PROJECT EXPENSES – are direct, out-of-pocket expenditures for eligible project activities that are supported by paid invoices, canceled checks, signed receipts, or official payroll records. Examples include:

- **Labor (Administrative and Personnel)**- may include paid staff, or documented reimbursement from Sub-grantee to others for services. Related expenses such as employee benefits or required travel costs are also eligible if properly documented.
  - Administrative labor includes general project oversight, while personnel labor includes work done on the ground
  - All staff/labor hours must be accompanied by an employee time sheet detailing the hours worked on the grant project. We must be able to determine, for each staff member, the hours contributed, the rate of pay, the work completed, and the total amount being requested.
  - The time sheet must clearly have the State grant ID number, an employee signature, and the dates work hours were contributed towards the grant. A supervisor's approval signature should also be included. **Note, for auditing purposes, an auditor will most likely want to see all hours worked in addition to those charged to the grant.**
  - Required documentation should include some combination of: payment receipts, timesheets, payroll records (paystubs), job sheets, canceled checks, or signed letters detailing paid staff time, dates, and services or work provided.
- **Contracted Services** – Contracting for services from outside organizations or businesses is permitted if included in the approved project plan and budget. Such services could include contracted fuels crews, arborists, trucking, waste disposal, and other costs.
  - Required documentation will include original invoices with sufficient detail of work performed, dates of work performed, and proof of payment, such as canceled checks or credit card receipts.
- **Supplies** - may include operating supplies, office supplies, and small equipment purchased by the Sub-grantee and necessary for the completion of the project.
  - Required documentation should include proof of purchase via payment receipts, canceled checks, or official accounting records detailing expenses and goods and service provided. Original quotes or incomplete invoices are not sufficient.
- **Travel -** may include mileage reimbursement
  - Documentation should include mileage logs with beginning and ending odometer readings and reference the grant project number.
- **Equipment** - may include the cost of renting equipment, fuel, operational costs or repairs at an accepted rate
  - Documentation should include invoices and proof of payment, receipts, or equipment logs.
  - If using FEMA or negotiated CFRA rates, the non-emergency rate (½ of negotiated rate) must be used.
  - Take into consideration that if the rate provided is a "Wet Rate," it already includes fuel and maintenance for the equipment.
- **Other**
  - Other costs as necessary must include proper support documentation demonstrating that the Sub-grantee has incurred the costs.
  - Indirect Costs – Agreed upon indirect costs can be included for reimbursement. No more than 10% of the indirect costs may come from the grant share.
    - Indirect costs may cover general operating expenses such as those negotiated at the time of the grant agreement and other overhead costs; therefore supporting documentation is not required, but detailed specifics about what is covered under the indirect cost must be included in the detailed project plan budget narrative.
    - If Sub-grantee has a Negotiated Indirect Cost Rate Agreement (NICRA), State Forestry must receive this agreement before the rate can be used in the project budget. If the NICRA is greater than 10%, anything above this is allowable as match only.
    - De Minimis: If no NICRA rate is available, Sub-grantee can include the 10% de minimis cost rate to cover other general operating expenses.

ATTACHMENT D

Grant Reimbursement and Documentation Requirements

ELIGIBLE MATCH – Grants may require some level of MATCH investment from the Sub-grantee organization. Matching investment may only be included if goods or services are provided during the term of the agreement and are necessary for the completion of the project. The matching investment may be in the form of dollars expended and/or in-kind contributions used toward the project. The Sub-grantee share (match) cannot be used as a match for any other cost-share program. As with reimbursable costs, eligible match expenses only include those that are reasonable and necessary for the completion of the grant funded program or project and must meet the approved Cost Principles.

Matching investments will not be directly reimbursed.

Examples of possible match include:

- **Hard Dollars** - Matching investment can include actual costs incurred as documented above.
  - A hard dollar match includes anything directly purchased for the grant work with costs incurred by the grantee where money has changed hands, including time spent by employees on grant related activities. Time spent by employees on eligible project activities must include the same documentation as listed above for the Labor category for grant share.
  - Required documentation will include payment receipts, canceled checks, or official accounting records detailing expenses and related goods and service provided. Physical cash transactions are unallowable with DFFM grants.

- **In-kind Contributions** - includes the use of the sub-grantees's or their partners' on-hand supplies, use of third party donations of supplies or equipment, or the value of professional services provided at the professional rate.
  - Use of in-kind contribution of goods or services from another business or organization may be counted as in-kind match with proper documentation. Property or use thereof shall be assigned a fair market value per applicable Cost Principles and should include a letter of documentation from the donating party, if necessary. Use of donated equipment shall consist of signed time logs, detailing day(s) or hours of use, accepted rate, and project specific function.

- **Volunteer** - Volunteer labor hours shall conform to documented standard operating procedures for the Sub-grantee organization with established pay rates.
  - Required documentation for volunteers will include signed time logs/sign-in sheets with volunteer name, date, time, place, and type of volunteer service provided. Volunteer sign in sheets must include a supervisor's signature. Volunteer timesheets should be filled out and signed on the day work was completed.
  - Volunteer time may be valued at the local market rate for equivalent work (children at minimum wage). Hourly rates exceeding $20 per hour will require specific support documentation for justification and approval. If you use consultants, forestry professionals, planners, etc., who donate their professional services, appropriate hourly rates may be documented in a letter from the individual or their organization, but will still require accurate timesheets.

Quarterly Performance Report

GRANT INFORMATION:

Grant Number:		**Grant Award $:**	
Project Name:		**Award End Date:**	
Organization:			
County:		**DFFM District:**	

REPORT INFORMATION:

Calendar Year:		**Calendar Quarter Q1** (Jan-Mar), **Q2, Q3, Q4**:	
Name of person completing report:			
Submittal Date:			

PROJECT OBJECTIVES ACCOMPLISHED: (During this quarterly reporting period, what progress has been made toward meeting the project objectives stated in the Project Plan? Provide quarterly and cumulative numbers for key criteria, such as acres completed, trees planted, educational programs delivered, etc.)

PLANNED OVERALL		ACTUAL				
Project Objectives	**Total Project Goal**	**Previously Reported**	+	**Current Quarter**	=	**Cumulative Total**

Program-Specific Reportables (if applicable)

1				
2				
3				
4				
5				

Is this Project On Track? (Yes / No)

Use the following sections to describe activities for this quarter and for the overall project status.

Additional items may be enclosed or attached, such as added narrative, detailed tables, pictures, maps, or other items. (Please list any additional items in the narrative to assure they are recorded.)

Quarterly Performance Report

NARRATIVE REPORT / THIS QUARTER: **What progress has been made THIS QUARTER in accomplishing the project objectives?** Describe activities for the quarter to support the status reported in the tables above. Include comments regarding accomplishments for employees, contractors, and volunteers; and describe the status of planning or purchasing activity if applicable. *(MAX: 1400 Characters – attach additional materials if needed)*

NARRATIVE REPORT / OVERALL PROJECT: **What is the success in meeting the OVERALL measurement criteria identified in the Project Plan?** Describe the overall project status to support the numbers listed in the tables above. What major milestones have been achieved and what are the next major activities planned? If the project is not on track or goals are not being met, please provide an explanation. If there are any factors that have, or will have, a significant impact on the successful project completion, provide details and explain the actions being taken or assistance that may be needed. *(MAX: 1400 Characters – attach additional materials if needed)*

Arizona Department of Forestry and Fire Management

Grant Reimbursement Form

NOTE: It is the Sub-grantees' responsibility to develop, document, administer and manage the correct accounting and administrative procedures for administering the grant in accordance with all applicable Federal and State laws. It is the Sub-grantees' sole responsibility to maintain all grant records and provide them as necessary to any auditing agent. Inability to provide such records may result in unallowable costs to the grant and any funds disbursed to the Sub-grantee may have to be paid back to the State and/or Federal government.

Grant Number:

Organization Name: **Match %:** - Select % -

Total Grant Amount: **Total Match Required:**

Grant Expiration/End Date: (Grant $ + Match $ = Total Project Cost)

Previous Project Totals (Sum of all previous reimbursement requests):

	Reimbursable Costs	Match	Total
			$0.00

This Reimbursement Period: (Period Start / End dates)

Item	Reimbursable Costs	Match	Total
Administration			$0.00
Personnel			$0.00
Contracted Services			$0.00
Supplies			$0.00
			$0.00
			$0.00
			$0.00
Volunteer time	N/A		$0.00
In-Kind Contributions	N/A		$0.00
Total:	$0.00	$0.00	$0.00

FOR DFFM USE ONLY

Cumulative Project Totals (This period request added to all previous reimbursement requests):

Reimbursable Costs	Match	Total
$0.00	$0.00	$0.00

*As long as the Cumulative MATCH meets the required amount, this Reimbursement Period's REIMBURSABLE amount should qualify for payment (provided all items are properly documented and all other requirements are met.)

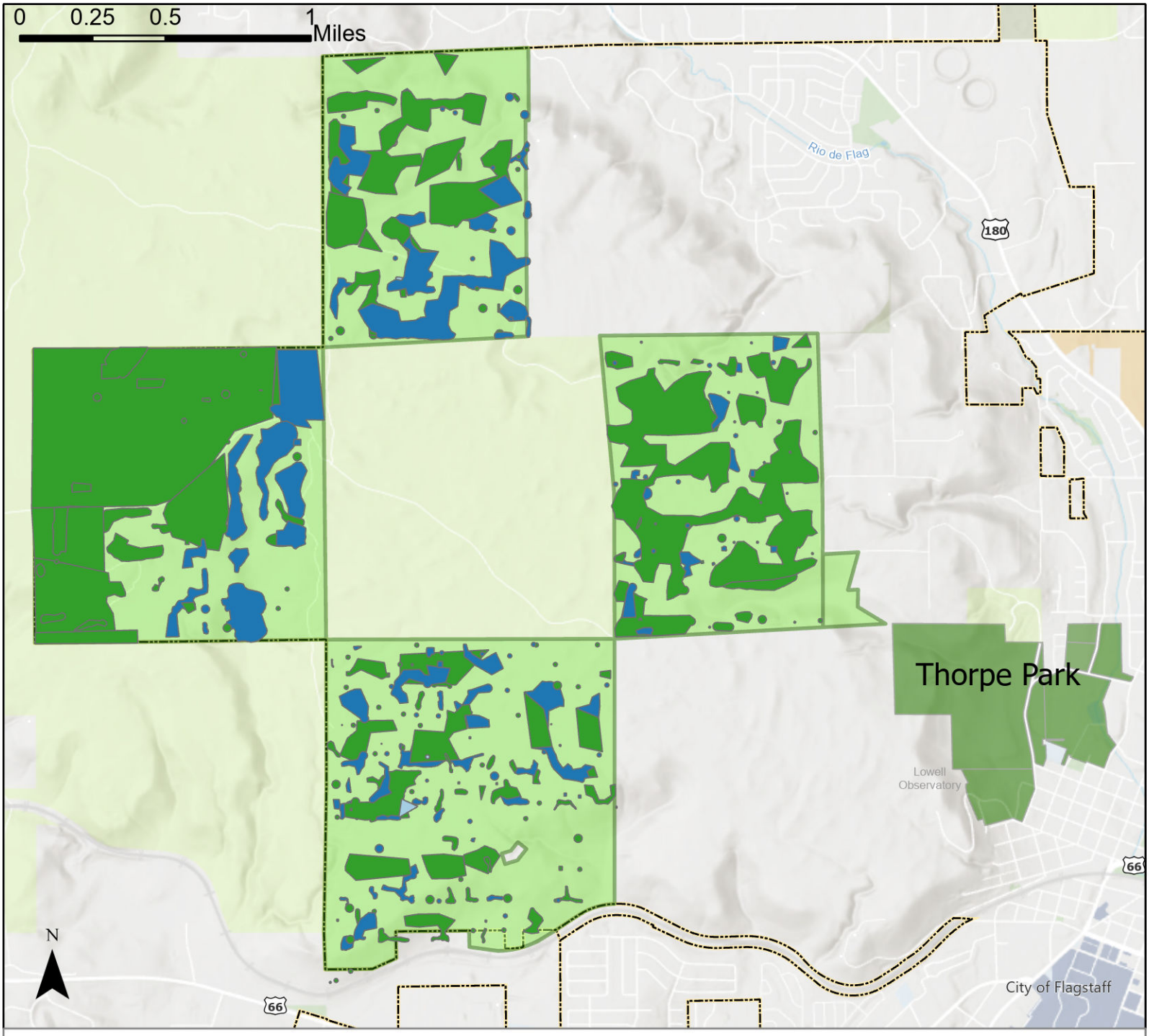
Authorized Signature *Title* *Date*

SIGNATURE LINE STATEMENT (Required for Processing)

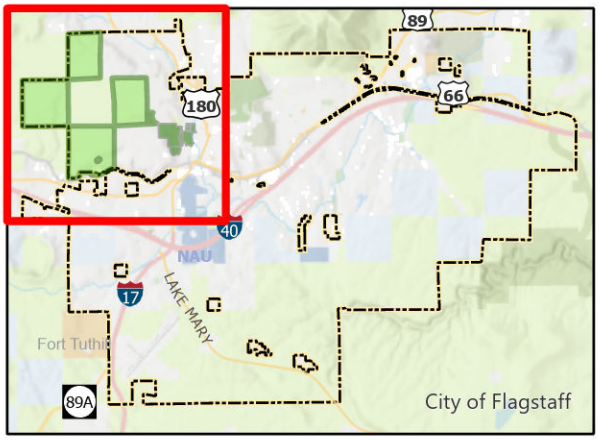
By signing the "Grant Reimbursement Form", the signing agent is verifying that:

All work performed on this grant/project was completed in conformance with all applicable laws and established procedures. Charges and time sheets submitted are in fact for work completed on this project. All charges have been reviewed and verified by a supervisor and all employee and volunteer hours are being tracked, with support documentation on file and available to any auditing agent.

NOTE: Reimbursements may take 60-90 days



Observatory Mesa Natural Area - Overview



Legend

City Boundary

Parks

- Observatory Mesa
- Thorpe Park

Invasive Plant Areas

- Carduus nutans
- Cirsium vulgare
- Convolvulus arvensis
- Linaria dalmatica
- Onopordum acanthium

7/28/2022

Open Space Invasive Plant Grant Consideration

TEAM FLAGSTAFF
WE MAKE THE CITY BETTER

Robert Wallace, Open Space Supervisor

Open Space Background – Who, What, How

Who are we?

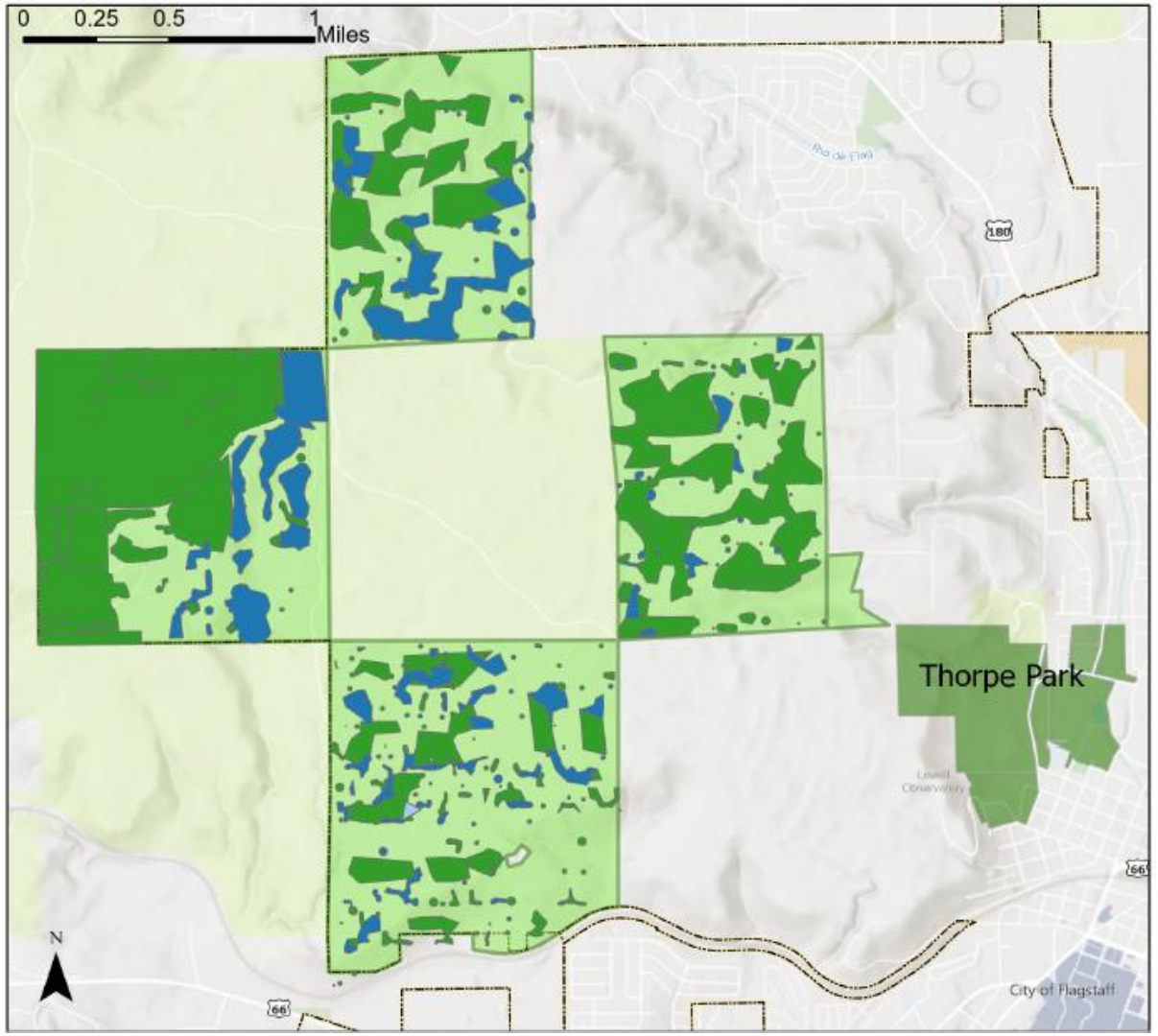
- Two full-time employees
- One full-time temporary grant-funded position

What does Open Space maintain

- Manage 3,000 acres of community accessible Open Space
- Invasive Weeds are problematic

How are we moving forward

- Invasive Plant Grant application to support treatment and restoration, total project cost $108,260



What Will This Grant Achieve

- Invasive Plant Grant – *STATE Funding*
  - Contribute $108,260 toward managing weeds and restoring for the Observatory Mesa area, for two years

  - Complete Objectives:
    - Focus on two adjoining locations Observatory Mesa (2,200 acres) and Thorpe Park (172.9 acres).
    - Invasive plant prevention and control, 74 acres for two years
    - Revegetion of 31 acres
    - Partner opportunities
    - Recruitment of volunteers for monitoring & weeding
    - Community education

What is the City agreeing to?

- A completed grant agreement
- $11,260 match, Open Space base budget allocation of $2,500 (in-kind cash match), and a volunteer time in-kind match of $8,760. Total project cost $108,260.
- Detailed status quarterly reporting
  - Required to submit “deliverables”
  - Documentation of treatments and seeding
  - Partner meeting
  - Two community Invasive Weed Workshops
  - Project sustainability (weed management and partnerships).

How Grant Acceptance Meets City Goals

Maintains Service Level

- **Section goals:**
  - Maintain, restore, and enhance the natural ecosystem
  - Protect diverse and healthy wildlife populations.
  - Maintain and develop partnerships
  - Community education
  - Secure funding through grants
- **Community goals:**
  - Supports all 7 PBB Priorities
  - Climate Neutrality Plan
    - Priority one: Neighborhoods - Inclusive Recreation
    - Priority four: Commitments - Healthy Forests and Open Spaces

Options

Option A – Approve the agreement with the Department of Forestry and Fire Management, in the amount of $97,000, with a city match of $11,260 to support the management of the Observatory Mesa Natural Area.

Option B – Do not approve, thus declining grant funds in the amount of $97,000.

Questions?

TEAM FLAGSTAFF

WE MAKE THE CITY BETTER

9. B.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Genevieve Pearthree, Senior Planner
Date:	01/12/2023
Meeting Date:	01/17/2023

TITLE:

Consideration and Approval of Parking Demand Study: Request by the Holy Trinity Catholic Newman Center to approve a Parking Demand Study for a new place of worship building at 520 W. Riordan Rd., subject to the issuance of a Conditional Use Permit.

STAFF RECOMMENDED ACTION:

Approve the parking demand study with the following conditions:

1. The Newman Center shall work with NAU to secure additional parking spaces on NAU property to account for increases in the size of the congregation in the larger Newman Center building and associated increases in parking demand.
2. The Newman Center shall provide a pedestrian path per City of Flagstaff Zoning Code section 10-30.60.080.A. that connects to the existing pedestrian path located on the adjacent property to the west at 910 S. Milton Rd. (APN 103-04-005B).
3. The Newman Center shall provide a minimum of 12 bicycle parking spaces, as shown on the Concept Plan that city staff deemed Complete with Conditions on November 17, 2022.

Executive Summary:

Section 10-50.80.060.C of the City of Flagstaff Zoning Code allows a property owner to submit a study or plan prepared in accordance with the established professional traffic and parking practices by a registrant licensed to practice in the State of Arizona to allow reduced parking for any development. The study or plan is required to document how any reductions are calculated and the assumptions utilized in the calculations. The Planning Director may approve a reduction equal to, or less than, 30 percent of the total parking spaces required by this Division. Any request greater than 30 percent requires the approval of the City Council. The applicant is requesting to meet the required on-site parking by providing 45 on-site spaces, in addition to managing demand through a contract between the Newman Center and NAU for 20 Sunday parking passes in two NAU parking lots, the Newman Center's ability to purchase additional daily NAU parking passes on an as-needed basis, parishioners' possession of their own NAU parking passes, and alternative transportation means, including walking, biking, and carpooling.

Financial Impact:

None

Policy Impact:

None

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

Priority Based Budget Key Community Priorities and Objectives

- Environmental Stewardship: Implement sustainable building practices, enhance waste diversion program, alternative energy programs and multi-modal transportation options.
- Sustainable, Innovative Infrastructure: Provide effective management of and infrastructure for all modes of transportation.

Regional Plan

- Goal T.1. Improve mobility and access throughout the region.
- Goal T.7. Provide a high-quality, safe, convenient, accessible public transportation system, where feasible, to serve as an attractive alternative to single-occupant vehicles.

Carbon Neutrality Plan

- DD-3: Encourage Flagstaff residents and visitors to walk, bike, roll and take the bus.

Previous Council Decision on This:

There has been no previous Council decision on the Parking Demand Study affiliated with the Newman Center.

Options and Alternatives:

1. The City Council may approve the Newman Center parking demand study with conditions, as recommended by staff.
2. The City Council may approve the Newman Center parking demand study with additional or modified conditions.
3. The City Council may deny the Newman Center parking demand study.

Background/History:

On November 17, 2022, City Staff reviewed and accepted a Concept Plan for an approximately 25,520 square-foot building at 520 W. Riordan Ranch Rd. in the HC (Highway Commercial) Zone. The proposed building will include a sanctuary, student center, rectory, and assembly hall. Places of Worship is a permitted use in the HC Zone, but a Conditional Use Permit is required for facilities that exceed 250 seats. The Parking Demand study was based on a 4,554 square-foot sanctuary, which can hold up to 413 people and would require 73 parking spaces. Staff understands that the Newman Center may shrink the building footprint to approximately 23,000 square feet and reduce the size of the sanctuary. These changes may reduce the minimum required parking spaces, but the provided parking (45 spaces) is unlikely to reach the minimum required per the Zoning Code. These changes will be formally reviewed when the applicant submits for Site Plan review (future submittal).

A total of 73 parking spaces are required for the building shown on the Concept Plan per Zoning Code section 10-50.80.040: Number of Motor Vehicle Parking Spaces Required (Places of Worship require one parking space per 60 gross square feet of sanctuary area). The Concept Plan shows 45 on-site parking spaces. The existing Newman Center building has 62 on-site parking spaces. The Newman Center is currently in negotiations with NAU to purchase 20 Sunday parking spaces on NAU campus. Staff understands that the Newman Center also has the ability to purchase daily parking passes from NAU on an as-needed basis.

The Newman Center is within 1/4 mile of a northbound bus stop on Mountain Line's Route 14 along

Milton Rd. and is within walking distance to a southbound Route 14 stop and a southwest bound Route 8 stop along Plaza Way. A pedestrian path required by Zoning Code Section 10-30.60.80.2 to connect to the existing pedestrian walkway on the property at 910 N. Milton Rd. (APN 103-04-005B) directly to the west, will facilitate pedestrian access directly from Milton Rd. to the Newman Center.

Key Considerations:

Zoning Code section 10-50.80.060: Parking Adjustments allows applicants to request reduced parking through the preparation of a parking demand study in accordance with established professional traffic and parking practices. However, City Council must approve parking reductions that exceed 30% of the total required on-site parking. The Newman Center requests a reduction of 28 on-site parking spaces (a 38% reduction).

On November 2, 2022 the applicant submitted a parking demand study prepared by CivTech. The study is based on a survey that the Newman Center took of its congregation when NAU was in session, and when NAU was not in session during winter and summer breaks, to determine how the congregation travels to the Newman Center. In addition, the Newman Center recorded the number of attendees at each Sunday mass over an almost two-year period.

The parking demand study identified 10 distinct transportation groups. Per the study, only four of these groups need on-site parking:

- Students who carpool with no NAU parking pass
- Students who drive alone with no NAU parking pass
- Non-students who carpool with no NAU parking pass
- Non-students who drive alone with no NAU parking pass

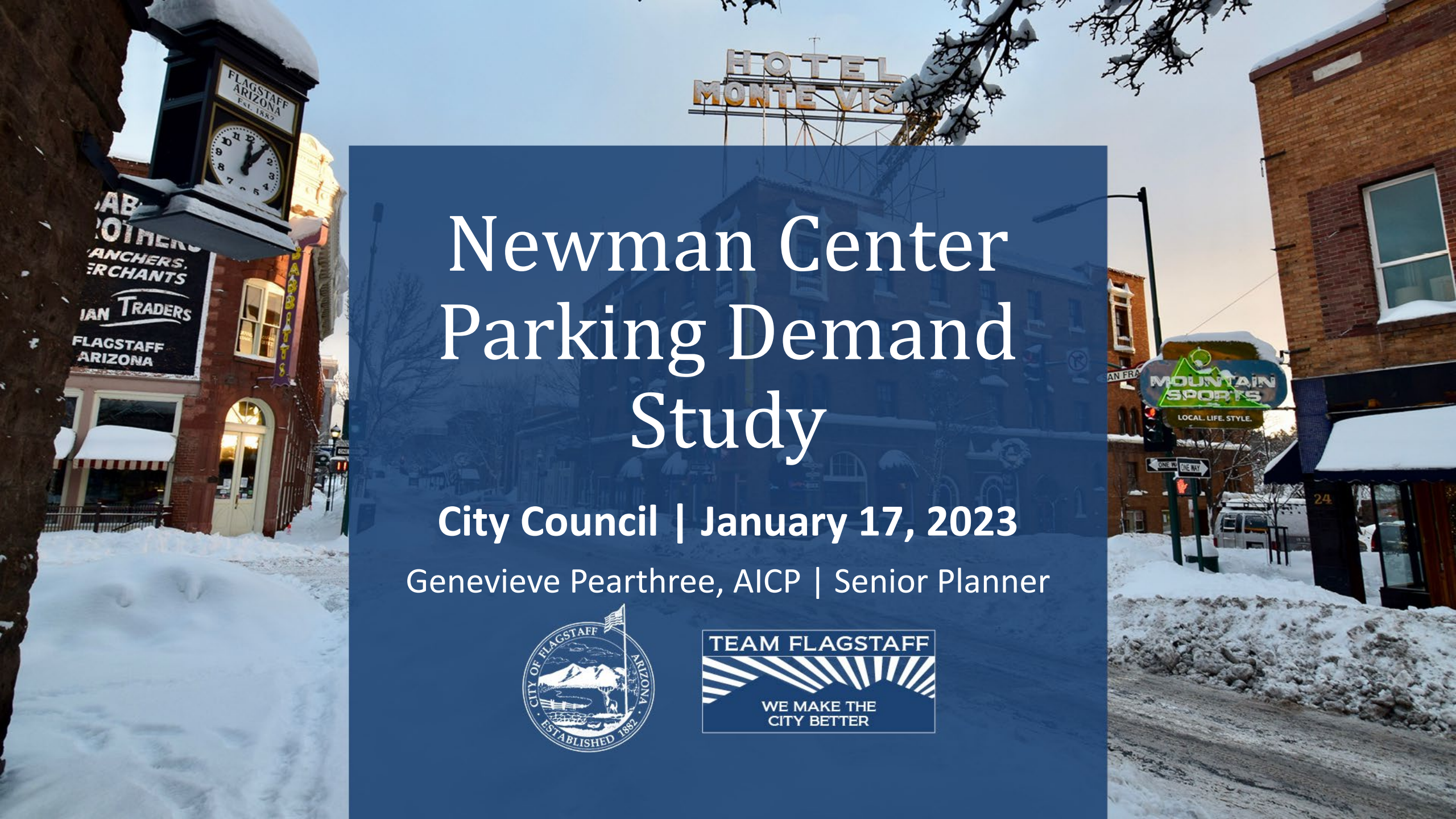
The remaining six transportation groups do not need on-site parking per the study:

- Students who walk/bike
- Students who carpool with a NAU parking pass
- Students who drive alone with a NAU parking pass
- Non-students who walk/bike
- Non-students who carpool with a NAU parking pass
- Non-students who drive alone with a NAU parking pass

The parking demand study found that the attendees that use the current Newman Center building require 31 parking spaces when NAU is in session, and 44 spaces when NAU is not in session. The study states that more parking is needed when NAU is not in session because larger portion of congregants are non-students who drive alone and who do not possess a NAU parking pass. The study determined the required parking numbers by dividing the required parking spaces (73) by the percent of student vs. non-student attendees, and determining how many spaces are needed by each of these groups when NAU is in session vs. not in-session, based on each group's travel patterns.

The average year-round attendance in the current building is approximately 27% of the maximum occupancy, or 88 people (the maximum occupancy is 325 people). Thirty-two parking spaces are needed to meet average parking demand in the current building based on the travel patterns identified in the study. The maximum occupancy of the new building is a 27% increase over the current building. If attendance and travel trends carry through to the new building, then 41 parking spaces will be need to accommodate average attendance.

Attachments: Presentation
Parking Demand Study



Newman Center Parking Demand Study

City Council | January 17, 2023

Genevieve Pearthree, AICP | Senior Planner

CITY OF FLAGSTAFF · ARIZONA · ESTABLISHED 1882 ·

TEAM FLAGSTAFF
WE MAKE THE CITY BETTER

Newman Center Parking Demand Study

Request

- Request by the Holy Trinity Catholic Newman Center to approve a Parking Demand Study for a new Newman Center building at 520 W. Riordan Ranch Rd., subject to the issuance of a Conditional Use Permit
- Section 10-50.80.060.C of the Zoning Code allows a study or plan prepared in accordance with the established professional traffic and parking practices by a registrant licensed to practice in the State of Arizona to reduce parking for any development
- The study or plan is required to document how any reductions are calculated and the assumptions utilized in the calculations

Newman Center Parking Demand Study

Request

- Any request for a parking reduction greater than 30 percent requires approval of City Council
- 73 parking spaces required and 45 spaces proposed
- Applicant requests to manage parking demand through:
  - Walking/biking
  - Carpooling
  - Attendees using their own NAU parking passes
  - Draft agreement between the Newman Center and NAU to provide 20 parking spaces on Sundays in NAU parking lots
  - Newman Center purchasing additional daily NAU parking passes as needed

Newman Center Proposal

- Redevelop the existing 9,500 square-foot Newman Center building at 520 W. Riordan Ranch Rd. and construct a new 25,520 square-foot building that will contain a sanctuary, student center, rectory, and assembly hall
- Place of Worship is an allowed use in the Highway Commercial zone, but a Conditional Use Permit is required for facilities that exceed 250 seats

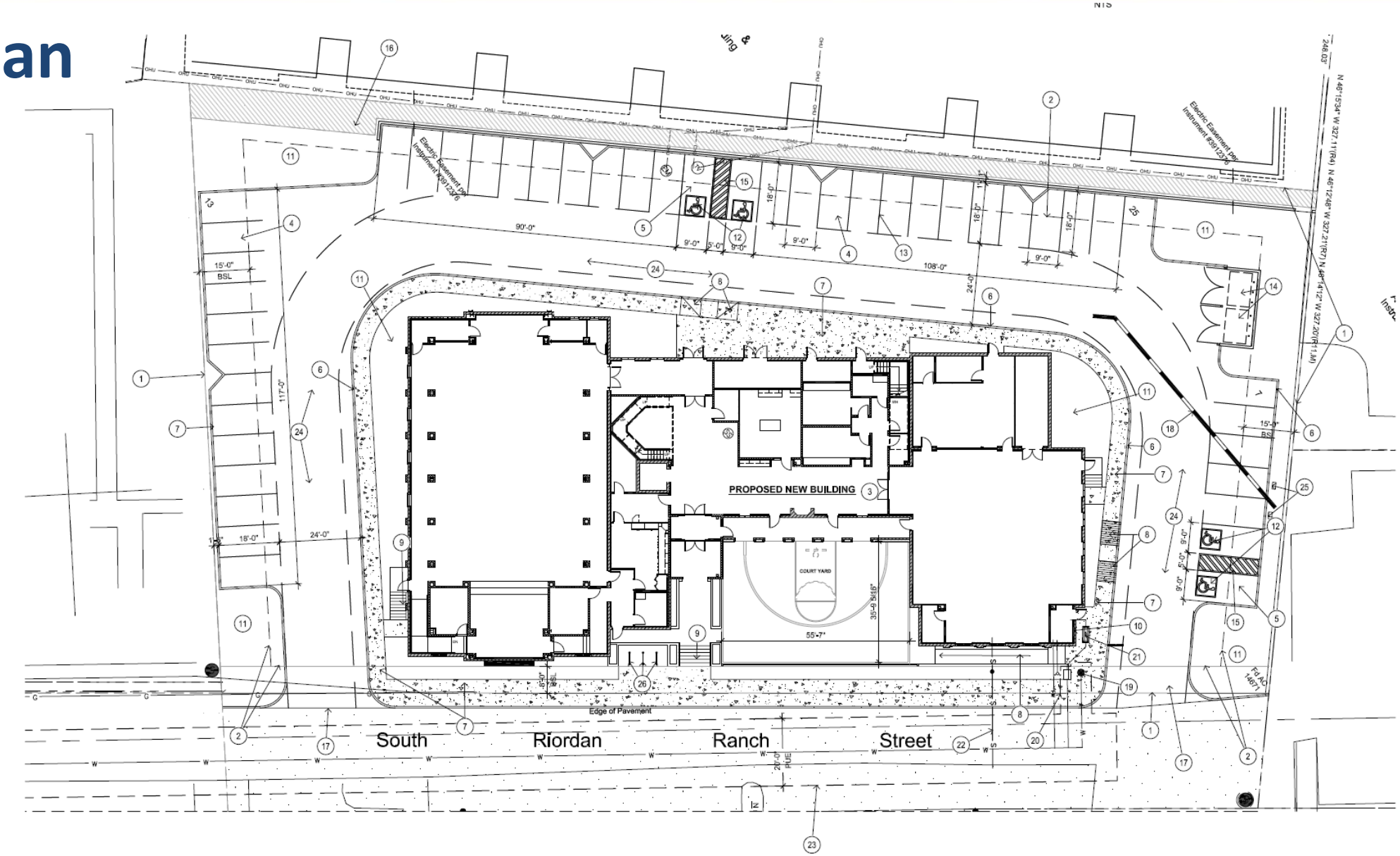
Newman Center Parking Demand Study

Concept Plan

- City staff reviewed and accepted a Concept Plan application for the new building on November 17, 2022
- Sanctuary would hold up to 413 people
- Newman Center may reduce size of building and size of sanctuary with Site Plan (future submittal)
  - Could reduce minimum required parking, but provided parking (45 spaces) would still be less than required

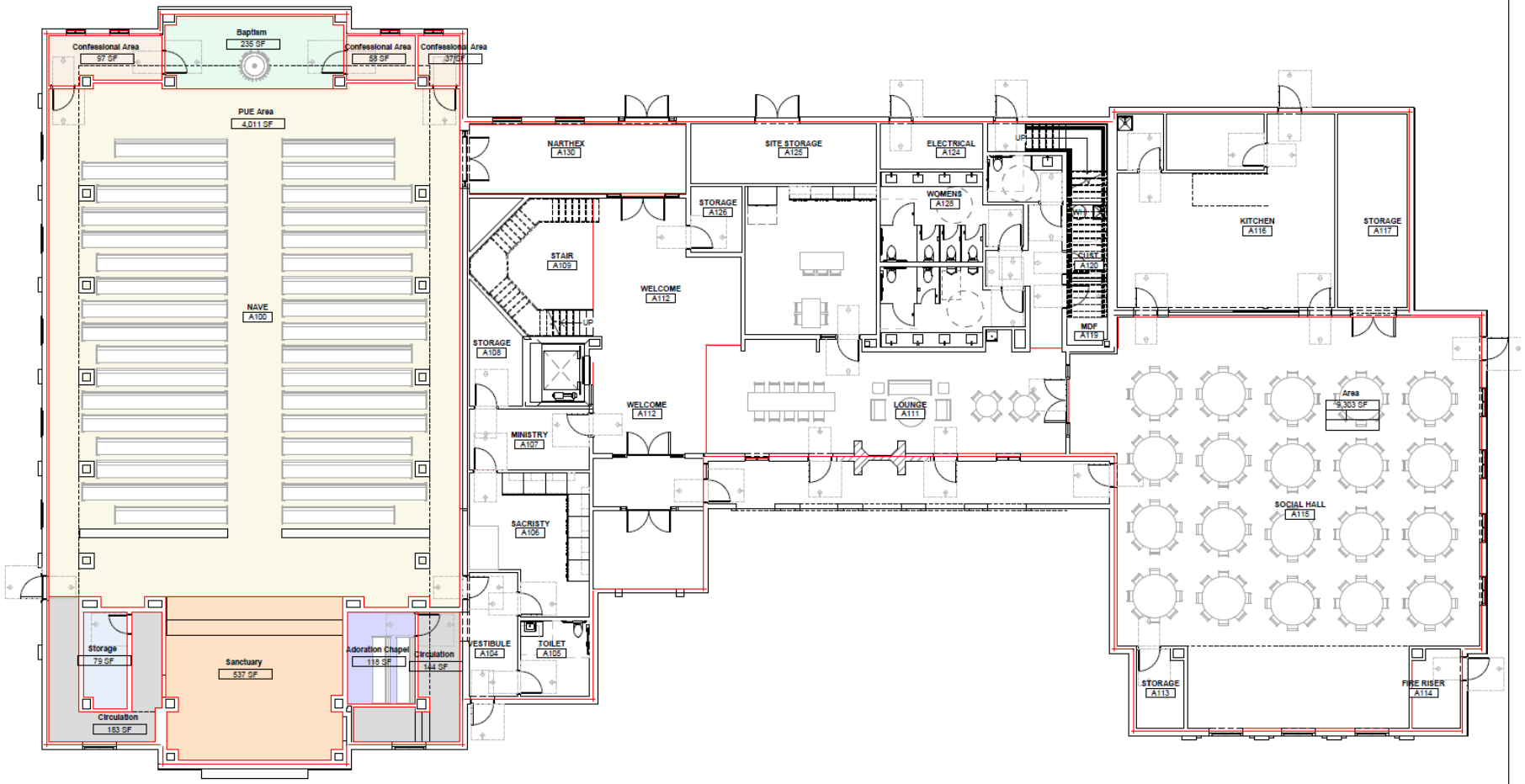
Newman Center Parking Demand Study

Concept Plan



Newman Center Parking Demand Study

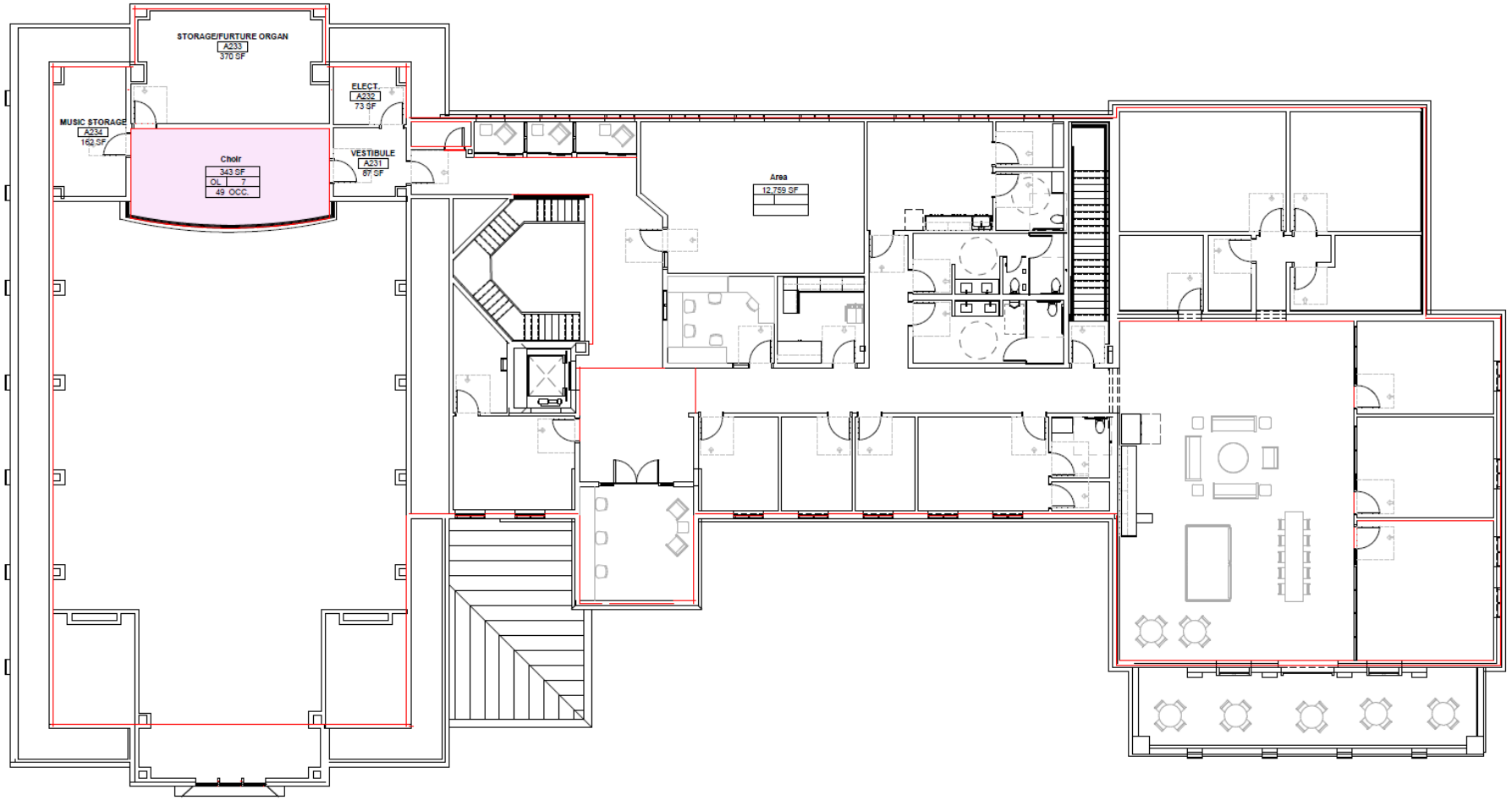
Building Floor Plans – 1st floor



Building floor plans and elevations will be formally reviewed with Site Plan submittal

Newman Center Parking Demand Study

Building Floor Plans – 2nd floor



Building floor plans and elevations will be formally reviewed with Site Plan submittal

Parking Demand Study Methods

- Surveyed congregation to determine transportation modes
- Counted attendance at Sunday Mass in current Newman Center building for almost 2 years
- Analyzed required parking spaces (73) compared to ratio of students vs. non-students and each group's transportation mode

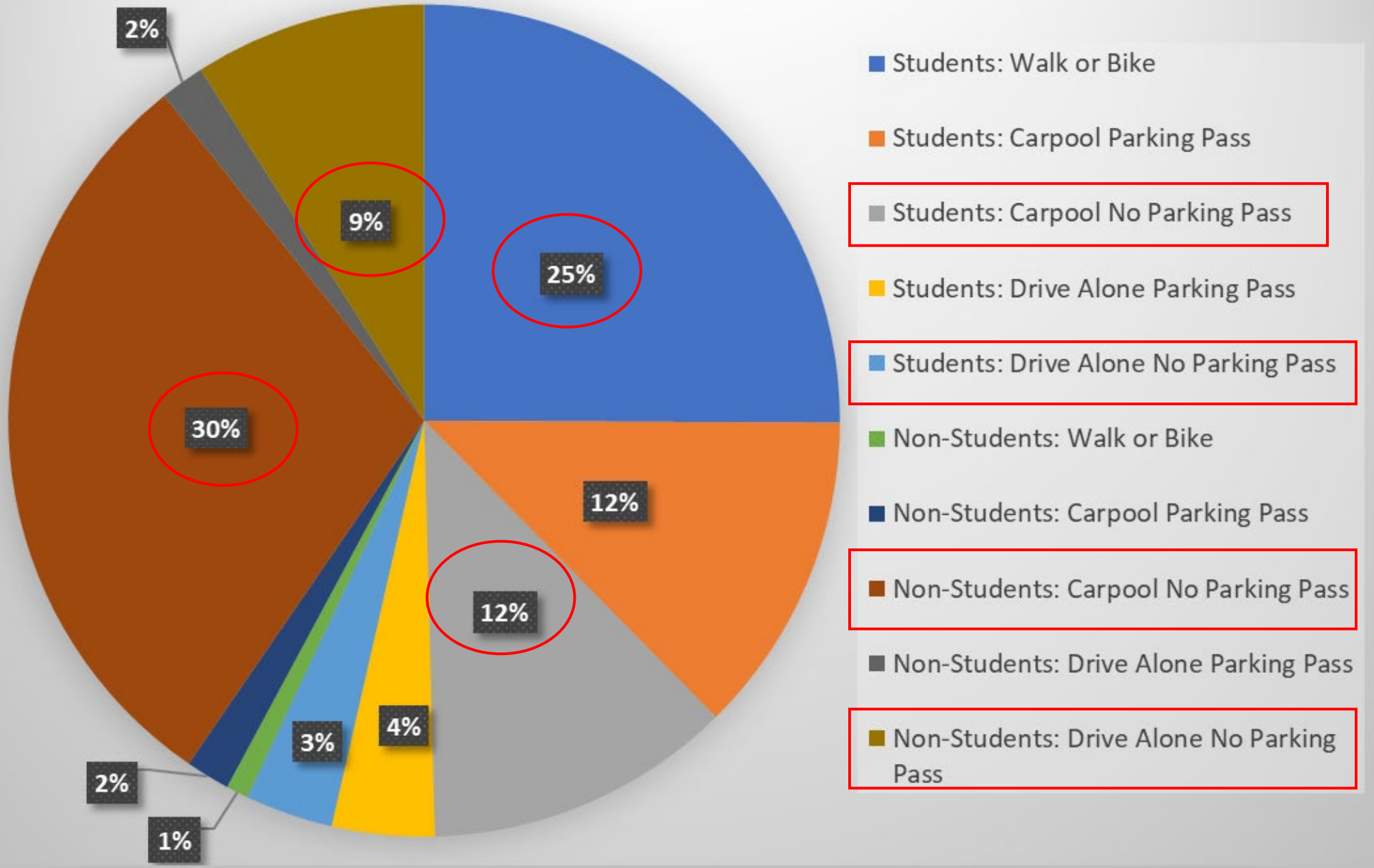
Parking Demand Study Results

- Identified 10 distinct transportation groups
  - Students and non-students who walk/bike
  - Students and non-students who carpool with NAU parking pass
  - **Students and non-students who carpool with no NAU parking pass*
  - Students/non-students who drive alone with NAU parking pass
  - **Students/non-students who drive alone with no NAU parking pass*
- ***Students and non-students who drive and do not have a NAU parking pass are only groups who need parking**

Parking Demand Study Results

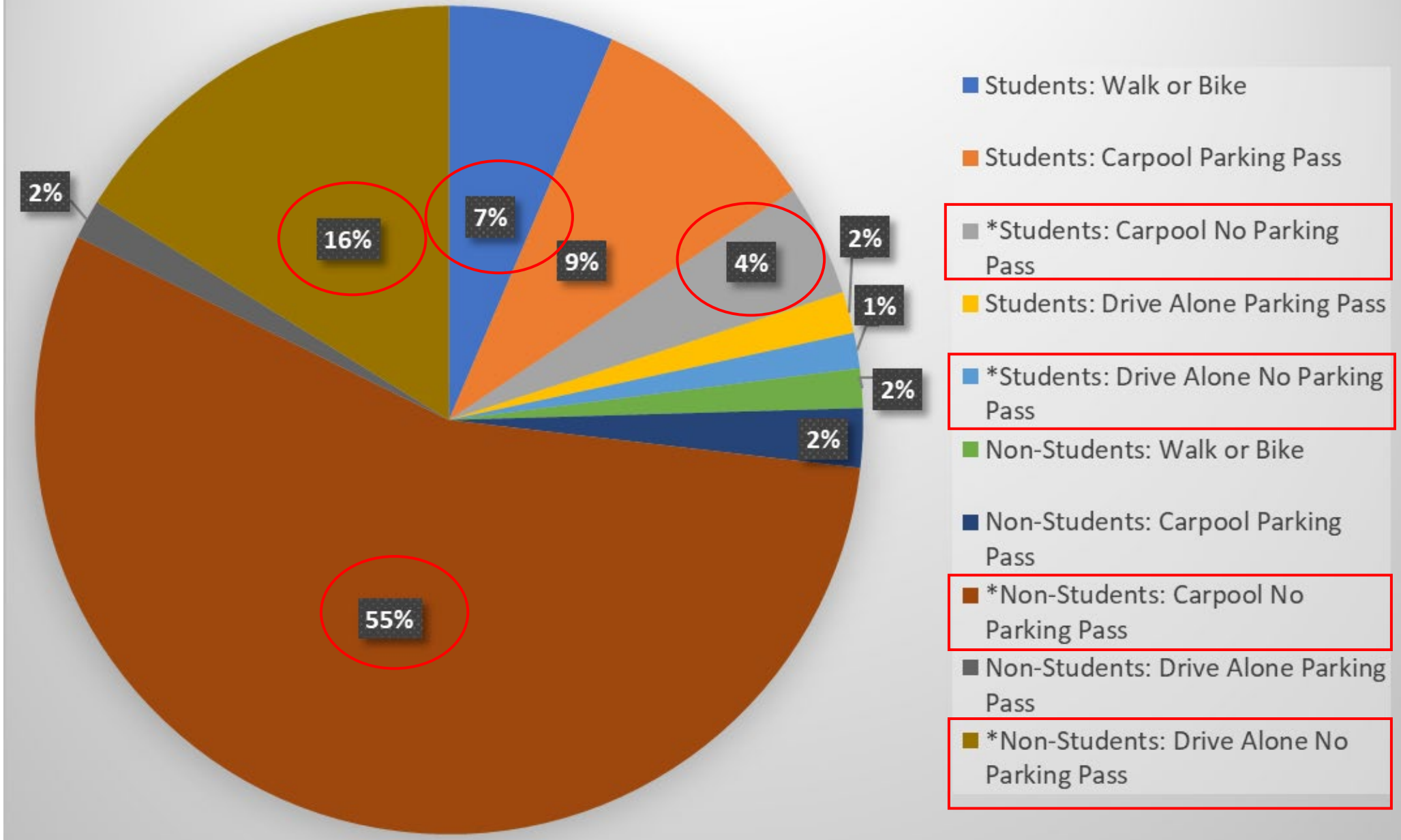
- 31 parking spaces are needed when NAU is in session
- 44 parking spaces are needed when NAU is not in session
- Proportion of non-students who drive with no NAU parking pass increases when NAU is not in session → greater parking demand
  - NAU in session: 57% students, 43% non-students
  - NAU not in session: 23% students, 77% non-students

Transportation mode when NAU is in session



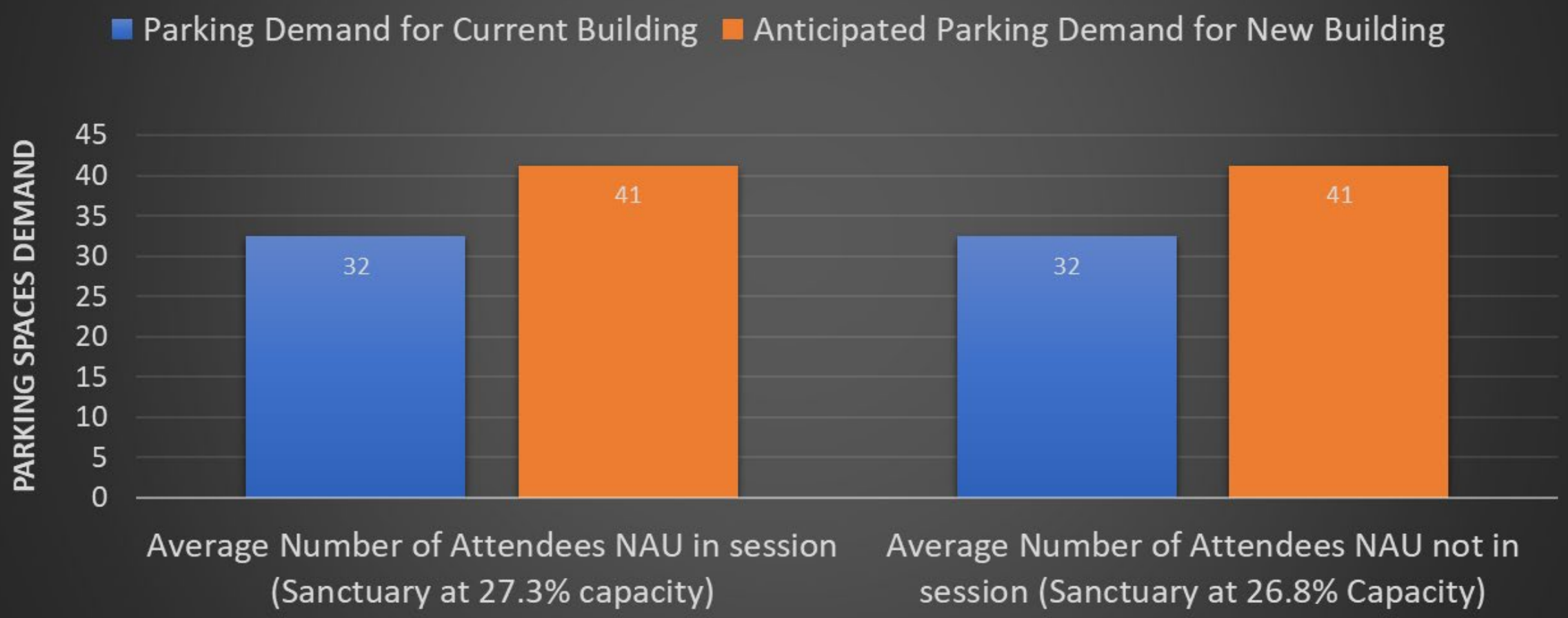
TEAM FLAGSTAFF
WE MAKE THE CITY BETTER

Transportation mode when NAU is not in session



TEAM FLAGSTAFF
WE MAKE THE CITY BETTER

Current and Anticipated Parking Demand for Average Number of Attendees



Proposed parking demand management strategies

- 45 on-site parking spaces
- Agreement with NAU for 20 Sunday parking passes on nearby lots
- Purchasing additional daily NAU parking passes as needed
- Walking/biking
- Carpooling
- Attendees using their own NAU parking passes to park on nearby NAU lots

Options and Alternatives

1. City Council may approve the Parking Demand Study with conditions, as recommended by staff
2. City Council may approve the Parking Demand Study with additional or modified conditions
3. City Council may deny the Parking Demand Study

Staff Recommendation

Staff recommends the City Council approve the parking demand study with the following conditions:

1. The Newman Center shall work with NAU to secure additional parking spaces on NAU property to account for increases in the size of the congregation in the larger Newman Center building and associated increases in parking demand
2. The Newman Center shall provide a pedestrian path per City of Flagstaff Zoning Code section 10-30.60.080.A. that connects to the existing pedestrian path located on the adjacent property to the west at 910 S. Milton Rd. (APN 103-04-005B)
3. The Newman Center shall provide a minimum of 12 bicycle parking spaces, as shown on the Concept Plan that city staff deemed to be Complete with Conditions on November 17, 2022

Questions?

TEAM FLAGSTAFF

WE MAKE THE CITY BETTER

CivTech

November 2, 2022

COLE Architects
459 N. Gilbert Road, Suite C-200
Gilbert, Arizona, 85234
Attn: Mr. Bruce Scott

RE: **PARKING DEMAND STUDY FOR HOLY TRINITY NEWMAN CENTER – 520 RIORDAN RANCH STREET, FLAGSTAFF, ARIZONA**

Dear Mr. Scott:

CivTech is pleased to present you with this parking demand study to COLE Architects ("the Client") for the Client's planned replacement of the Holy Trinity Newman Center at 520 Riordan Street in the City of Flagstaff Arizona. The proposed project would replace the existing center with one that provides 4,354 square foot in the sanctuaries and loft. All other areas, social hall, lounge, kitchen, adoration chapel, recreation areas, office space, etc., would not be used simultaneously with the worship area studied here. Access driveways to the center will be reconstructed; the Newman Center would still be served by two (2) driveways along South Riordan Ranch Street.

PURPOSE

CivTech has been asked to determine if the number of parking spaces the client proposes is sufficient for the proposed renovation. Per the conceptual site plan (see **Attachment A**), 45 parking spaces are planned including four ADA accessible spaces.

CITY OF FLAGSTAFF PARKING REQUIREMENTS

Motor vehicle (and bicycle) parking requirements are addressed in Section 10-50.80 of the *Flagstaff City Code*, relevant excerpts of which are included for reference as **Attachment B**. Parking for this land use, places of worship, is based on a ratio from a parking-space generator, which is calculated through the floor area of the main sanctuary and choir loft. **Table 1** summarizes the required motor vehicle parking calculations for the church.

Table 1: Required Parking Spaces per City of Flagstaff's Zoning Code

Project Data		Motor Vehicle Spaces Required per Code	
Land Use	**Quantity Units***	**Ratio**	**Spaces**
Chapel (Sanctuary & Loft)	4,354 Square Feet	1 per 60 square feet of main sanctuary	73
Total Parking Spaces Required			**73**

As summarized in **Table 1**, the required motor vehicle parking based on the City's Zoning Code is 73 motor vehicle parking spaces.

Based on attendee data for the existing center, certain specific reductions are applied to the parking demand. Separate reductions are applied for an NAU In-Session scenario and NAU Summer scenario. In each case, reductions are considered for Students and for Non-Students. From this we have four unique reduction scenarios to consider for Sunday Mass: Students with NAU In-Session, Non-Student

with NAU In-Session, Students during NAU Summer, and Non-Students during NAU Summer. Newman Center data indicates that when classes are in-session, an average of 57% of attendees are students (43% are non-students). The data indicates that when classes are not in session, an average of 23% of attendees are students (77% are non-students).

On Sundays when the Newman Center holds services, NAU parking lot pass holders are not restricted to which lots they park in. Those students with parking passes are expected to park in NAU lots adjacent to the Newman Center when able.

NAU In-Session Reductions

Newman Center attendance data indicates that, during times of the year when Northern Arizona University (NAU) classes are in session, a higher percentage of attendees are pedestrians than a typical place of worship. Surveys of attendees indicate that 44% of students walk or bike, 22% carpool and have a NAU parking pass, 21% carpool and do not have a NAU parking pass, 7% drive alone and have a NAU parking pass, and 6% drive alone and do not have a NAU parking pass. The data indicates that the carpooling vehicles have an average capacity of three attendees per vehicle. The only groups above who require on-site parking are those who drive alone and do not have a NAU parking pass, and the driver of a carpool that does not have a NAU parking pass. The drivers of the carpools that do not have a NAU parking pass equates to 1/3rd of the total attendees who carpool and do not have a NAU parking pass, which is 7%. A graph showing a breakdown of how students travel to the Newman Center when NAU is in session is shown in **Figure 1**.

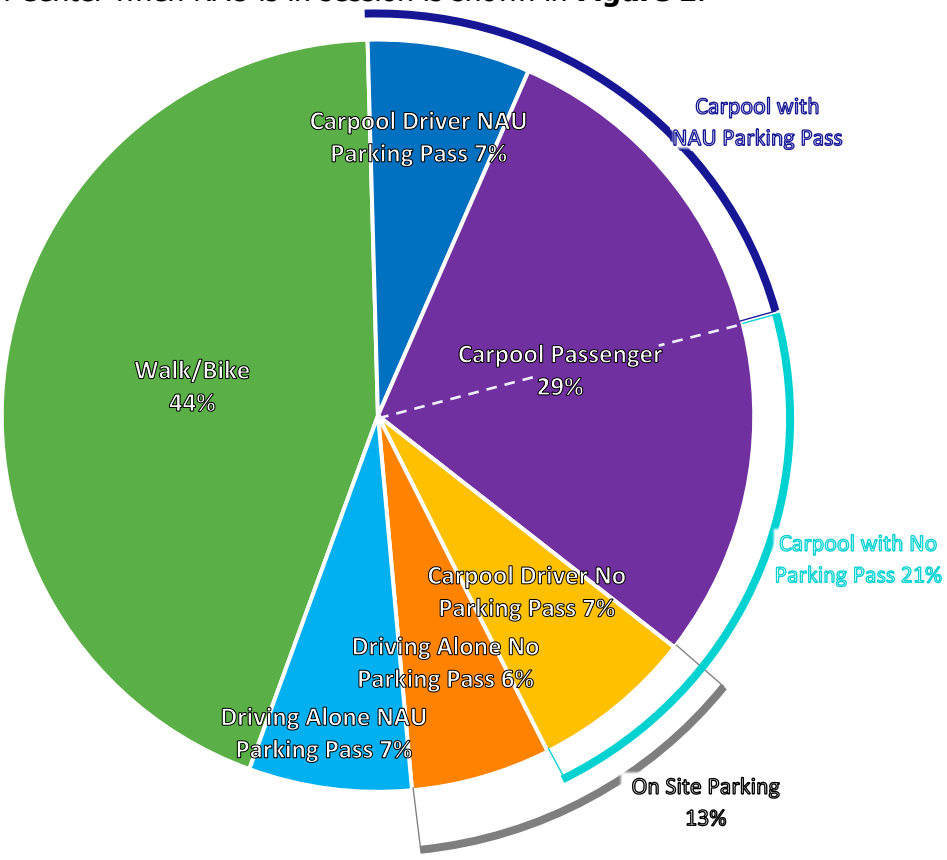


Figure 1 – Travel Mode Breakdown of Students with NAU In-Session

Newman Center data indicates that, during times of the year NAU classes are in session, an average of 43% of attendees are non-students. Surveys of attendees indicates that 2% of non-students walk or bike, 4% carpool and have a NAU parking pass, 69% carpool and do not have a NAU parking pass, 4% drive alone and have a NAU parking pass, and 21% drive alone and do not have a NAU parking pass. The data indicates that the carpooling vehicles have an average capacity of two-and-a-half attendees per vehicle. The only groups above who require on-site parking are those who drive alone and do not have a NAU parking pass, and the driver of a carpool that does not have a NAU parking pass. The drivers of the carpools that do not have a NAU parking pass equates to 2/5th of the total attendees who carpool and do not have a NAU parking pass, which is 28%. A graph showing a breakdown of how students travel to the Newman Center when NAU is in session is shown in **Figure 2**.

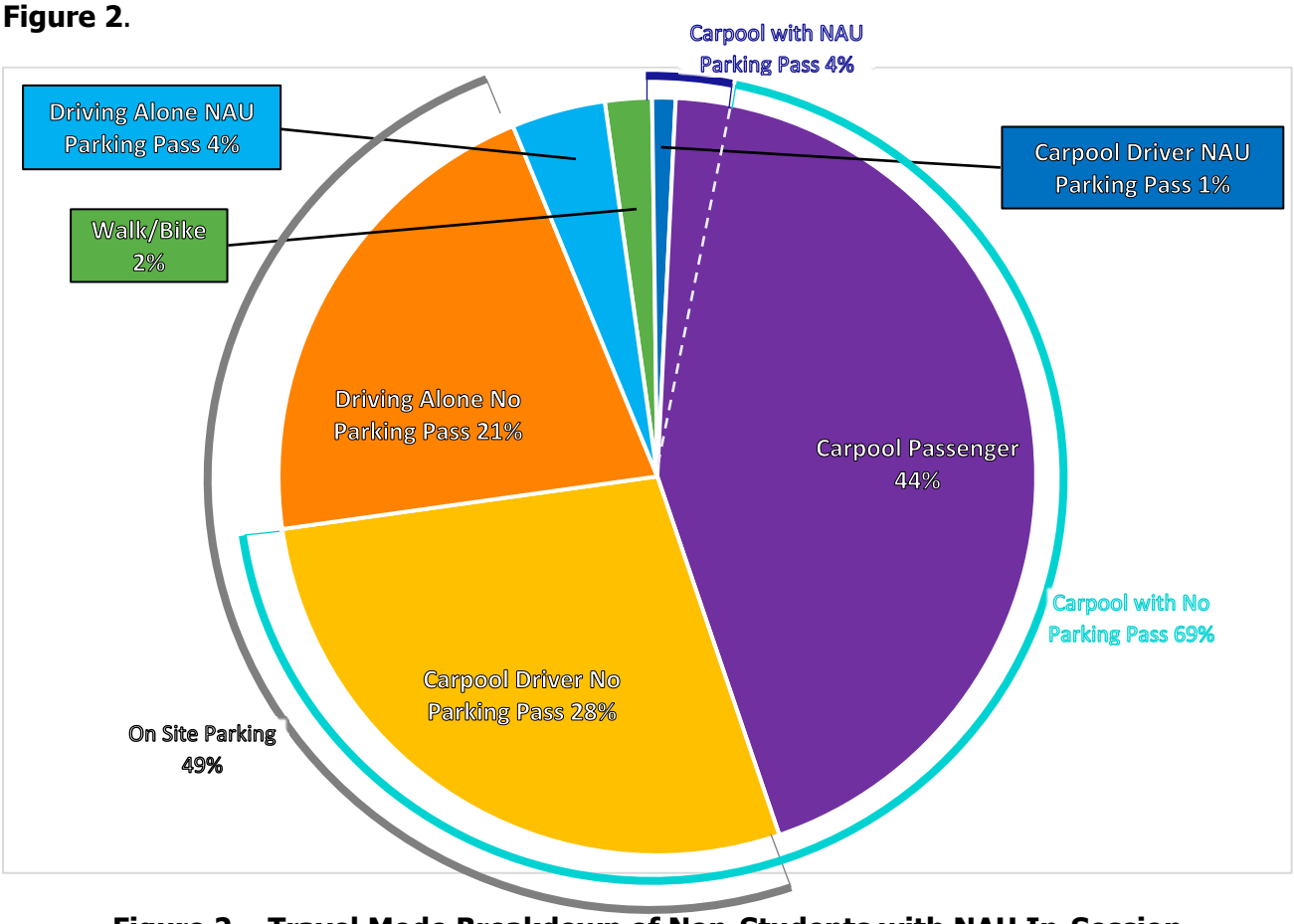


Figure 2 – Travel Mode Breakdown of Non-Students with NAU In-Session

NAU Summer Reductions

Newman Center attendance data indicates that when classes are not in session, an average of 23% of attendees are students. Surveys of attendees indicate that 28% of students walk or bike, 40% carpool and have a NAU parking pass, 19% carpool and do not have a NAU parking pass, 7% drive alone and have a NAU parking pass, and 6% drive alone and do not have a NAU parking pass. The data indicates that the carpooling vehicles have an average capacity of three attendees per vehicle. The only groups above who require on-site parking are those who drive alone and do not have a NAU

parking pass, and the driver of a carpool that does not have a NAU parking pass. The drivers of the carpools that do not have a NAU parking pass equates to 1/3rd of the total attendees who carpool and do not have a NAU parking pass, which is 6%. A graph showing a breakdown of how students travel to the Newman Center when NAU is not in session is shown in **Figure 3**.

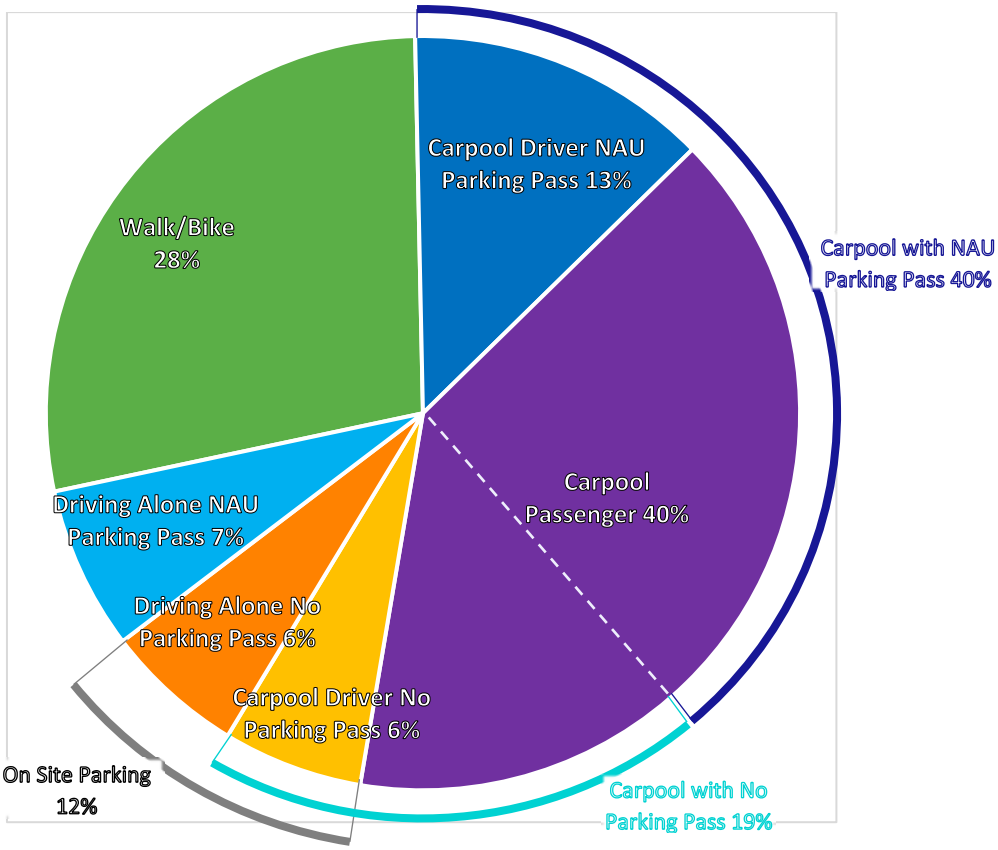


Figure 3 – Travel Mode Breakdown of Students with NAU Summer

Newman Center data indicates that, when classes are not in session, an average of 77% of attendees are non-students. Surveys of attendees indicate that 2% of non-students walk or bike, 3% carpool and have a NAU parking pass, 72% carpool and do not have a NAU parking pass, 2% drive alone and have a NAU parking pass, and 21% drive alone and do not have a NAU parking pass. The data indicates that the carpooling vehicles have an average capacity of three attendees per vehicle. The only groups above who require on-site parking are those who drive alone and do not have a NAU parking pass, and the driver of a carpool that does not have a NAU parking pass. The drivers of the carpools that do not have a NAU parking pass equates to 1/3rd of the total attendees who carpool and do not have a NAU parking pass, which is 24%. A graph showing a breakdown of how students travel to the Newman Center when NAU is not in session is shown in **Figure 4**.

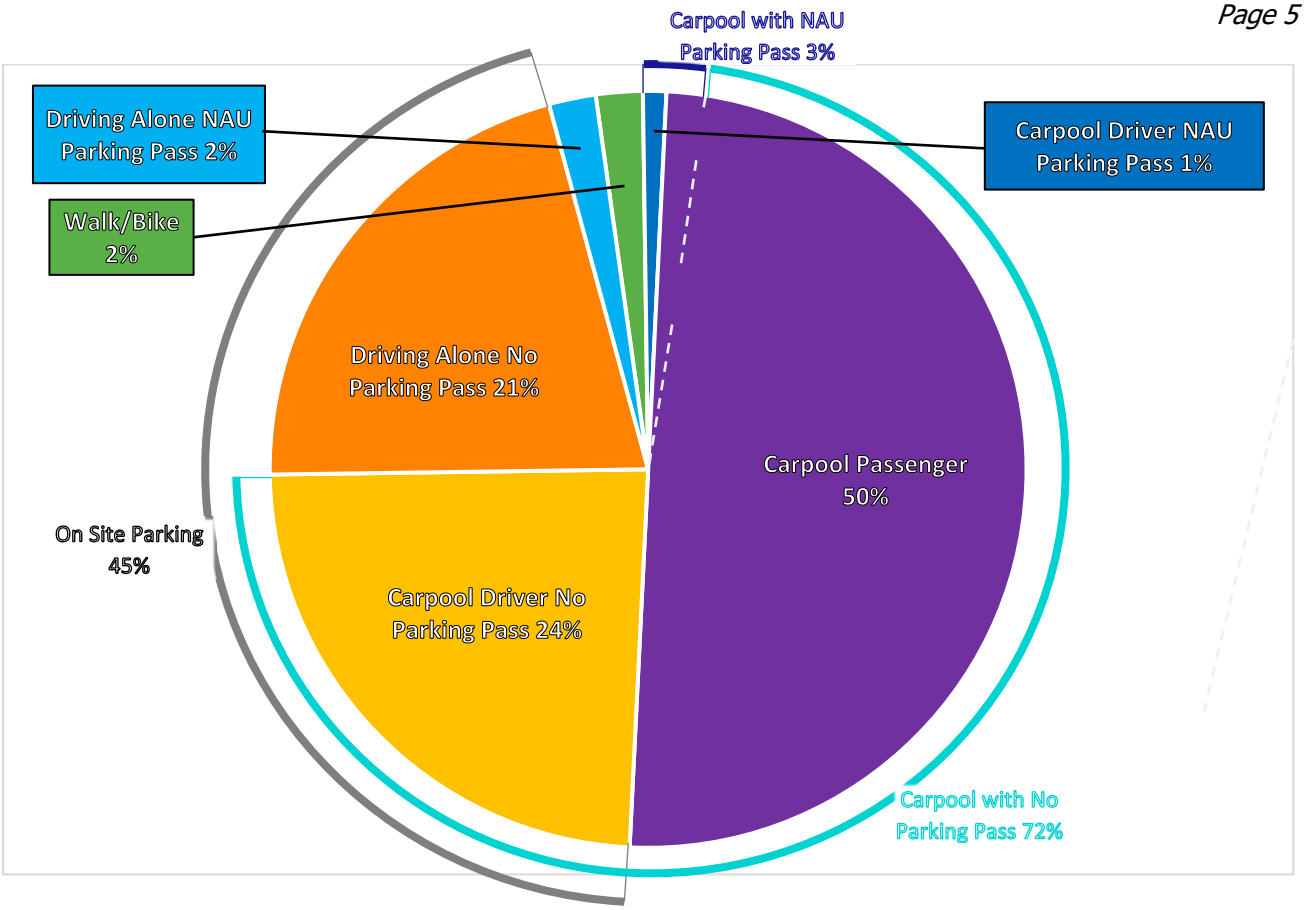


Figure 4 – Travel Mode Breakdown of Non-Students with NAU Summer

REQUIRED PARKING

The reduced on-site required parking requirements are shown in **Table 2**. A brief explanation of each column is provided below to clarify the calculations and resulting findings.

1. The first column of **Table 2** is the Scenario. For each scenario a parking demand is calculated, the largest of which is used as the Total Newman Center Parking Spaces Required After Reductions.

2. The second column is the percentage of all attendees that belong to the demographic considered for each scenario.

3. The third column is the number of parking spaces needed by attendees that belong to the demographic considered for each scenario before applying reductions. For example, the Sunday Mass when NAU is In-Session, prior to any reductions, would be expected to have students use 42 parking spaces.

4. The fourth, sixth, eighth, tenth, twelfth, and fourteenth columns are the percentages of the scenario's attendees that uses the respective travel mode.

- The Percent Carpool Passenger travel mode was capped at 25% to provide a more conservative and consistent result. The difference in percentage was added to the Percent Driving Alone with No Parking Pass travel mode. The capped percentages are shown in a box just below the uncapped percentages.

5. The fifth, seventh, ninth, and eleventh columns are the number of spaces reduced from that scenario's demand because those attendees use the respective travel mode.

    - The Number Carpool Passenger travel mode was capped at 25% to provide a more conservative and consistent result. The difference in spaces was added to the Number Driving Alone with No Parking Pass travel mode. The capped values are shown in a box just below the uncapped values.

6. The thirteenth, and fifteenth columns are the number of spaces required on-site for that scenario because those attendees use the respective travel mode.

7. The sixteenth column is the Total Parking demand On-Site for that scenario.

8. The percentages and values in the boxes represent capped values. When Carpool Passenger mode was capped, the remaining amount was conferred to the Drive Alone No Parking Pass mode. This created a more conservative analysis.

Table 2: Reduced On-Site Parking Demand

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Scenario	**Demographic Percent of All Attendees**	**Demographic Number of Attendees**	**Percent Walk/Bike**	**Number Walk/Bike**	**Percent Carpool Driver NAU Parking Pass**	**Number Carpool Driver NAU Parking Pass**	**Percent Carpool Passenger**	**Number Carpool Passenger**	**Percent Drive Alone NAU Parking Pass**	**Number Drive Alone NAU Parking Pass**	**Percent Carpool Driver No Parking Pass**	**Number Carpool Driver No Parking Pass**	**Percent Drive Alone No Parking Pass**	**Number Drive Alone No Parking Pass**	**Total Parking On-Site**
Sunday Mass Students NAU In-Session	57% Students	42 Student Spaces	44%	18	7%	3	29% 25%	12 10	7%	3	6%	3	7% 11%	3 5	6 8
Sunday Mass Non-Students NAU In-Session	43% Non-Students	31 Non-Student Spaces	2%	0	1%	0	44% 25%	14 7	4%	1	28%	9	21% 40%	7 14	16 23
Total NAU In-Session															**31**
Sunday Mass Students NAU Summer	23% Students	17 Student Spaces	28%	5	13%	2	40% 25%	7 4	7%	1	6%	1	6% 21%	1 4	2 5
Sunday Mass Non-Students NAU Summer	77% Non-Students	56 Non-Student Spaces	2%	1	1%	1	50% 25%	28 14	2%	1	24%	13	21% 46%	12 26	25 39
Total NAU Summer															**44**
Total Newman Center Parking Spaces Required After Reduction															**44**
Proposed Newman Center Parking Spaces Provided															**45**
Parking Space Needs															**+1**

CONCLUSION

The following are CivTech's conclusions based on the above analysis:

- The proposed project would renovate the existing Holy Trinity Newman Center to provide a 4,354 square foot place of worship.
    - Proposed parking spaces to be provided total 45 with 4 ADA assessable spaces.
- The required motor vehicle parking based on the City's Zoning Code is 73 motor vehicle parking spaces.
    - When accounting for members who walk or bike, carpool, or have an NAU parking pass, the number of parking spaces that would be used on-site for Sunday Mass when school is in session are 31.

  - When accounting for members who walk or bike, carpool, or have an NAU parking pass, the number of parking spaces that would be used on-site for Sunday Mass during the summer season is 44.

- After reductions, 44 motor vehicle parking spaces will be required for the project.
- A surplus of approximately 1 space could be expected.

Thank you for allowing CivTech to assist you on this project. Please contact me with any questions you may have on this statement.

Sincerely,

CivTech

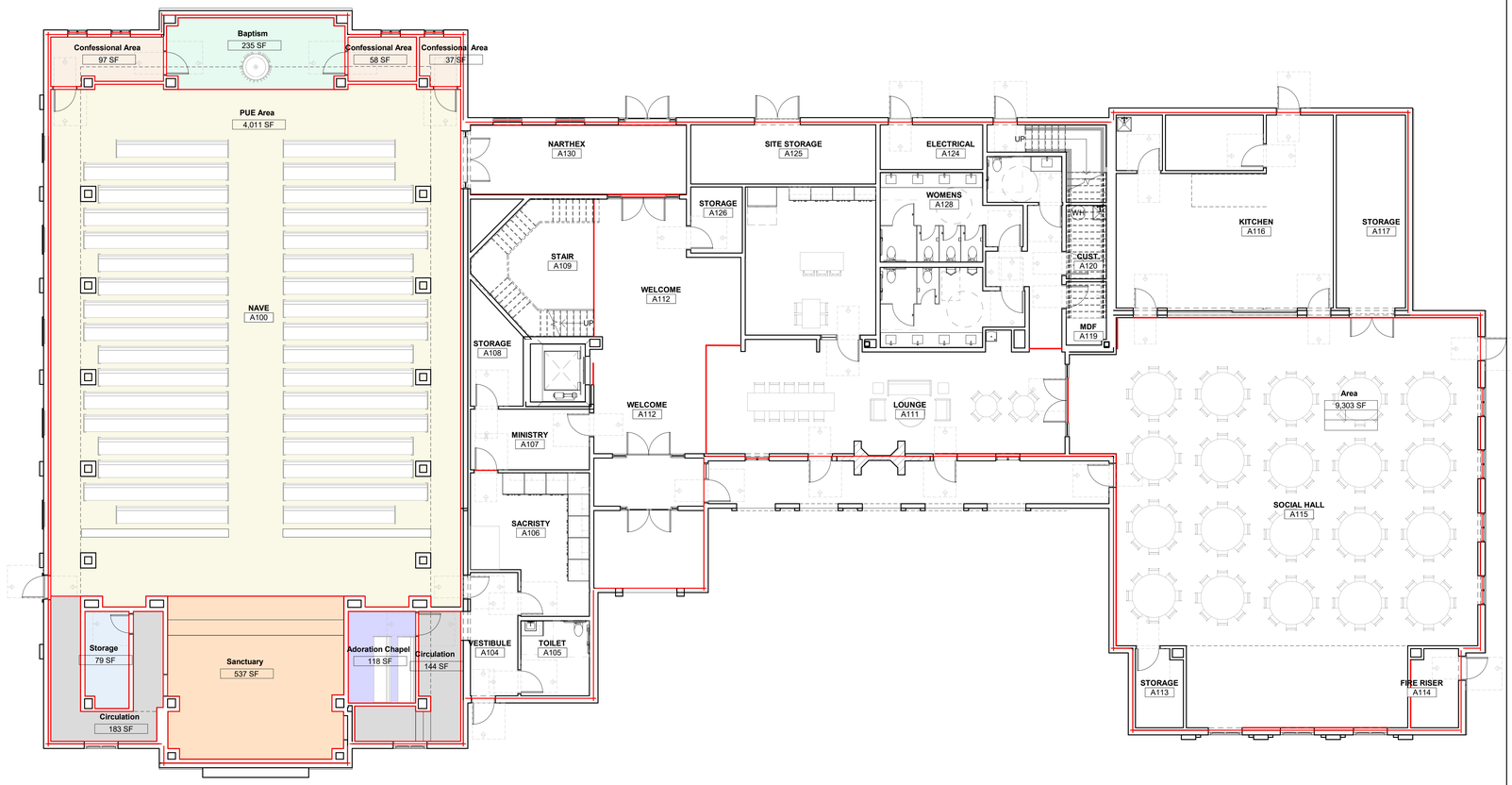
Dawn D. Cartier, P.E., PTOE
Senior Project Manager & President

Attachments:

A. Site Plan
B. Flagstaff Parking Standards
C. Sunday Mass Counts – Newman Center Flagstaff

Church Area Study

Adoration Chapel	118 SF
Baptism	235 SF
Circulation	327 SF
Confessional Area	192 SF
PUE Area	4011 SF
Sanctuary	537 SF
Storage	79 SF



1 FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"

COLE /ARCHITECTS
1008 W Main St
Boise, Idaho 83702
t 208.345.1800
colearchitects.com

Copyright © 2022 Cole Architects, PLLC

STAMP

NOT FOR CONSTRUCTION

BIDDERS ARE INSTRUCTED TO CAREFULLY REVIEW THE CONSTRUCTION DOCUMENTS AND THE SITE CONDITIONS. INFORMATION REGARDING THE COMPLETE WORK OF SPECIFIC TRADES IS DISPERSED THROUGHOUT THE ENTIRE DOCUMENT SET AND CANNOT BE ACCURATELY DETERMINED BY REFERENCE TO OTHER THAN COMPLETE DOCUMENT SET.

CONSULTANT

PROJECT INFORMATION

Holy Trinity Newman Center

520 RIORDAN RANCH ST.
FLAGSTAFF, AZ 86001

ISSUES

MARK	DATE	DESCRIPTION

PHASE	Schematic Documents
DATE	08.23.2022
JOB NUMBER	2204

SHEET NAME

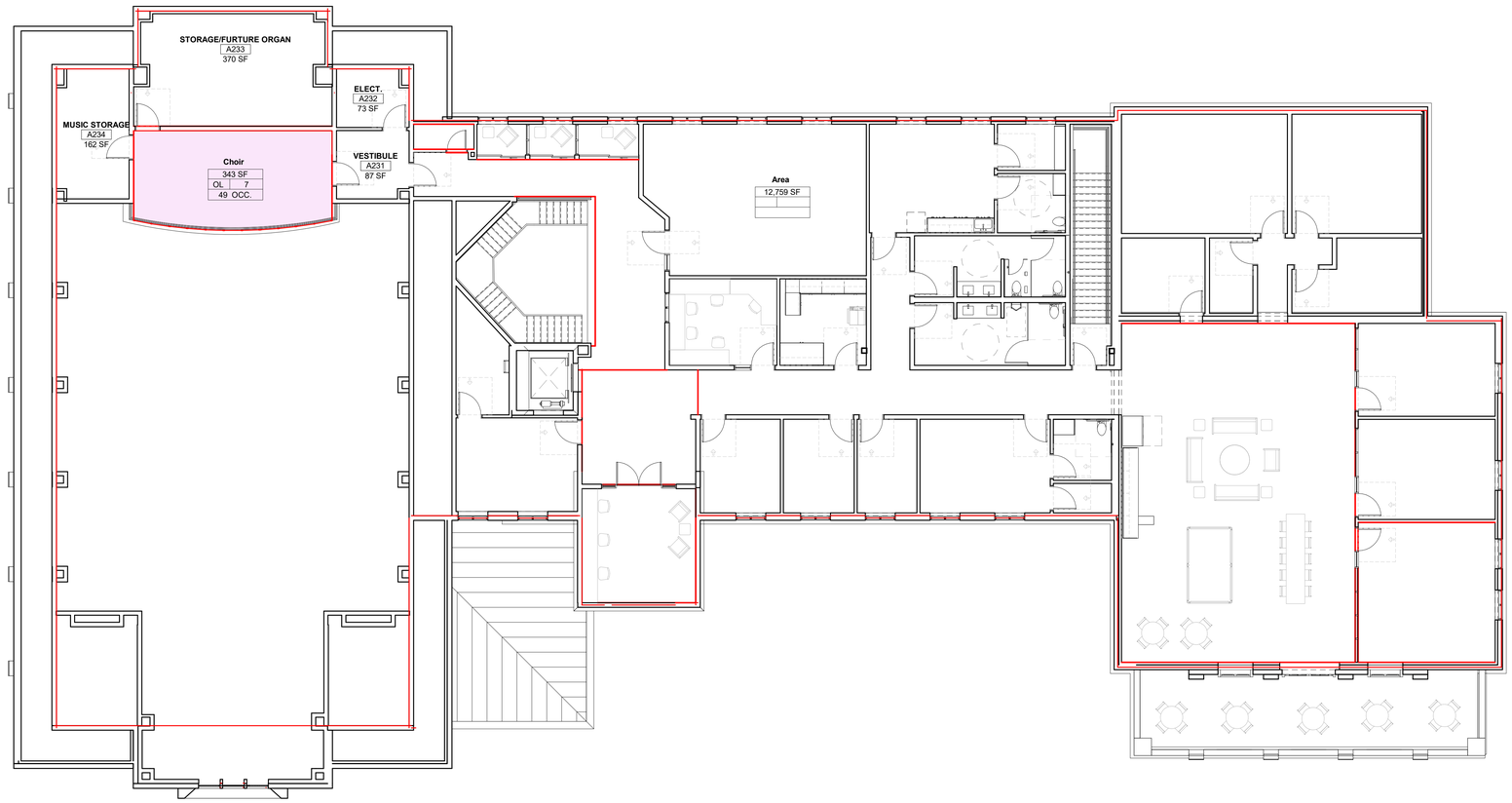
FLOOR PLAN - LEVEL 01 - AREA A

SHEET NUMBER

A101B

Church Area Study

	Choir	343 SF



1 **SECOND FLOOR**
SCALE: 1/8" = 1'-0"

COLE /ARCHITECTS

1008 W Main St
Boise, Idaho 83702
t 208.345.1800
colearchitects.com

Copyright © 2022 Cole Architects, PLLC

STAMP

NOT FOR CONSTRUCTION

BIDDERS ARE INSTRUCTED TO CAREFULLY REVIEW THE CONSTRUCTION DOCUMENTS AND THE SITE CONDITIONS. INFORMATION REGARDING THE COMPLETE WORK OF SPECIFIC TRADES IS DISPERSED THROUGHOUT THE ENTIRE DOCUMENT SET AND CANNOT BE ACCURATELY DETERMINED BY REFERENCE TO OTHER THAN COMPLETE DOCUMENT SET.

CONSULTANT

PROJECT INFORMATION

Holy Trinity Newman Center

520 RIORDAN RANCH ST.
FLAGSTAFF, AZ 86001

ISSUES

MARK	DATE	DESCRIPTION

PHASE	Schematic Documents
DATE	08.23.2022
JOB NUMBER	2204

SHEET NAME

FLOOR PLAN - LEVEL 02 - AREA A

SHEET NUMBER

A102B

Table 10-50.80.040.A.: Number of Motor Vehicle Parking Spaces Required	
Use	**Number of Required Spaces**
Commercial Campgrounds	1 per camp vehicle or site plus 1 per employee
Meeting Facilities, Public or Private	1 per employee plus the greater of either 1 per 250 gsf or 1 per 4 persons at maximum capacity
Places of Worship	1 per 60 gsf in main sanctuary
Commercial Recreation Facilities, Indoor or Outdoor	
Bowling Alleys	1 per lane plus 1 per 6 persons at maximum capacity
Golf Courses and Related Facilities	4 per hole plus 1 per employee
Recreational Vehicle Park	1 per recreational vehicle and/or travel trailer plus required spaces for accessory uses
Recreation Centers	1 per 250 gsf, or 1 per 4 patrons at max. capacity, whichever is greater; plus 1 per employee
Skating Rinks: Ice or Roller	1 per 300 gsf
Swimming Facility	1 per 75 gsf of water area
Tennis, Racquetball, or Handball Courts	2 per court
Other:	1 per 4 persons at maximum capacity
Libraries, Museums	1 per employee plus the greater of either 1 per 250 gsf or 1 per 4 persons at maximum capacity
Theaters	1 per 4 persons at maximum capacity
Schools, Private	
Grades K-8	1 per employee plus 1 per 2 classrooms
Grades 9-12	1 per employee plus 1 per 4 students at capacity class attendance
Trade	1 per employee plus 1 per 3 students at capacity class attendance
Universities and Colleges	1 per employee plus 1 per 2 students at capacity class attendance
Youth Recreation Camp	1 per employee on the largest work shift plus 1 per camp vehicle
Other: Uses Not Listed	1 per employee plus

Table 10-50.80.040.A.: Number of Motor Vehicle Parking Spaces Required	
Use	**Number of Required Spaces**
	1 per 300 gsf
Retail Trade	
Bars/Taverns	1 per 50 gsf plus 1 per employee
Convenience Groceries	1 per employee plus 1 per 300 gsf
Drive-Through Uses	5 stacking spaces per drive-through, including service window and menu board areas, plus base use requirement
Furniture and/or Major Appliance Stores	1 per 600 gsf
General Retail Business	1 per 300 gsf
Markets	
Neighborhood, < 5,000 gsf	1 per 400 gsf, excluding storage areas
Grocery or Supermarket, = 5,000 gsf	1 per 250 gsf, excluding storage areas
Restaurants or Cafes	1 per employee plus 1 per 100 gsf
Shopping Centers	
< 100,000 gsf with Restaurant(s) Sharing Parking	1 per 250 gsf
< 100,000 gsf with no Restaurant(s) or Restaurant Having Separate Counted Parking	1 per 300 gsf
≥ 100,000 gsf with Restaurant(s) Sharing Parking	1 per 250 gsf up to 100,000 gsf plus 1 per 300 gsf for gsf over 100,000 gsf
≥ 100,000 gsf with no Restaurant(s) or Restaurant Having Separate Counted Parking	1 per 300 gsf up to 100,000 gsf plus 1 per 325 gsf for gsf over 100,000 gsf
Tap Room	1 per 300 gsf
Services	
Bed and Breakfast Establishments	2 per dwelling unit plus 1 per bedroom for rent
Cemeteries	1 per employee plus 2 per acre
Day Care/Child Day-Care Facilities	1 per employee plus 1 off-street passenger drop-off/pick-up space per 10 students
Funeral Homes, Chapels, Crematoriums, Mortuaries	1 per 4 persons at maximum capacity
General Services	1 per 300 gsf

	Student	*Community*	*Total*
Sunday, July 5,2020			
4:30 PM			
10:30 AM			
5:30 PM	11	52	63
9:00PM			
Total:	11	52	63

Sunday, July 12, 2020	*Student*	*Community*	*Total*
4:30PM			
10:30 AM	6	58	64
5:30 PM	9	24	33
9:00 PM			
Total:	15	82	97

Sunday, July 19, 2020	*Student*	*Community*	*Total*
4:30PM			
10:30 AM	10	70	80
5:30 PM	19	24	43
9:00 PM			
Total:	29	94	123

Sunday, July 26, 2020	*Student*	*Community*	*Total*
4:30PM			
10:30 AM			
5:30 PM	13	35	48
9:00 PM			
Total:	13	35	48

Sunday, August 2, 2020	*Student*	*Community*	*Total*
4:30 PM			
10:30 AM	7	104	111
5:30 PM	12	49	51
9:00PM			
Total:	19	153	162

Sunday, August 9, 2020	*Student*	*Community*	*Total*
4:30PM			
10:30 AM	38	72	111
5:30 PM	23	34	57
9:00 PM			
Total:	61	106	168

Sunday, August 16, 2020	*Student*	*Community*	*Total*
4:30PM			
10:30 AM	22	65	87
5:30 PM	37	30	57
9:00 PM	11	1	12
Total:	70	96	156

Sunday, August 23, 2020	*Student*	*Community*	*Total*
4:30PM	15	17	32
10:30 AM	48	58	106
5:30 PM	38	45	83
9:00 PM	15	2	17
Total:	116	122	238

Sunday, August 30, 2020	*Student*	*Community*	*Total*
4:30 PM	8	30	38
10:30 AM	40	47	87
5:30 PM	60	25	85
9:00PM	15	4	19
Total:	123	106	229

Sunday, September 6, 2020	*Student*	*Community*	*Total*
4:30PM	3	28	31
10:30 AM	41	63	104
5:30 PM	27	49	76
9:00 PM	21	4	25
Total:	92	144	236

Sunday, September 13, 2020	*Student*	*Community*	*Total*
4:30PM	11	26	37
10:30 AM	52	56	108
5:30 PM	49	33	82
9:00 PM	23	3	26
Total:	135	118	253

Sunday, September 20, 2020	*Student*	*Community*	*Total*
4:30PM			
10:30 AM	50	47	97
5:30 PM	46	37	83
9:00 PM	20	6	26
Total:	116	90	206

Sunday, September 27, 2020	*Student*	*Community*	*Total*
4:30 PM			
10:30 AM	70	40	110
5:30 PM	40	22	62
9:00PM	9	25	34
Total:	119	87	206

Sunday, October 4, 2020	*Student*	*Community*	*Total*
4:30PM	11	22	33
10:30 AM	49	55	104
5:30 PM	32	21	53
9:00 PM	22	2	24
Total:	114	100	214

Sunday, October 11, 2020	*Student*	*Community*	*Total*
4:30PM	5	33	38
10:30 AM	62	45	107
5:30 PM	75	14	89
9:00 PM	18	3	21
Total:	160	95	255

Sunday, October 18, 2020	*Student*	*Community*	*Total*
4:30PM	10	25	35
10:30 AM	30	56	86
5:30 PM	53	28	71
9:00 PM	22	5	27
Total:	115	114	219

TOTAL COUNT FOR 16 MASSES

	Student	*Community*	*Total*
4:30 PM	*63*	*268*	*331*
10:30 AM	525	836	1361
5:30 PM	544	522	1066
9:00 PM	176	55	231
Total Count:	**1308**	**1681**	**2989**

Sunday, October 25 2020	*Student*	*Community*	*Total*
4:30PM	5	26	31
10:30 AM	89	56	145
5:30 PM	11	41	52
9:00 PM	28	7	35
Total:	133	130	263

Sunday, November 1, 2020	*Student*	*Community*	*Total*
4:30PM			
10:30 AM	24	60	84
5:30 PM	32	42	74
9:00 PM	6	17	23
Total:	62	119	181

Sunday, November 8, 2020	*Student*	*Community*	*Total*
10:30 AM	53	68	121
5:30 PM	50	17	67
9:00 PM	7	18	25
Total:	110	103	213

Sunday, November 15, 2020	*Student*	*Community*	*Total*
10:30 AM	42	51	93
5:30 PM	44	21	61
9:00 PM	20	2	22
Total:	106	74	176

Sunday, November 22, 2020	*Student*	*Community*	*Total*
10:30 AM	39	45	84
5:30 PM	23	22	45
9:00 PM	2	22	24
Total:	64	89	153

Sunday, November 29, 2020	*Student*	*Community*	*Total*
10:30 AM	10	52	62
5:30 PM	9	29	38
Total:	19	81	100

Sunday, December 6, 2020	*Student*	*Community*	*Total*
10:30 AM	11	82	
5:30 PM			
Total:	11	82	0

Sunday, December 13, 2020	*Student*	*Community*	*Total*
10:30 AM			
5:30 PM			
Total:	0	0	0

Sunday, December 20, 2020	*Student*	*Community*	*Total*
10:30 AM	9	80	
5:30 PM			
Total:	9	80	0

Christmas Eve Total (2pm & 4pm) 105

Sunday, December 27, 2020	*Student*	*Community*	*Total*
10:30 AM			
5:30 PM	1	37	
Total:	1	37	0

Sunday, January 3, 2021	*Student*	*Community*	*Total*
10:30 AM	2	55	57
5:30 PM			
Total:	2	55	57

Sunday, January 10, 2021	*Student*	*Community*	*Total*
10:30 AM	45	53	98
5:30 PM	35	34	69
Total:	80	87	167

Sunday, January 17, 2021	*Student*	*Community*	*Total*
10:30 AM	37	47	84
5:30 PM	23	23	46
9:00 PM	11	11	22
Total:	71	81	152

Sunday, January 24, 2021	*Student*	*Community*	*Total*
10:30 AM	40	15	55
5:30 PM	33	29	62
9:00 PM	5	9	14
Total:	78	53	131

Sunday, January 31, 2021	*Student*	*Community*	*Total*
10:30 AM	47	42	89
5:30 PM	34	32	66
9:00 PM	13	7	20
Total:	94	81	175

Sunday, February 7, 2021	*Student*	*Community*	*Total*
10:30 AM	16	66	82
5:30 PM	15	25	40
9:00 PM	9	16	25
Total:	40	107	147

Sunday, February 14, 2021	*Student*	*Community*	*Total*
10:30 AM	30	57	87
5:30 PM			
9:00 PM	15	10	25
Total:	45	67	112

Sunday, February 21, 2021	*Student*	*Community*	*Total*
10:30 AM	43	65	108
5:30 PM	50	28	78
9:00 PM	24	8	32
Total:	117	101	218

Sunday, February 28, 2021	*Student*	*Community*	*Total*
10:30 AM	50	73	103
5:30 PM	21	36	57
9:00 PM			
Total:	71	109	160

Sunday, March 7, 2021	*Student*	*Community*	*Total*
10:30 AM	51	86	137
5:30 PM	47	29	76
9:00 PM	20	21	41
Total:	118	136	254

Sunday, March 14, 2021	*Student*	*Community*	*Total*
10:30 AM	45	73	118
5:30 PM	48	65	113
9:00 PM			
Total:	93	138	231

Sunday, March 21, 2021	*Student*	*Community*	*Total*
10:30 AM	64	41	105
5:30 PM	33	38	71
9:00 PM	26	2	28
Total:	123	81	204

Sunday, March 28, 2021	*Student*	*Community*	*Total*
10:30 AM	88	75	163
5:30 PM	48	66	114
9:00 PM	27	11	38
Total:	163	152	315

Sunday, April 4, 2021	*Student*	*Community*	*Total*
Easter Sunday			
8:30AM	37	135	172
10:30AM	43	103	146
9:00 PM	26	25	51
Total:	106	263	369

Sunday, April 11, 2021	*Student*	*Community*	*Total*
10:30 AM	78	59	137
5:30 PM			
9:00 PM	18	6	24
Total:	96	65	161

Sunday, April 18, 2021	*Student*	*Community*	*Total*

10:30 AM	41	105	146
5:30 PM	49	58	107
9:00 PM	25	8	33
Total:	115	171	286

Sunday, April 25, 2021

	Student	*Community*	*Total*
10:30 AM	46	118	164
5:30 PM	44	45	89
9:00 PM	26	5	31
Total:	116	168	284

Sunday, May 2, 2021

	Student	*Community*	*Total*
10:30 AM	17	101	118
5:30 PM			
Total:	17	101	118

Sunday, May 9, 2021

	Student	*Community*	*Total*
10:30 AM	17	71	88
5:30 PM	18	28	46
Total:	35	99	134

Sunday, May 16, 2021

	Student	*Community*	*Total*
10:30 AM	15	77	92
5:30 PM	19	49	68
Total:	34	126	160

Sunday, May 23, 2021

	Student	*Community*	*Total*
10:30 AM	15	95	110
5:30 PM	26	34	60
Total:	41	129	170

Sunday, May 30, 2021		*Student*	*Community*	*Total*
	10:30 AM	12	101	113
	5:30 PM	25	33	58
	Total:	37	134	171

Sunday, June 6, 2021		*Student*	*Community*	*Total*
	10:30 AM	31	119	150
	5:30 PM	12	60	72
	Total:	43	179	222

Sunday, June 13, 2021		*Student*	*Community*	*Total*
	10:30 AM	14	146	160
	5:30 PM	15	64	79
	Total:	29	210	239

Sunday, June 20, 2021		*Student*	*Community*	*Total*
	10:30 AM	22	152	174
	5:30 PM	13	50	63
	Total:	35	202	237

Sunday, June 27, 2021		*Student*	*Community*	*Total*
	10:30 AM	15	96	111
	5:30 PM	12	45	57
	Total:	27	141	168

Sunday, July 4, 2021		*Student*	*Community*	*Total*
	10:30 AM	16	142	158
	5:30 PM	5	43	48
	Total:	21	185	206

Sunday, July 11, 2021		*Student*	*Community*	*Total*
	10:30 AM	18	120	138
	5:30 PM	12	52	64
	Total:	30	172	202

Sunday, July 18, 2021	*Student*	*Community*	*Total*
10:30 AM	13	140	153
5:30 PM	11	64	75
Total:	24	204	228

Sunday, July 25, 2021	*Student*	*Community*	*Total*
10:30 AM	16	112	128
5:30 PM	13	50	63
Total:	29	162	191

Sunday, August 1, 2021	*Student*	*Community*	*Total*
10:30 AM	17	160	177
5:30 PM	18	46	64
Total:	35	206	241

Sunday, August 8, 2021	*Student*	*Community*	*Total*
10:30 AM		140	140
5:30 PM	9	55	64
Total:	9	195	204

Sunday, August 15, 2021	*Student*	*Community*	*Total*
10:30 AM	22	170	192
5:30 PM	22	82	104
Total:	44	252	296

Sunday, August 22, 2021	*Student*	*Community*	*Total*
10:30 AM	121	167	288
5:30 PM	81	65	146
Total:	202	232	434

Sunday, August 29, 2021	*Student*	*Community*	*Total*
10:30 AM	78	115	193
5:30 PM	92	42	134
Total:	170	157	327

Sunday, September 5, 2021	*Student*	*Community*	*Total*
10:30 AM	78	198	276
5:30 PM	62	61	123
9:00 PM	35	17	52
Total:	175	276	451

Sunday, September 12, 2021	*Student*	*Community*	*Total*
10:30 AM	84	101	185
5:30 PM	90	48	138
9:00 PM	35	8	43
Total:	209	157	366

Sunday, September 19, 2021	*Student*	*Community*	*Total*
10:30 AM	79	102	181
5:30 PM	54	53	107
9:00 PM			0
Total:	133	155	288

Sunday, September 26, 2021	*Student*	*Community*	*Total*
10:30 AM	71	124	195
5:30 PM	80	61	141
9:00 PM	41	5	46
Total:	192	190	382

Sunday, October 3, 2021	*Student*	*Community*	*Total*
10:30 AM	59	151	210
5:30 PM	81	92	173
9:00 PM	37	4	41
Total:	177	247	424

Sunday, October 10, 2021	*Student*	*Community*	*Total*
10:30 AM	57	125	182
5:30 PM	64	70	134
9:00 PM	34	4	38
Total:	155	199	354

Sunday, October 17, 2021	*Student*	*Community*	*Total*
10:30 AM	77	100	177
5:30 PM	71	73	144
9:00 PM	30	19	49
Total:	178	192	370

Sunday, October 24, 2021	*Student*	*Community*	*Total*
10:30 AM	46	89	135
5:30 PM	99	89	188
9:00 PM	12	27	39
Total:	157	205	362

Sunday, October 31, 2021	*Student*	*Community*	*Total*
10:30 AM	48	116	164
5:30 PM			0
9:00 PM	14	4	18
Total:	62	120	182

Sunday, November 7, 2021	*Student*	*Community*	*Total*
10:30 AM	36	120	156
5:30 PM	70	66	136
9:00 PM	27	9	36
Total:	133	195	328

Sunday, November 14, 2021	*Student*	*Community*	*Total*
10:30 AM	60	140	200
5:30 PM	73	54	127
9:00 PM	22	11	33
Total:	155	205	360

Sunday, November 21, 2021	*Student*	*Community*	*Total*
10:30 AM	54	118	172
5:30 PM	48	42	90
9:00 PM	18	10	28
Total:	120	170	290

Sunday, November 28, 2021	*Student*	*Community*	*Total*
10:30 AM	20	80	100
5:30 PM			0
9:00 PM	21	13	34
Total:	41	93	134

Sunday, December 5, 2021	*Student*	*Community*	*Total*
10:30 AM	52	112	164
5:30 PM	79	49	128
Total:	131	161	292

Sunday, December 12, 2021	*Student*	*Community*	*Total*
10:30 AM	16	131	147
5:30 PM	27	60	87
Total:	43	191	234

Sunday, December 19, 2021	*Student*	*Community*	*Total*
10:30 AM			41
5:30 PM	3	91	94
Total:	3	91	135

Sunday, December 26, 2021	*Student*	*Community*	*Total*
10:30 AM			71
5:30 PM	7	51	58
Total:	7	51	129

Sunday, January 2, 2022	*Student*	*Community*	*Total*
10:30 AM	2	11	
5:30 PM			
9:00PM			
Total:	2	11	0

Sunday, January 9, 2022		*Student*	*Community*	*Total*	
	10:30 AM	50	76	126	
	5:30 PM	62	49	111	
	9:00PM	18	10	28	
	Total:	130	135	265	
Sunday, January 16, 2022		*Student*	*Community*	*Total*	
	10:30 AM	52	66	118	
	5:30 PM	84	59	143	
	9:00PM	24	22	46	
	Total:	160	147	307	School in session
Sunday, January 23, 2022		*Student*	*Community*	*Total*	
	10:30 AM	55	76	131	
	5:30 PM	68	60	128	
	9:00PM	35	20	55	
	Total:	158	156	314	School in session
Sunday, January 30, 2022		*Student*	*Community*	*Total*	
	10:30 AM	69	63	132	
	5:30 PM	61	58	119	
	9:00PM	26	22	48	
	Total:	156	143	299	School in session
Sunday, February 6, 2022		*Student*	*Community*	*Total*	
	10:30 AM	20	88	108	
	5:30 PM	34	60	94	
	9:00PM	20	12	32	
	Total:	74	160	234	School in session
Sunday, February 13, 2022		*Student*	*Community*	*Total*	
	10:30 AM	61	101	162	
	5:30 PM	29	27	56	
	9:00PM	30	2	32	
	Total:	120	130	250	School in session

Sunday, February 20, 2022		*Student*	*Community*	*Total*	
	10:30 AM	48	61	109	
	5:30 PM	55	75	130	
	9:00PM	21	22	43	
	Total:	124	158	282	
					School in session
Sunday, February 27, 2022		*Student*	*Community*	*Total*	
	10:30 AM			0	
	5:30 PM	49	46	95	
	9:00PM	29	3	32	
	Total:	78	49	127	
					School in session
Sunday, March 6, 2022		*Student*	*Community*	*Total*	
	10:30 AM	68	73	141	
	5:30 PM	57	68	125	
	9:00PM	10	36	46	
	Total:	135	177	312	
					School in session
Sunday, March 13, 2022		*Student*	*Community*	*Total*	
	10:30 AM	36	105	141	
	5:30 PM	16	64	80	
	9:00PM	3	9	12	
	Total:	55	178	233	
					School in session
Sunday, March 20, 2022		*Student*	*Community*	*Total*	
	10:30 AM	34	84	118	
	5:30 PM	41	64	105	
	9:00PM	12	25	37	
	Total:	87	173	260	
					School in session
Sunday, March 27, 2022		*Student*	*Community*	*Total*	
	10:30 AM	93	88	181	
	5:30 PM	75	99	174	
	9:00PM			0	
	Total:	168	187	355	
					School in session

Sunday, April 3, 2022		*Student*	*Community*	*Total*	
	10:30 AM	74	124	198	
	5:30 PM	63	87	150	
	9:00PM	24	10	34	
	Total:	161	221	382	
					School in session
Sunday, April 10, 2022		*Student*	*Community*	*Total*	
	10:30 AM	73	116	189	
	5:30 PM	52	41	93	
	9:00PM	34	20	54	
	Total:	159	177	336	
					School in session
Sunday, April 17, 2022		*Student*	*Community*	*Total*	
	8:30 AM	49	71	120	
	5:30 PM	70	115	185	
	9:00PM	30	38	68	
	Total:	149	224	373	
					School in session
Sunday, April 24, 2022		*Student*	*Community*	*Total*	
	10:30 AM			0	
	5:30 PM	50	77	127	
	9:00PM	26	12	38	
	Total:	76	89	165	
					School in session
Sunday, May 1, 2022		*Student*	*Community*	*Total*	
	10:30 AM	57	127	184	
	5:30 PM	56	56	112	
	9:00PM	24	14	38	
	Total:	137	197	334	
					School in session
Sunday, May 8, 2022		*Student*	*Community*	*Total*	
	10:30 AM			0	
	5:30 PM		40	40	
	9:00PM	7	3	10	
	Total:	7	43	50	

Sunday, May 15, 2022	*Student*	*Community*	*Total*
10:30 AM	10	105	115
5:30 PM	13	61	74
Total:	23	166	189

Sunday, May 22, 2022	*Student*	*Community*	*Total*
10:30 AM	12	88	100
5:30 PM	12	102	114
Total:	24	190	214

Sunday, May 29, 2022	*Student*	*Community*	*Total*
10:30 AM	13	155	168
5:30 PM	11	97	108
Total:	24	252	276

10. A.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Christina Rubalcava, Senior Assistant City Attorney CR
Date:	01/12/2023
Meeting Date:	01/17/2023

TITLE:

Consideration and Adoption of Resolution No. 2023-02: A resolution approving Binding Waivers of Enforcement for five parcels of land located in the City of Flagstaff.

STAFF RECOMMENDED ACTION:

1) Read Resolution No. 2023-02 by title only
2) City Clerk reads Resolution No. 2023-02 by title only (if approved above)
3) Adopt Resolution No. 2023-02

Executive Summary:

On November 17, 2020, the Flagstaff City Council adopted a land use law, Ordinance 2020-28, generally referred to as the High Occupancy Housing amendments, which made various amendments to the Flagstaff Zoning Code.

Arizona Revised Statutes §12-1134 ("Prop 207") allows a property owner to seek just compensation when a city adopts a land use law that reduces the property owner's existing rights to use, divide, sell, or possess private real property and such action reduces the fair market value of the property.

The property owners listed in the attached Binding Waiver of Enforcement filed claims for just compensation under Prop 207, asserting that the amendments to the Flagstaff Zoning Code adopted by Ordinance 2020-28 reduced their rights to use their respective properties and thereby collectively reduced the fair market value of the five properties by approximately $25 million.

In response to a claim for just compensation under Prop 207, a city may reach an agreement with the property owner on the demanded compensation, deny the demanded compensation and defend such denial in litigation, amend the land use law, repeal the land use law, or issue to the property owner a binding waiver of enforcement of the land use law on the owner's specific parcels.

If the City Council approves and adopts the attached resolution approving the Binding Waiver of Enforcement for the five properties identified therein, these properties will not be subject to the High Occupancy Housing amendments adopted by Ordinance 2020-28.

Financial Impact:

Adoption of the resolution and approval of the Binding Waivers of Enforcement will moot the pending claims for just compensation.

Policy Impact:
None.

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:
None.

Has There Been Previous Council Decision on This:
No.

Attachments:
Res. 2023-02
Ex. A Binding Waiver of Enforcement
Ord. 2020-28 (HOH)
Res. 2020-59 (HOH)
Presentation

RESOLUTION NO. 2023-02

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL APPROVING BINDING WAIVERS OF ENFORCEMENT FOR FIVE PARCELS OF LAND WITHIN THE CORPORATE LIMITS OF THE CITY OF FLAGSTAFF

RECITALS:

WHEREAS, on November 17, 2020, the Flagstaff City Council adopted Ordinance 2020-28, which made various amendments to the Flagstaff Zoning Code; and

WHEREAS, the owners identified in Exhibit A, attached hereto, owned their respective parcels of land ("Properties") on November 17, 2020; and

WHEREAS, Arizona Revised Statutes §12-1134 ("Prop 207") allows a property owner to seek just compensation when a city adopts a land use law that reduces the property owner's existing rights to use, divide, sell, or possess private real property and such action reduces the fair market value of the property; and

WHEREAS, the property owners identified in Exhibit A filed claims for just compensation under Prop 207, asserting that the amendments to the Flagstaff Zoning Code reduced their rights to use the five Properties and thereby reduced the fair market value of the Properties; and

WHEREAS, in response to a claim for just compensation under Prop 207, a city may issue to the property owner a binding waiver of enforcement of the land use law on the owner's specific parcels.

ENACTMENTS:

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

SECTION 1. That the Binding Waiver of Enforcement, which is attached hereto as Exhibit A, is hereby approved and the Mayor is authorized to execute the Binding Waiver of Enforcement, waiving enforcement of Ordinance 2020-28 as set forth therein

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 17th day of January, 2023.

_____

MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Exhibits:

Exhibit A - Binding Waiver of Enforcement

WHEN RECORDED, MAIL TO:

Flagstaff City Clerk
Stacy Saltzburg
211 W. Aspen Avenue
Flagstaff, AZ 86001

BINDING WAIVER OF ENFORCEMENT

THIS BINDING WAIVER OF ENFORCEMENT (this "Waiver") is granted by the City of Flagstaff, an Arizona municipal corporation (the "City").

RECITALS:

A. On November 17, 2020, the Flagstaff City Council adopted a land use law, Ordinance 2020-28, which made various amendments to the Flagstaff Zoning Code.

B. The respective owners of the following parcels in Flagstaff (collectively "the HOH Properties") owned the Properties on the date of enactment listed above:

	APN	Property Owner	Address
1.	103-08-016	Sunshine Rescue Mission	3 East Cottage Avenue
2.	101-08-024	Flagstaff Historical Preservation LLC	606 North Beaver Street
3.	101-01-010A	OIC LLC	900 North San Francisco Street
4.	104-02-056	Joe Heinrichs and Yuuri Heinrichs	603 South Fountaine Street
5.	113-76-002	Niki Holdings, LP and Niki Flagstaff, LP	5060 US-89

C. Arizona Revised Statutes §12-1134 ("Prop 207") allows a property owner to seek just compensation when a city adopts a land use law that reduces the property owner's existing rights to use, divide, sell, or possess private real property and such action reduces the fair market value of the property.

D. In June through December 2022, the owners of the HOH Properties filed with the City a request for just compensation pursuant to Prop 207.

E. In response to a claim for just compensation under Prop 207, a city may reach an agreement to issue to the property owner a binding waiver of enforcement of the land use law on the owner's specific parcels.

NOW, THEREFORE, the City of Flagstaff does hereby declare as follows:

1) Incorporation of Recitals. The recitals stated above are true and correct and are incorporated herein.

2) HOH Properties Binding Waiver of Enforcement. That the amendments to the Flagstaff Zoning Code adopted by Ordinance 2020-28 shall not be enforced nor applicable to the entirety, or any portion of the HOH Properties.

3) Recordation. This Binding Waiver of Enforcement shall be adopted by Resolution of the Flagstaff City Council and recorded in its entirety in the Official Records of Coconino County, Arizona, not later than ten (10) days after this Waiver takes effect.

4) Covenants Running with Land; Inurement. The covenants, conditions, terms, and provisions of this Waiver relating to use of the Properties shall run with the Properties.

5) Governing Law. This Waiver, and all rights and obligations created hereby, shall be determined and governed by the laws of the State of Arizona.

IN WITNESS WHEREOF, this Waiver is approved by the Flagstaff City Council through the adoption of Resolution 2023-02.

City of Flagstaff

_____

Mayor

Attest:

_____

City Clerk

Approved as to Form:

_____

City Attorney

STATE OF ARIZONA)
COUNTY OF COCONINO)

ACKNOWLEDGMENT

On this _____ day of _____, 202__, before me, a Notary Public, personally appeared Becky Daggett, Mayor of the City Flagstaff, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of the City of Flagstaff, for the purposes therein contained.

_____
Notary Public

My Commission Expires: _____

ORDINANCE NO. 2020-28

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 *"CASE NO. PZ-19-00125 UPDATES TO ZONING CODE 2020 – HIGH OCCUPANCY HOUSING LAND USE"*; PROVIDING FOR PENALTIES, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City of Flagstaff wishes to amend Title 10 Flagstaff Zoning Code of the Flagstaff City Code, to implement the High Occupancy Housing Plan by adopting modifications to the land use and property development tables, specific to use standards, parking standards, definitions, and the appendixes; and

WHEREAS, a citizen review session was held at the Planning Commission work session on September 23, 2020, 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 public hearing on October 28, 2020, and provided a recommendation to City Council on 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; and

WHEREAS, that certain document known as "*Case No. PZ-19-00125 Updates to Zoning Code 2020 - High Occupancy Housing Land Use*", one (1) paper copy and one (1) electronic copy of which are on file with the City Clerk in compliance with A.R.S. § 44-7041, was declared to be a public record by Resolution No. 2020-59.

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 "*Case No. PZ-19-00125 Updates to Zoning Code 2020 - High Occupancy Housing Land Use*", one(1) paper copy and (1) electronic copy are on file in the office of the City Clerk of the City of Flagstaff, Arizona, which document is declared a public record by Resolution No. 2020-59 of the City of Flagstaff, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance.

SECTION 3. The Zoning Code text amendment is consistent with and conforms to the goals of the Regional Plan.

SECTION 4. The amendment requested in the application will not be detrimental to the public interest, health, safety, convenience, or welfare of the City, and will add to the public good as described in the General Plan.

SECTION 5. The proposed 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 resolution shall be effective on March 1, 2021.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 17th day of November, 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

RESOLUTION NO. 2020-59

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "*CASE NO. PZ-19-00125 UPDATES TO ZONING CODE 2020 – HIGH OCCUPANCY HOUSING LAND USE*"

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;

WHEREAS, the City of Flagstaff wishes to incorporate by reference amendments to the Flagstaff Zoning Code, Ordinance No. 2020-59, 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 *"Case No. PZ-19-00125 Updates to Zoning Code 2020 - High Occupancy Housing Land Use"* attached hereto as Exhibit A is hereby declared to be a public record, and one (1) paper copy and one (1) electronic copy shall remain on file with the City Clerk in compliance with A.R.S. § 44-7041, and said copies shall remain on file with the City Clerk.

SECTION 2. Effective Date.

This resolution shall be effective on March 1, 2021.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 17th day of November, 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibits:
A. Case No. PZ-19-00125 Updates to Zoning Code 2020 - High Occupancy Housing Land Use

Case No. PZ-19-00125 Updates to Zoning Code 2020 - High Occupancy Housing Land Use

Amendment for Adoption in Flagstaff Zoning Code

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.**

Graphics/Figures that are being deleted are indicated with an "X" over the graphic/figure.

Graphics/Figures that are being added are indicated with a border around the graphic/figure.

Tables that are being deleted are indicated with an "X" over the Tables.

Tables that are being added are indicated with a thick border around the Tables.

Bold blue capitalized text, **BOLD BLUE CAPITALIZED TEXT LIKE THIS**, are additions that the City Council made at the November 17, 2020 City Council Meeting

Section 1. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.30 Non-Transect Zones, Section 10-40.30.030 Residential Zones, Subsection B. Residential Zones – Allowed Uses, as follows:

Section 10-40.30.030 Residential Zones

B. Residential Zones – Allowed Uses. The allowed land uses of each of the Residential Zones are shown in Table 10-40.30.030.B.

Table 10-40.30.030.B.
Residential Zones – Allowed Uses.

Primary Land Use[1]	Specific Use Regulations	Residential Zones						
		RR	ER	R1	R1N	MR	HR	MH
Ranching, Forestry and Animal Keeping								
Animal Keeping	10-40.60.070	P[6]	P[6]	--	--	--	--	--
Recreation, Education and Assembly								
Commercial Campgrounds	10-40.60.130	UP	--	--	--	--	--	--
Equestrian Recreational Facilities		UP	UP	UP	--	--	--	--
Golf Courses and Facilities		UP	UP	UP	--	--	--	--

Libraries, Museums		UP	UP	UP	UP	UP	UP	UP
Meeting Facilities, Public and Private	10-40.60.230							
Regional		--	--	--	--	--	--	--
Neighborhood		P/UP[2]	P/UP[2]	P/UP[2]	P/UP[2]	P/UP[2]	P/UP[2]	P/UP[2]
Outdoor Public Uses, General		P	P	P	--	P	P	P
Places of Worship		P/UP[5]	P/UP[5]	P/UP[5]	P/UP[5]	P/UP[5]	P/UP[5]	P/UP[5]
Schools – Private		P	P	P	P	P	P	P
Schools – Public and Charter		P[3]	P[3]	P[3]	P[3]	P	P	P[3]
Trade Schools		--	--	--	--	--	--	--
Residential								
Co-housing	10-40.60.120	P	P	PRD	--	P	P	--
Congregate Care Facilities		UP	UP	UP	UP	P	P	UP
Day Care, Centers	10-40.60.150.B	UP	UP	UP	UP	UP	UP	UP
Day Care, Home	10-40.60.150.A	P	P	P	P	P	P	P
Development, Duplex		PRD	PRD	PRD	P	P	P	--
Development - Cluster, Single-Family	10-40.60.170	P	P	— PRD	--	--	--	--
Development, Multiple-Family		PRD	PRD	PRD	--	P	P	--
Development, Single-Family		P	P	P	P	PRD[4]	PRD[4]	P
Dormitories		--	--	--	--	UP	UP	--
Group Home		P	P	P	P	P	P	P
High Occupancy Housing Development, Single-Family	**10-40.60.175**	**UP**	**UP**	**UP**	**UP**	**UP/PRD**	**UP/PRD**	**UP**
High Occupancy Housing Development, Two-units	**10-40.60.175**	**UP/PRD**	**UP/PRD**	**UP/PRD**	**UP**	**UP**	**UP**	**--**
High Occupancy Housing Development, Three-units	**10-40.60.175**	**UP/PRD**	**UP/PRD**	**UP/PRD**	**--**	**UP**	**UP**	**--**

High Occupancy Housing Development, Four-units and Greater	**10-40.60.175**	**UP/PRD**	**UP/PRD**	**UP/PRD**	**--**	**UP**	**UP**	**--**
Home Occupation	10-40.60.180	P	P	P	P	P	P	P
Institutional Residential								
Custodial Care Facilities		UP	UP	UP	UP	UP	UP	UP
Homeless Shelters	10-40.60.190							
Emergency Shelters		UP	UP	UP	UP	UP	UP	UP
Short Term Housing		UP	UP	UP	UP	UP	UP	UP
Transitional Housing		UP	UP	UP	UP	UP	UP	UP
Sheltered Care Homes		UP	UP	UP	UP	UP	UP	UP
Nursing Homes		--	UP	UP	UP	UP	UP	UP
Live/Work	10-40.60.200	--	--	--	--	UP/PRD	UP/PRD	--
Manufactured Home	10-40.60.210	--	--	--	--	--	--	P
Manufactured Home Park	10-40.60.210.D	--	--	--	--	--	--	P
Manufactured Home Subdivision	10-40.60.210.C	--	--	--	--	--	--	P
Mobile Home		--	--	--	--	--	--	P
Planned Residential Development	10-40.60.280	P	P	P	P	P	P	--
~~**Rooming and Boarding Facilities**~~		~~--~~	~~**UP**~~	~~--~~	~~--~~	~~**UP**~~	~~**UP**~~	~~**UP**~~
Single Room Occupancy, Fraternities and Sororities		--	--	--	--	UP	UP	--
Retail Trade								
Neighborhood Market								
≤ 1,500 sf		--	--	UP	--	--	--	UP
≤ 2,500 sf		--	--	--	--	UP	--	--
≤ 5,000 sf		--	--	--	--	--	UP	--
Offices		--	--	--	--	--	UP	--

Services								
Bed and Breakfast Establishments	10-40.60.110	P	P	P	P	P	P	P
Cemeteries		UP	UP	UP	--	UP	UP	UP
Hospitals		UP	UP	UP	UP	UP	UP	UP
Public Services								
Emergency Services		UP	UP	UP	UP	UP	UP	UP
Public Services Minor		P	P	P	P	P	P	P
Public Services Major		--	--	--	--	--	--	--
Telecommunications Facilities								
AM Broadcasting Facilities	10-40.60.310	UP	UP	UP	UP	UP	UP	UP
Antenna-supporting Structure	10-40.60.310	UP	UP	UP	UP	UP	UP	UP
Attached Telecommunication Facilities	10-40.60.310	P	P	P	P	P	P	P
Colocation Facility	10-40.60.310	P	P	P	UP	P	P	P
FM/DTV/Low Wattage AM Broadcasting Facilities	10-40.60.310	UP	UP	UP	UP	UP	UP	UP
Stealth Telecommunication Facilities	10-40.60.310	P	P	P	P	P	P	P
Transportation and Infrastructure								
Accessory Wind Energy Systems	10-40.60.040	P	P	P	--	P	P	P
Urban Agriculture								
Community Garden	10-40.60.140	P	P	P	P	P	P	P
Nurseries		UP	--	--	--	--	--	--

End Notes
1. A definition of each listed use type is in Chapter 10-80, Definitions.
2. A conditional use permit is required if liquor is sold or if facilities exceed 250 seats.
3. Charter schools proposed in existing single-family residences shall be located on residential lots one acre or greater. Charter schools shall be subject to the review processes established in A.R.S. §15-189.01., as amended.

4.	Existing single-family uses and lots recorded in MR and HR, prior to the effective date of this Zoning Code, are considered legal, conforming uses.
5.	A conditional use permit is required if the facility exceeds 250 seats and/or if the facility is located adjacent to a toxic use.
6.	Use is allowed only on a lot or parcel with a net lot area of five acres, or greater.
Key	
P	= Permitted Use
UP	= Conditional Use – Requires the Approval of a Conditional Use Permit
PRD	= Allowed Use only when part of a Planned Residential Development (see Section 10-40.60.280)
UP/PRD	= Conditional Use – Requires the Approval of a Conditional Use Permit, and the use shall be part of a Planned Residential Development (see Section 10-40.60.280)
- -	= Use Not Allowed

Section 2. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.30 Non-Transect Zones, Section 10-40.30.030 Residential Zones, Subsection C. Residential Zones – Building Form Standards and Property Development Standards, as follows:

10-40.30.030 Residential Zones

C. Residential Zones – Building Form Standards and Property Development Standards. The building form and property development standards shown in Table 10-40.30.030.C. shall apply to all property within the corresponding residential zone.

Table 10-40.30.030.C.
Residential Zones – Building Form and Property Development Standards.

	Residential Zones						
	RR	**ER**	**R1**	**R1N**	**MR**	**HR**	**MH**
Residential development subdivided by a plat that was recorded before December 5, 2011							
Lot sizes	(1) Lot sizes and setbacks shall be provided in accordance with the requirements delineated on the final plat approved by the City Council and recorded. When a recorded plat does not have setbacks delineated, the Building Placement Requirements of this table shall govern. (2) Any lot(s) created or reconfigured in accordance with the subdivision code shall conform with the current requirements of						
Setbacks							

	the property's zone, unless alternate lot sizes and setbacks are approved by the City Council on a final plat that is recorded.						
Building Placement Requirements							
Setbacks							
Front (min.)							
2nd Floor and Below	75'	50'	15'	15'	10'	10'	15'
Above 2nd Floor	75'	50'	15'	15'	15'	15'	15'
For Parking	--	--	25'[1]	--	--	--	--
Side (min.)							
Side Yard	10'	20'min./ 45'total	8'	6'	5'	5'	8'
Street Side Yard	25'	20'	15'	6'	5'	5'	12'
Rear (min.)	10'	60'	25'[2]	15'	15'[3]	15'[3]	10'
Building Form Requirements							
Building Height (max.)[12,13, and 14]	35'	35'	35'	35'	35'	60'[4]	30'
Coverage (max.)	20%	17%	35%	35%	40%	50%	43%
Density Requirements (See Division 10-30.20, Affordable Housing Incentives)							
Gross Density (units/acre)							
Min.	--	--	2	2	6	10	--
~~**Max. Outside the RPO**~~	~~**1**~~	~~**1**~~	~~**6**~~	~~**14**~~	~~**14**~~	~~**29**[5]~~	~~**11**~~
Maximum without the Resource Protection Overlay (RPO)	**1**	**1**	**6**	**14**	**14**	**29**[5]	**11**
Maximum with the RPO, inside of a pedestrian shed of an activity center[(18)]	**1**	**1**	**6**	**14**	**14**	**29**[5]	**11**
~~**Max. Within the RPO**~~ **Maximum with the RPO, outside of a pedestrian shed of an activity center**[(18)]	1	1	5	--	9	22	4
Multiple-Family Developments with four dwelling units or more, Bedrooms per Acre							
Maximum without the RPO	**---End note 15---**		**15**	**--**	**35**	**72.5**	**--**
Maximum without the RPO with a Conditional Use Permit for a High Occupancy Housing Development inside of a	**---End note 16---**		**21**	**--**	**49**[17]	**101.5**[17]	**--**

pedestrian shed of an activity center[18]							
Maximum with the RPO	**---End note 15---**	**12.5**	**--**	**22.5**	**55**	**--**
Maximum with the RPO and a Conditional Use Permit for a High Occupancy Housing Development inside of a pedestrian shed of an activity center[18]	**---End note 16---**	**17.5**	**--**	**31.5[17]**	**77[17]**	**--**
Lot Requirements							
Area							
Gross (min.)	1 ac[6]	1 ac	6,000 sf	6,000 sf	6,000 sf	6,000 sf	5 ac
Per Unit (min.)	1 ac[6]	1 ac	6,000 sf	3,000 sf	End note 5	End note 5	4,000 sf
Width							
Interior Lots (min.)	100'[7]	149'[8]	60'[8,9]	50'	50'[8,9]	50'[8,10]	--
Corner Lots (min.)	100'[7]	149'[8]	60'[8,9]	50'	50'[8,9]	50'[8,10]	--
Depth (min.)	200'[7]	--	100'[8]	100'	100'[8]	75'[8,10]	--
Other Requirements							
Open Space (% of Development Site Area)[11]	--	--	--	--	See Table 10-40.30.030.A		
Fences and Screening	See Division 10-50.50						
Landscaping	See Division 10-50.60						
Lighting	See Division 10-50.70						
Parking	See Division 10-50.80						
Signs	See Division 10-50.100						

End Notes

1. 15' for side entrance garages, where the garage is designed as an integral element of the primary dwelling (i.e., doors and windows are consistent with the overall architectural character).
2. One or two story residential buildings and decks attached to those buildings may be built to 15' from the rear property line; provided, that any portion of the structure located closer than 25' to the rear property line does not exceed 50% of the lot width.
3. May be reduced for zones not subject to the Resource Protection Overlay when a minimum of 350 sf of open yard area per unit is provided, see Section 10-40.30.030(H).
4. Building height can be exceeded with approval of a Conditional Use Permit.
5. The maximum number of units for each lot is based on the following:

Area of Lot	Required Lot Area Per Dwelling Units
5,000 to 14,000 square feet	2,500 square feet
14,001 to 24,000 square feet	2,000 square feet
24,001 square feet and over	1,500 square feet

6. Five-acre minimum where public water supply and public streets are not available to serve the property.

7. Where public water supply and public streets are not available to serve the property a minimum lot width of 200' and lot depth of 250' are required.

8. Within a Planned Residential ~~Development~~ **Development,** the minimum width and depth of a lot may vary based on the minimum lot standards applicable to the building types selected for application within a Planned Residential Development (See Section 10-40.60.280, Planned Residential Development).

9. Lot width measured at the setback line.

10. On lots greater than 9,000 sf: 70' minimum width on interior lots, 75' minimum width on corner lots and 100' minimum depth on all lots.

11. ~~Any required common~~ **Common** open space as required in Division 10-50.110, Specific to Building Types, and areas set aside for resource preservation such as floodplains, slopes and forests (Division 10-50.90, Resource Protection Standards) may be used to satisfy this standard. In this context, **"open space" includes active and passive recreation uses, landscape areas, and community gardens.**

12. Primary structures, excluding accessory structures, with a roof pitch greater than, or equal to, 6:12 shall be allowed an additional five feet above the maximum building height.

13. The elevator and stairwell bulkheads shall be architecturally integrated with the building. Elevator and stairwells bulkheads are allowed an additional 15 feet above the maximum building height. The Director may approve a height greater than 15 feet when the additional height is necessary to accommodate an elevator or stairwell bulkhead, related equipment, or the requirements of the Building or Fire Code.

14. Steeples, solar collectors, towers and other unoccupied architectural features are allowed an additional height above the maximum building height equal to 20 percent multiplied by the **maximum building height allowed for property's zone. The total area of the referenced** allowances above the building height shall not exceed 20 percent of the total roof area.

15. Multiple-Family Developments are allowed 3 bedrooms for the first acre of a Development Site and 2.5 bedrooms per acre for each additional acre of a Development Site.

16. Multiple-Family Developments are allowed 4 bedrooms for the first acre of a Development Site and 3.5 bedrooms per acre for each additional acre of a Development Site.

17. Additional bedrooms per acre may be approved on a lot or parcel inside of a pedestrian shed of a Regional Activity Center delineated on the General Plan or applicable Specific Plan with an HOHD Conditional Use Permit.

18. Activity centers are delineated on the General Plan or applicable Specific Plan.

Key
- - Not Applicable

Section 3. 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., as follows:

10-40.30.040 Commercial Zones

B. **Commercial Zones – Allowed Uses.** The allowed land uses of each of the Commercial zones are shown in Table 10-40.30.040.B.

Table 10-40.30.040.B.

Commercial Zones – Allowed Uses

Primary Land Use[1]	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
Industrial, Manufacturing, Processing and Wholesaling						
Carpenter or Cabinet Shops		--	--	--	P	-
Flammable Liquid, Gas, and Bulk Fuel – Storage and Sale		--	--	UP	--	
Machine or Metal Working Shops		--	--	--	P	--
Manufacturing and Processing – Incidental		--	P	P	P	P
Micro-brewery or Micro-distillery	10-40.60.240	--	P	P	P	P
Mini-storage Warehousing	10-40.60.250	--	--	UP[2]	P	--
Research and Development Uses	10-40.60.300	--	--	UP	--	--
Transportation or Trucking Yards		--	--	--	P	--
Vehicle Towing/Impound Yard		--	--	P[4]	--	--
Warehousing	10-40.60.330	--	P[3]	P[3]	--	P[3]

Wholesaling and Distribution		--	--	--	P	P[3]
Recreation, Education and Assembly						
Automobile, Go-kart, Miniature Automobile Racing	10-40.60.080	--	UP	UP	--	--
Commercial Campgrounds	10-40.60.130	--	--	P	--	--
Commercial Recreation Facilities, Indoor		P	P	P	--	P
Commercial Recreation Facilities, Outdoor	10-40.60.270	--	UP	UP	--	--
Libraries, Museums		P	P	P	P	P
Meeting Facilities, Public or Private	10-40.60.230					
Regional		--	P/UP[5]	P/UP[5]	P/UP[5]	P/UP[5]
Neighborhood		P[5]	P/UP[5]	--	--	--
Outdoor Public Uses, General		P	P	P	--	--
Places of Worship		P/UP[10]	P/UP[10]	P/UP[10]	P/UP[10]	P/UP[10]
Schools – Public and Charter		P	P	P	P	P
Schools – Private		P	P	P	P	P
Theaters		P	P	P	--	P
Trade Schools		--	UP	UP	UP	UP
Residential[7]						
Co-housing	10-40.60.120	P[6]	P[6]	P[6]	P[6]	P[6]
Congregate Care Facilities		UP	P	P	P	UP
Day Care, Centers	10-40.60.150.B	P	P	P	UP	UP
Day Care, Home	10-40.60.150.A	P	P	P	P	P
Development, Duplex		P[6]	P[6,9]	P[6]	P[6]	P[6]
Development, Multiple-Family		P[6]	P[6]	P[6]	P[6]	P[6]
Development, Single-Family		--	P[9]	--	--	--

Dormitories		UP[6]	UP[6]	UP[6]	UP[6]	UP[6]
Fraternities and Sororities		UP[6]	UP[6]	UP[6]	UP[6]	UP[6]
Group Homes		P[6]	P[6]	P[6]	P[6]	P[6]
High Occupancy Housing Development, Single-Family	**10-40.60.175**	--	**UP**	--	--	--
High Occupancy Housing Development, Two-units	**10-40.60.175**	**UP[6]**	**UP[6]**	**UP[6]**	**UP[6]**	**UP[6]**
High Occupancy Housing Development, Three-units	**10-40.60.175**	**UP[6]**	**UP[6]**	**UP[6]**	**UP[6]**	**UP[6]**
High Occupancy Housing Development, Four-units and Greater	**10-40.60.175**	**UP[6]**	**UP[6]**	**UP[6]**	**UP[6]**	**UP[6]**
Home Occupation	10-40.60.180	P	P	P	P	P
Institutional Residential						
Custodial Care Facilities		P[8]	P[8]	P[8]	P[8]	P[8]
Homeless Shelters	10-40.60.190					
Emergency Shelters		P[8]	P[8]	P[8]	P[8]	P[8]
Short Term Housing		P[8]	P[8]	P[8]	P[8]	P[8]
Transitional Housing		P	P	P	P	P
Nursing Homes		UP	UP	UP	UP	UP
Sheltered Care Homes		P	P	P	P	P
Live/Work	10-40.60.200	P	P	P	P	P
Planned Residential Development	10-40.60.280	P/UP	P/UP[9]	UP	UP	UP
Residence for Owner, Caretaker or Manager		P[6]	P[6]	P[6]	P[6]	P[6]
~~**Rooming and Boarding Facilities**~~		~~**UP[6]**~~	~~**UP[6]**~~	~~**UP[6]**~~	~~**UP[6]**~~	~~**UP[6]**~~

Single Room Occupancy		UP	--	P	--	P
Retail Trade						
Bars/Taverns		P	P	P	P	P
Crematorium		P	P	P	P	--
Drive-through Retail	10-40.60.160	P	P	P	--	--
Drive-through Service		P	P	P	--	--
Farmers Markets and Flea Markets		--	P	P	P	P
General Retail Business		P	P	P	P	P
Mixed Use	10-40.60.260	P	P	P	P	P
Mixed-Use High Occupancy Housing Development	**10-40.60.175 and 10-40.60.260**	**UP**	**UP**	**UP**	**UP**	**UP**
Restaurant or Cafe		P	P	P	P	P
Services						
Bed and Breakfast Establishments	10-40.60.110	P	P	P	P	P
Cemeteries		UP	UP	UP	UP	--
Dry-cleaning, Processing		P	P	P	--	--
Equipment Rental Yard		--	UP	P	P	--
Funeral Homes, Chapels and Mortuaries		--	P	P	--	UP
General Services		P	P	P	P	P
Hospital		UP	UP	UP	UP	UP
Kennel, Animal Boarding	10-40.50.195			UP [11]		
Medical Marijuana Dispensary	10-40.60.220	--	--	P	--	--
Office		P	P	P	P	P
Public Services						
Public Services Major		--	--	--	--	--

	Public Services Minor		P	P	P	P	P
	Emergency Services		UP	UP	UP	UP	UP
Travel Accommodations			UP	--	P	--	P
Veterinary Clinics			P	P	P	P	--
Veterinary Hospitals			--	--	UP	UP	--
Telecommunication Facilities							
AM Broadcasting Facilities		10-40.60.320	UP	UP	UP	UP	UP
Antenna-Supporting Structure		10-40.60.320	UP	UP	UP	UP	UP
Attached Telecommunication Facilities		10-40.60.320	P	P	P	P	P
Collocation Facility		10-40.60.320	P	P	P	P	P
FM/DTV/Low Wattage AM Broadcasting Facilities		10-40.60.320	P	P	P	P	P
Stealth Telecommunication Facilities		10-40.60.320	P	P	P	P	P
Transportation and Infrastructure							
Accessory Wind Energy Systems		10-40.60.040	P	P	P	P	P
Garages, Off-Street			P	P	P	P	P
Parking Lots, Off-Street		10-50.80	P	P	P	P	P
Passenger Transportation Facilities			--	--	UP	UP	UP
Urban Agriculture							
Community Gardens		10-40.60.140	P	P	P	P	P
Food Production			--	--	UP[2]	UP[2]	--
Vehicle Sales and Services							
Automobile Service Station and Convenience Store		10-40.60.090	P	P	P	P	--

Automobile and Trailer Rental		--	--	P	P	--
Automobile/Vehicle Sales and Service, New and Used		--	UP	P	P	UP
Automobile/Vehicle Repair Garages – Minor	10-40.60.100	--	UP	P	P	--
Automobile/Vehicle Repair Garages – Major	10-40.60.100	--	--	P	P	--
Car Washes		P	P	P	--	--
Mobile Homes and Recreational Vehicles, Sales, and Service		--	--	P	--	--

End Notes

1. A definition of each listed use type is in Chapter 10-80, Definitions.
2. Only allowed on lots that do not have highway frontage or behind existing/new commercial uses.
3. Only permitted when incidental to permitted use.
4. This use shall be screened. See Division 10-50.50, Fences and Screening, for fencing and screening requirements.
5. A conditional use permit is required if liquor is sold or if facilities exceed 250 seats.
6. Residential uses with more than two units are allowed as part of a mixed-use development located above or behind the commercial uses, or as a planned residential development ~~(Section 10-40.60.280)~~.
7. Residential uses in the CC, HC, CS and CB zones, and residential uses and properties listed on the National Historic Registry or within the Landmarks overlay zone existing prior to the effective date of this Zoning Code are considered legal, nonconforming uses. Residential uses in the CC, HC, CS and CB zones shall be subject to the development standards established in the HR zone.
8. Conditional use permit is required if proximity between shelter facilities is less than one-quarter mile.
9. Single-family and duplex land uses are permitted by right on lots ≤9,000 sf and existing prior to November 1, 2011, subject to the building placement and building form requirements of the MR zone.
10. A conditional use permit is required if the facility exceeds 250 seats and/or if the facility is located adjacent to a toxic use.
11. Outdoor kenneling of animals is prohibited.

Key

P = Permitted Use
UP = Conditional Use Permit Required
-- = Use Not Allowed

Section 4. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.30 Non-Transect Zones, Section 10-40.30.040 Commercial Zones, Subsection C. Commercial Zones – Building Form Standards., as follows:

Section 10-40.30.040 Commercial Zones

C. Commercial Zones – Building Form and Property Development Standards. The building form and property development standards shown in Table 10-40.30.040.C. shall apply to all property with the corresponding commercial zones.

Table 10-40.30.040.C.
Commercial Zones – Building Form and Property Development Standards

	Commercial Zones				
	SC	**CC**	**HC**	**CS**	**CB**
Building Placement Requirements					
Setback from property line					
Front (Also see Section 10-50.60.040.B)	15'[1]	0'	0'[2]	0'	0'
Side					
Adjacent to Residential Use	---------- 15' min.[6] ----------				
Street Side (min.)	10'[3]	10'[3]	10'[3]	10'[3]	0'
All Other sides	---------- 0' ----------				
Rear					
Adjacent to Residential	---------- 15' min. ----------				
All Other rears	---------- 0' ----------				
Building Form Requirements					
Building Height (max.)[8, 9, 10]	35'	60'[4, 7]	60'[4]	60'[4]	60'[4]
Gross FAR (max.)	0.8	2.5	3.0	2.0	No max.
Density Requirements					
Gross Density (units/acre) ~~(max.) (Not Applicable to Mixed Use)~~					
~~Areas of the City without the Resource Protection Overlay (RPO)~~ **Maximum without the Resource Protection Overlay (RPO)**	~~13~~ **13**[11]	---------- ~~29~~ **29**[11] ----------			
~~Areas of the City inside of a pedestrian shed of an activity center delineated on the General Plan, with or without the RPO~~ **Maximum with the RPO, inside of a pedestrian shed of an activity center**[(13)]	~~13~~ **13**[11]	---------- ~~29~~ **29**[11] ----------			
~~Areas of the City with RPO, excluding areas of the City inside of a pedestrian shed of an activity center delineated on the General Plan~~	~~13~~ **13**[11]	---------- ~~22~~ **22**[11] ----------			

	Maximum with the RPO, outside of a pedestrian shed of an activity center[13])					
Maximum Bedroom Requirements						
Bedrooms per Acre on a Development Site with Four Dwelling Units or More						
	Maximum without the RPO for a development	**35[12]**	---------- **72.5[12]**----------			
	Maximum with the RPO inside of a pedestrian shed of an activity center[13]	**35[12]**	---------- **72.5[12]**----------			
	Maximum with the RPO inside of a pedestrian shed of an activity center[13]	**35[12]**	---------- **55[12]**----------			
Lot Requirements						
Area (Gross sf) (min.)[5]		6,000	9,000	9,000	9,000	7,000
Width (min.)[5]		50'	60'	60'	60'	50'
Depth (min.)[5]		100'	100'	100'	100'	--
Open Space						
Developments with Two or More Dwelling Units		---------- 15 percent of the net lot area ----------				
Other Requirements						
Fences and Screening		See Division 10-50.50				
Landscaping		See Division 10-50.60				
Outdoor Lighting		See Division 10-50.70				
Parking		See Division 10-50.80				
Signs		See Division 10-50.100				

End Notes

1. Front setbacks shall be equal to 15' or match adjacent residential development, whichever is less.
2. No front setback required, except when required by the adoption of building setback lines along specified streets.
3. Setback may be reduced to 5' min., if the landscape street buffer is reduced in accordance with Section 10-50.60.040(B), Nonresidential Zone Buffers.
4. Conditional use permit required for structures over 60' in height.
5. Within a planned residential development, the minimum area, width, and depth of a lot may vary based on the minimum lot standards applicable to the building types selected for application within a planned residential development (see Section 10-40.60.280, Planned Residential Development).
6. Except that the setback from a proposed residential use in a commercial zone to other residential uses shall be 5' min.
7. Single-family dwellings and duplexes in the CC zone shall be limited to a maximum height of 35 feet consistent with the height standard for the MR zone.
8. Primary structures, excluding accessory structures, with a roof pitch greater than, or equal to, 6:12 shall be allowed an additional five feet above the maximum building height.
9. The elevator and stairwell bulkheads shall be architecturally integrated with the building. Elevator and stairwells bulkheads are allowed an additional 15 feet above the maximum building height. The Director may approve a height greater than 15 feet when the additional

	height is necessary to accommodate an elevator or stairwell bulkhead, related equipment, or the requirements of the Building or Fire Code.
10.	Steeples, solar collectors, towers and other unoccupied architectural features are allowed an additional height above the maximum building height equal to 20 percent multiplied by the maximum building height allowed for property's zone. The total area of the referenced allowances above the building height shall not exceed 20 percent of the total roof area.
11. Additional density may be approved with an HOHD or MHOHD Conditional Use Permit.	
12. Additional bedrooms per acre may be approved with an HOHD or MHOHD Conditional Use Permit.	
13. Activity centers are delineated on the General Plan or applicable Specific Plan.	

Section 5. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.40 Transect Zones, Section 10-40.40.050 T3 Neighborhood I (T3N.1) Standards, H. Allowed Uses, as follows:

10-40.40.050 T3 Neighborhood I (T3N.1) Standards

H. Allowed Uses					
Land Use[1]	**Specific Use Regulations**	**T3N.1**	**Land Use[1]**	**Specific Use Regulations**	**T3N.1**
Residential			Places of Worship		P/UP[6]
Accessory Buildings and Structures	10-40.60.020	P	Schools – Private		P
Accessory Dwelling Unit	10-40.60.040	P	Schools – Public and Charter		P[5]
Co-Housing	10-40.60.120	P	Retail Trade		
Congregate Care Facilities		UP	**Neighborhood Market ≤ 1,500 sf**		UP
Dormitories and Fraternities/Sororities		UP	Services		
Dwelling: Multiple-Family		P[2]	Bed and Breakfast	10-40.60.110	P
Dwelling: Single-Family		P	Cemeteries		UP
Duplex		P[2]	Daycare	10-40.60.150	
Group Home		P	Home		P
Home Occupation	10-40.60.180	P	Centers		UP
High Occupancy Housing Development, Single-Family	**10-40.60.175**	**UP**	Public Services		

H. Allowed Uses					
Land Use[1]	**Specific Use Regulations**	**T3N.1**	**Land Use[1]**	**Specific Use Regulations**	**T3N.1**
Institutional Residential	10-40.60.190	UP	Public Services Minor		P
~~**Rooming and Boarding Facilities**~~		~~**UP**~~	Emergency Services		UP
Recreation, Education and Public Assembly			Telecommunication Facilities		
Dance or Music Studio ≤ 650 sf		P[3]	Stealth Telecommunication Facilities	10-40.60.310	P
Libraries, Museums			Transportation and Infrastructure		
≤ 2,500 sf		P	Accessory Wind Energy Systems	10-40.60.040	P
> 2,500 sf		UP	Urban Agriculture		
Meeting Facilities, Public and Private	10-40.60.230	P/UP[4]	Community Gardens	10-40.60.140	P
Outdoor Public Use, General		P			

End Notes

1. See Chapter 10-80, Definitions, for use type definitions.
2. Permitted only if the use exists at the effective date of this code.
3. Not allowed on the ground floor unless behind an allowed ground-floor use.
4. UP required if liquor is sold or if facilities exceed 250 seats.
5. Charter schools proposed in existing single-family residences shall be located on residential lots 1 acre or greater.
6. A conditional use permit is required if the facility exceeds 250 seats and/or if the facility is located adjacent to a toxic use.

Key

P	Permitted Use
UP	Permitted Use

Section 6. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.40 Transect Zones, Section 10-40.40.060 T3 Neighborhood 2 (T3N.2) Standards, H. Allowed Uses, as follows:

10-40.40.060 T3 Neighborhood 2 (T3N.2) Standards

H. Allowed Uses					
Land Use[1]	**Specific Use Regulations**	**T3N.2**	**Land Use[1]**	**Specific Use Regulations**	**T3N.2**
Residential			Services		
Accessory Buildings and Structures	10-40.60.020	P	Bed and Breakfast	10-40.60.110	P
Accessory Dwelling Unit	10-40.60.030	P	Cemeteries		UP
Co-Housing	10-40.60.120	P	Crematoriums		UP
Congregate Care Facilities		UP	Daycare	10-40.60.150	
Dormitories and Fraternities/Sororities		UP	Home		P
			Centers		UP
Dwelling: Multiple-Family		P	Public Services		
Dwelling: Single-Family		P	Public Services Minor		P
Duplex		P	Emergency Services		UP
Group Home		P	Telecommunication Facilities		
Home Occupation	10-40.60.180	P	Stealth Telecommunication Facilities	10-40.60.310	P
High Occupancy Housing Development, Single-Family	**10-40.60.175**	**UP**			
High Occupancy Housing Development, Two-units	**10-40.60.175**	**UP**			
High Occupancy Housing Development, Three-units	**10-40.60.175**	**UP**			
High Occupancy Housing Development, Four-units and Greater	**10-40.60.175**	**UP**			
Institutional Residential	10-40.60.190	UP			
Live/Work		P	Transportation and Infrastructure		
~~**Rooming and Boarding Facilities**~~		~~**UP**~~	Accessory Wind Energy Systems	10-40.60.040	P

H. Allowed Uses		

Land Use[1]	Specific Use Regulations	T3N.2
Recreation, Education and Public Assembly Uses		
Dance or Music Studio ≤ 650 sf		P[2]
Libraries, Museums		
≤ 2,500 sf		P
> 2,500 sf		UP
Meeting Facilities, Public and Private	10-40.60.230	P/UP[3]
Outdoor Public Use, General		P
Places of Worship		P/UP[5]
Schools – Private		P
Schools – Public and Charter		P[4]
Retail Trade		
Neighborhood Market ≤ 1,500 sf		P

Land Use[1]	Specific Use Regulations	T3N.2
Urban Agriculture		
Community Gardens	10-40.60.140	P

End Notes
1. See Chapter 10-80, Definitions, for use type definitions. 2. Not allowed on the ground floor unless behind an allowed ground-floor use. 3. UP required if liquor is sold or if facilities exceed 250 seats. 4. Charter schools proposed in existing single-family residences shall be located on residential lots 1 acre or greater. 5. A conditional use permit is required if the facility exceeds 250 seats and/or if the facility is located adjacent to a toxic use.

Key	
P	Permitted Use
UP	Permitted Use

Section 7. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.40 Transect Zones, Section 10-40.40.070 T4 Neighborhood 1 (T4N.1) Standards, I. Allowed Uses, as follows:

10-40.40.070 T4 Neighborhood 1 (T4N.1) Standards

I. Allowed Uses							
Land Use[1]	**Specific Use Regulations**	**T4N.1**	**T4N.1-O**	**Land Use[1]**	**Specific Use Regulations**	**T4N.1**	**T4N.1-O**
Residential				Services			
Accessory Buildings and Structures	10-40.60.020	P[2]	P[2]	ATM		-	P
				Bed and Breakfast	10-40.60.110	P	p
Accessory Dwelling Unit	10-40.60.030	P	P	Cemeteries		UP	UP
Co-Housing	10-40.60.120	P	P	Crematorium		-	UP
Congregate Care Facilities		P	P	Daycare	10-40.60.150		
Dormitories, Fraternities/Sororities and SRO (≤15 rooms)		UP	UP	Home		P	P
				Centers		UP	UP
Dwelling: Multiple-Family		P	P	Funeral Homes, Chapels, Mortuaries		-	P
Dwelling: Single-Family		P	P	General Services		-	P
Duplex		P	P	Lodging			
Group Home		P	P	**≤ 15 rooms**		-	P
High Occupancy Housing Development, Single-Family	**10-40.60.175**	**UP**	**UP**	Offices		-	P
High Occupancy Housing Development, Two-units	**10-40.60.175**	**UP**	**UP**	Public Services			
High Occupancy Housing Development, Three-units	**10-40.60.175**	**UP**	**UP**	Public Services Minor		P	P
High Occupancy Housing Development, Four-units and Greater	**10-40.60.175**	**UP**	**UP**	Emergency Services		UP	UP

I. Allowed Uses

Land Use[1]	Specific Use Regulations	T4N.1	T4N.1-O
Home Occupation	10-40.60.180	P	P
Institutional Residential	10-40.60.190	UP	UP
Live/Work		-	P
~~Rooming and Boarding Facilities~~	-	~~UP~~	~~UP~~
Recreation, Education and Public Assembly			
Libraries, Museums			
≤ 2,500 sf		P	P
> 2,500 sf		UP	UP
Meeting Facilities, Public and Private	10-40.60.230	P[3]	P[3]
Places of Worship		P/UP[4]	P/UP[4]
Schools – Private		P	P
Schools – Public and Charter		P	P
Retail Trade			
Bars/Taverns		-	P
General Retail Businesses, except with any of the following features		-	P
Drive-Through		-	-
Floor Area ≥ 3,500 sf		-	UP
Markets			
Neighborhood Market ≤ 2,500 sf		-	P

Land Use[1]	Specific Use Regulations	T4N.1	T4N.1-O
Veterinary Clinic		-	P
Telecommunication Facilities			
Stealth Telecommunication Facilities	10-40.60.310	P	P
Transportation and Infrastructure			
Accessory Wind Energy Systems	10-40.60.040	P	P
Urban Agriculture			
Community Gardens	10-40.60.140	P	P

End Notes

1. See Chapter 10-80, Definitions, for use type definitions.
2. Not allowed on the ground floor unless behind an allowed ground-floor use.
3. UP required if liquor is sold or if facilities exceed 250 seats.
4. A conditional use permit is required if the facility exceeds 250 seats and/or if the facility is located adjacent to a toxic use.

Key	
P	Permitted Use
UP	Conditional Use Permit Required
-	Use Not Allowed

I. Allowed Uses							
Land Use[1]	Specific Use Regulations	T4N.1	T4N.1-O	Land Use[1]	Specific Use Regulations	T4N.1	T4N.1-O
Micro-brewery/Micro-distillery	10-40.60.240	-	P				
Restaurant, or Cafes		-	P				

Section 8. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.40 Transect Zones, Section 10-40.40.070 T4 Neighborhood 2 (T4N.2) Standards, I. Allowed Uses, as follows:

10-40.40.080 T4 Neighborhood 2 (T4N.2) Standards

I. Allowed Uses							
Land Use[1]	Specific Use Regulations	T4N.2	T4N.2-O	Land Use[1]	Specific Use Regulations	T4N.2	T4N.2-O
Residential				Services			
Accessory Buildings and Structures	10-40.60.020	P[2]	P[2]	ATM		-	P
				Bed and Breakfast	10-40.60.110	P	p
Accessory Dwelling Unit	10-40.60.030	P	P	Cemeteries		UP	UP
Co-Housing	10-40.60.120	P	P	Crematorium		-	UP
Congregate Care Facilities		P	P	Daycare	10-40.60.150		
Dormitories, Fraternities/Sororities and SRO (≤15 rooms)		UP	UP	Home		P	P
				Centers		UP	UP
Dwelling: Multiple-Family		P	P	Funeral Homes, Chapels, Mortuaries		-	P
Dwelling: Single-Family		P	P	General Services		-	P
Duplex		P	P	Lodging		UP	UP
Group Home		P	P				

I. Allowed Uses			
Land Use[1]	Specific Use Regulations	T4N.2	T4N.2-O
High Occupancy Housing Development, Single-Family	**10-40.60.175**	**UP**	**UP**
High Occupancy Housing Development, Two-units	**10-40.60.175**	**UP**	**UP**
High Occupancy Housing Development, Three-units	**10-40.60.175**	**UP**	**UP**
High Occupancy Housing Development, Four-units and Greater	**10-40.60.175**	**UP**	**UP**
Home Occupation	10-40.60.180	P	P
Institutional Residential	10-40.60.190	UP	UP
Live/Work		-	P
~~**Rooming and Boarding Facilities**~~	-	~~**UP**~~	~~**UP**~~
Recreation, Education and Public Assembly			
Libraries, Museums			
≤ 2,500 sf		P	P
> 2,500 sf		UP	UP
Meeting Facilities, Public and Private	10-40.60.230	P[3]	P[3]
Places of Worship		P/UP[4]	P/UP[4]
Schools – Private		P	P
Schools – Public and Charter		P	P
Retail Trade			
Bars/Taverns		-	P

Land Use[1]	Specific Use Regulations	T4N.2	T4N.2-O
Offices		-	P
Public Services			
Public Services Minor		P	P
Emergency Services		UP	UP
Veterinary Clinic		-	P
Telecommunication Facilities			
Stealth Telecommunication Facilities	10-40.60.310	P	P
Transportation and Infrastructure			
Accessory Wind Energy Systems	10-40.60.040	P	P
Urban Agriculture			
Community Gardens	10-40.60.140	P	P
End Notes			
1. See Chapter 10-80, Definitions, for use type definitions. 2. Not allowed on the ground floor unless behind an allowed ground-floor use.			

I. Allowed Uses			
Land Use[1]	**Specific Use Regulations**	**T4N.2**	**T4N.2-O**
General Retail Businesses, except with any of the following features		-	P
Drive-Through		-	-
Floor Area ≥ 3,500 sf		-	UP
Markets			
Neighborhood Market ≤ 2,500 sf		-	P
Micro-brewery/Micro-distillery	10-40.60.240	-	P
Restaurant, or Cafes		-	P

Land Use[1]	Specific Use Regulations	T4N.2	T4N.2-O
3. UP required if liquor is sold or if facilities exceed 250 seats. 4. A conditional use permit is required if the facility exceeds 250 seats and/or if the facility is located adjacent to a toxic use.			
Key			
P	Permitted Use		
UP	Conditional Use Permit Required		
-	Use Not Allowed		

Section 9. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.40 Transect Zones, Section 10-40.40.090 T5 Main Street (T5) Standards, I. Allowed Uses, as follows:

10-40.40.090 T5 Main Street (T5) Standards

I. Allowed Uses			
Land Use[1]	**Specific Use Regulations**	**T5**	**T5-O**
Industrial, Manufacturing			
Manufacturing and Processing, Incidental		P	P
Residential			
Accessory Buildings and Structures	10-40.60.020	P[2]	P
Accessory Dwelling Unit	10-40.60.030	P[2]	P

Land Use[1]	Specific Use Regulations	T5	T5-O
Retail Trade			
Bars/Taverns		P	P
General Retail Businesses, except with any of the following features		P	P
Drive-Through		-	-
Floor Area ≥ 5,000 sf		UP	UP
Mixed Use		P	P

I. Allowed Uses							
Land Use[1]	Specific Use Regulations	T5	T5-O	Land Use[1]	Specific Use Regulations	T5	T5-O
Co-Housing	10-40.60.120	P[2]	P	**Mixed-Use High Occupancy Housing Development**	**10-40.60.175**	**UP**	**UP**
Congregate Care Facilities		UP[2]	UP	Micro-brewery/Micro-distillery	10-40.60.240	P	P
Dormitories, Fraternities/Sororities and SROs		UP[2]	UP	Restaurants or Cafes		P	P
Dwelling: Multiple-Family		P[2]	P	Services			
High Occupancy Housing Development, Three-units	**10-40.60.175**	**UP[2]**	**UP**				
High Occupancy Housing Development, Four-units and Greater	**10-40.60.175**	**UP[2]**	**UP**	ATM		-	P
Group Home		P[2]	P	Bed and Breakfast	10-40.60.110	P	p
Home Occupation	10-40.60.180	P	P	Cemeteries		UP	UP
Institutional Residential				Crematoriums		UP	UP
Custodial Care Facilities		UP[2, 3]	UP	Daycare	10-40.60.150		
Nursing Homes		UP[2, 3]	UP	Home		P	P
Homeless Shelter	10-40.60.190	UP[2, 3]	UP	Centers		UP	UP
Sheltered Care Home		UP[2, 3]	UP	Funeral Homes, Chapels, Mortuaries		P	P
Live/Work		P	P	General Services		P	P
~~**Rooming and Boarding Facilities**~~		~~**UP**~~	~~**UP**~~	Lodging		P	P
Recreation, Education and Public Assembly Uses				Office		P[2]	P
Commercial Recreation Facility, Indoor				Public Services			
				Public Services Minor		P	P
≤ 5,000 sf		P	P	Emergency Services		UP	UP
> 5,000 sf		UP	UP	Veterinary Clinic		P[2]	P

I. Allowed Uses							
Land Use[1]	**Specific Use Regulations**	**T5**	**T5-O**	**Land Use[1]**	**Specific Use Regulations**	**T5**	**T5-O**
Libraries, Museums		P	P	Transportation and Infrastructure			
Meeting Facilities, Public and Private	10-40.60.230	P[3]	P[3]	Accessory Wind Energy Systems	10-40.60.040	P	P
Places of Worship		P/UP[6]	P/UP[6]	Garages, Off Street		P[2]	P[2]
Schools – Private		P	P				
Schools – Public and Charter		P	P	Parking Lots, Off Street		P[2]	P[2]
Theaters, Walk-in		P	P				
Telecommunication Facilities				Urban Agriculture			
AM Broadcasting Facilities	10-40.60.310	UP	UP	Community Gardens	10-40.60.140	P	P
Antenna-Supporting Structure	10-40.60.310	UP	UP	Vehicle Sales and Services			
				Automobile/Vehicle Sales, New and Used		P	P
Attached Telecommunication Facilities	10-40.60.310	P	P	Automobile/Vehicle Repair Garage	10-40.60.100		
Collocation Facility	10-40.60.310	P	P	Minor		P[2]	P[2]
FM/DTV/Low Wattage AM Broadcasting Facilities	10-40.60.310	P	P	Major		UP[2]	UP[2]
Stealth Telecommunication Facilities	10-40.60.310	P	P				
End Notes							

1. See Chapter 10-80, Definitions, for use type definitions.
2. Not allowed on the ground floor unless behind an allowed ground-floor use.
3. Conditional use permit is required if proximity between shelter facilities is less than 1/4 mile.
4. UP required if liquor is sold or if facilities exceed 250 seats.
5. Residential uses, and residential properties listed on the National Historic Registry or within the Landmarks overlay zone, in T5 and T5-O zones existing prior to the effective date of this Zoning Code are considered legal, conforming uses.
6. A conditional use permit is required if the facility exceeds 250 seats and/or if the facility is located adjacent to a toxic use.

Key	
P	Permitted Use
UP	Conditional Use Permit Required
-	Use Not Allowed

Section 10. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.40 Transect Zones, Section 10-40.40.100 T6 Downtown (T6) Standards, H. Allowed Uses, as follows:

10-40.40.100 T6 Downtown (T6) Standards

H. Allowed Uses					
Land Use[1]	**Specific Use Regulations**	**T6**	**Land Use[1]**	**Specific Use Regulations**	**T6**
Residential5			Services		
Accessory Buildings and Structures	10-40.60.020	P[2]	ATM		P
Accessory Dwelling Unit	10-40.60.030	P[2]	Bed and Breakfast	10-40.60.110	P
Co-Housing	10-40.60.120	P[2]	Cemeteries		UP
Congregate Care Facilities		UP[2]	Crematorium		UP
Dormitories, Fraternities/Sororities and SROs		UP[2]	Daycare	10-40.60.150	
			Home		P
Dwelling: Multiple-Family		P[2]	Centers		UP
High Occupancy Housing Development, Three-units	**10-40.60.175**	**UP[2]**	Dry-cleaning, Pick-up Only		P

H. Allowed Uses					
Land Use[1]	Specific Use Regulations	T6	Land Use[1]	Specific Use Regulations	T6
High Occupancy Housing Development, Four-units and Greater	**10-40.60.175**	**UP[2]**			
Group Home		P[2]	Funeral Homes, Mortuaries		UP
Home Occupation	10-40.60.180	P			
Homeless Shelter	10-40.60.190	UP	General Services		P
Institutional Residential			Hospitals		UP
Custodial Care Facilities		UP[2, 3]	Lodging		P
Nursing Homes		UP[2]	Office		P
Homeless Shelter		UP[2, 3]	Public Services		
Sheltered Care Home		UP[2, 3]	Public Services Minor		P
Live/Work		P	Emergency Services		UP
Mixed Use		P	Transportation and Infrastructure		
Mixed-Use High Occupancy Housing Development	**10-40.60.175**	**UP**	Accessory Wind Energy Systems	10-40.60.040	P
~~**Rooming and Boarding Facilities**~~		~~**UP**~~			
Recreation, Education and Public Assembly Uses			Garages, Off Street		P[2]
Commercial Recreation Facility, Indoor			Parking Lots, Off Street		P[2]
			Passenger Transportation Facilities		P6
≤ 5,000 sf		P	Industrial, Manufacturing, Processing and Wholesaling		
> 5,000 sf		UP	Manufacturing/Processing – Incidental		P
Libraries, Museums		P	Manufacturing/Processing – Incidental		P
Meeting Facilities, Public and Private	10-40.60.230	P[3, 4]	Telecommunication Facilities		
Places of Worship		P/UP[7]	AM Broadcasting Facilities	10-40.60.310	UP
Schools – Private		P	Antenna-Supporting Structure	10-40.60.310	UP

H. Allowed Uses					
Land Use[1]	Specific Use Regulations	T6	Land Use[1]	Specific Use Regulations	T6
Schools – Public and Charter		P	Attached Telecommunication Facilities	10-40.60.310	P
Theaters, Walk-in		P	Collocation Facility	10-40.60.310	P
Retail Trade			FM/DTV/Low Wattage AM Broadcasting Facilities	10-40.60.310	P
Bars/Taverns		P	Stealth Telecommunication Facilities	10-40.60.310	P
General Retail Businesses, except with any of the following features		P	Vehicle Sales and Services		
Drive-Through		-	Automobile/Vehicles Sales, new and used		UP
Floor Area ≥ 5,000 sf		UP	Urban Agriculture		
Micro-brewery/Micro-distillery	10-40.60.240	P	Community Gardens	10-40.60.140	P
Restaurants or Cafes		P			

End Notes
1. See Chapter 10-80, Definitions, for use type definitions. 2. Not allowed on the ground floor unless behind an allowed ground-floor use. 3. Conditional use permit is required if proximity between shelter facilities is less than 1/4 mile. 4. UP required if liquor is sold or if facilities exceed 250 seats. 5. Residential uses, and residential properties listed on the National Historic Registry or within the Landmarks overlay zone, in the T6 zone existing prior to the effective date of this Zoning Code are considered legal, conforming uses. 6. Passenger facilities shall be on the ground floor with access to a public street or a public space. 7. A conditional use permit is required if the facility exceeds 250 seats and/or if the facility is located adjacent to a toxic use.

Key	
P	Permitted Use
UP	Conditional Use Permit Required
–	Use Not Allowed

Section 11. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.60: Specific to Uses, to add Section 10-40.60.175 High Occupancy Housing Developments and Mixed-Use High Occupancy Housing Developments, to list of sections of the Division, in numerical order, as follows:

Division 10-40.60: Specific to Uses

10-40.60.175 High Occupancy Housing Developments and Mixed-Use High Occupancy Housing Developments

Section 12. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.60: Specific to Uses, to add Section 10-40.60.175 High Occupancy Housing Developments and Mixed-Use High Occupancy Housing Developments, in numerical order, as follows:

Division 10-40.60: Specific to Uses

10-40.60.175 High Occupancy Housing Developments and Mixed-Use High Occupancy Housing Developments

A. General Requirements.

1. **The applicant of an HOHD or MHOHD with four dwelling units or more shall submit typical floor plans or a typical residential unit study that illustrates how the residential units of an HOHD or MHOHD could be converted to a residential unit that is no longer an HOHD or MHOHD with minimal structural or minimal plumbing modifications. The required study shall be designed and sealed by an Arizona Registrant.**
2. **An HOHD or MHOHD with four or more dwelling units shall be located inside of a pedestrian shed of an activity center delineated in the General Plan or applicable Specific Plan.**
3. **An HOHD or MHOHD with four dwelling units or more, and that has more than 29 dwelling units per acre or more than 72.5 bedrooms per acre shall have:**
   a. **A minimum of 20% of the bedrooms contained in studio and/or one-bedroom dwelling units; and**
   b. **A maximum of 30% of bedrooms contained in dwelling units with four bedrooms or more.**
4. **An HOHD or MHOHD with four dwelling units or more, and that has 29 dwelling units per acre or less or 72.5 bedrooms per acre or less shall not exceed a Bedroom-to-Dwelling Unit Ratio greater than 3.5.**
5. **The maximum number of bedrooms in a two-unit HOHD or MHOHD: 10.**
6. **The maximum number of bedrooms in a three-unit HOHD or MHOHD: 12.**
7. **Inside of a pedestrian shed of a Regional Activity Center, an HOHD or MHOHD in a commercial zone may contain more than 50 dwelling units per acre and/or 125 bedrooms per acre.**
8. **An HOHD in a Commercial Zone shall be:**

a. On a lot or parcel that is setback at least 300 feet from the centerline of a street classified as a Commercial Corridor identified on the General Plan; and

b. There shall be an existing primary mixed-use development or commercial use(s), excluding primary transportation and infrastructure uses, on the lot(s) or parcel(s) between the HOHD and the Commercial Corridor street.

9. An MHOHD shall comply with the mixed-use development standards of Section 10-40.60.260.

10. Prior to the final approval of a land division that creates one or more lots or parcels with a development that conforms to the definition of an HOHD or MHOHD, the property owner shall obtain approval of a Conditional Use Permit for the Development Site that will contain the HOHD or MHOHD.

11. An MHOHD shall be on a lot or parcel that:

a. Abuts a street classified as a commercial corridor shown on the General Plan; and

b. Is located inside of a pedestrian shed of an activity center delineated on the General Plan or applicable Specific Plan.

B. Building Footprint[(1)] Sizes and Separation Requirements.

1. Maximum building footprint[(1)] inside a pedestrian shed of a Historic Activity Center delineated in the General Plan or applicable Specific Plan, excluding properties zoned Commercial Business (CB): Equal to, or less than, 5,000 square feet.

2. Maximum building footprint[(1)] inside a pedestrian shed of a Historic Activity Center delineated in the General Plan or applicable Specific Plan, and on a property zoned Commercial Business (CB): Equal to, or less than, 22,000 square feet.

3. Maximum building footprint[(1)] inside a pedestrian shed of a Regional Activity Center delineated in the General Plan or applicable Specific Plan: No Maximum.

4. Maximum building footprint[(1)] inside a pedestrian shed of an activity center in all other areas not described in subsection B.1., B.2., and B.3. of this section: Equal to, or less than, 22,000 square feet.

5. Excluding the Commercial Business (CB) zone, the minimum separation between the building footprints of structures on the same lot or parcel, and structures on an abutting lot or parcel, shall be separated by a distance that is the greater of 10 feet, or 1/3 the height of the taller structure.

6. Where the area of a pedestrian shed of an activity center intersects with the area of a pedestrian shed of another activity center, the pedestrian shed with the more restrictive maximum building footprint requirement shall govern the intersecting area. The locations of the pedestrian sheds of the activity centers are identified in the General Plan, including any applicable Specific Plans.

Note 1. For the purpose of the requirements of subsection B of this section, the maximum allowable building footprint is equal to the largest floor plate of a structure, including interior courtyards, abutting and interior, or partial interior, podium and above ground parking structure(s), and structures connected with a continuous roof.

C. Waste Management Plan.

1. The property owner of an HOHD or MHOHD with four dwelling units or more shall obtain approval of a waste management plan from the City's Public Works Director, or designee, prior to the approval of the site plan.

2. Prior to the issuance of any building permit, the property owner shall incorporate into the construction documents the improvements required to comply with the approved waste management plan.

3. If a Certificate of Occupancy is not required, the property owner shall provide all necessary apparatus, equipment, and improvements within 182 days from the date of the approval of the CUP, or another date specified in the Conditions of Approval for the CUP.

   a. The Director may approve a one-time 91-day extension, for no-more than 273 days from the date of the CUP approval, to allow the property owner to complete the improvements. The property owner shall request an extension at least 14 days prior to the date indicated in subsection C.3. of this section.

4. The HOHD or MHOHD shall be maintained in compliance with the approved Waste Management Plan.

D. Crime Free Multi-Housing Program.

1. The property owner of an HOHD or MHOHD shall maintain compliance with the Flagstaff Police Department's Crime Free Multi-Housing Program, unless exempted by the Police Department's Crime Free Multi-Housing Program representative.

2. Prior to the issuance of the Conditional Certificate of Occupancy, or Certificate of Occupancy, whichever is first, or within 63 days of the approval of the Conditional Use Permit if a Certificate of Occupancy is not required, the property owner of a HOHD or MHOHD shall enter into an agreement with the City to comply with the Flagstaff Police Department's Crime Free Multi-Housing Program.

3. The property owner, or agent, shall:

   a. Utilize a Crime Free Lease Addendum, or an alternative approved by the Flagstaff Police Department's representative, as part of each tenant lease;

   b. Obtain written verification as part of a tenant lease that each tenant has received and agreed to the Crime Free Lease Addendum or the approved alternative; and

   c. Have completed the Flagstaff Police Department's Crime Free Multi-Housing Program required training within the Program's required time frames.

4. Within 182 days from the date of the agreement, the property owner, or managing agent, shall have completed the first phase requirements of the Flagstaff Police Department's Crime Free Multi-Housing Program.

5. **A new Flagstaff Police Department's Crime Free Multi-Housing Program first phase training and related requirements shall be completed within 182 days from the date of a change of ownership, management company, or a site manager of an existing HOHD or MHOHD.**

6. **Every two years from the date of the agreement, the property owner, or managing agent, shall complete the required training that complies with the Flagstaff Police Department's Crime Free Multi-Housing Program.**

E. Additional Conditional Use Permit Criteria. In addition to the criteria of Section 10-20.40.050.E., the Planning and Zoning Commission shall not approve a Conditional Use Permit unless:

1. **For the properties subject to Division 10-30.30 Heritage Preservation, the City's Historic Preservation Officer or the Heritage Preservation Commission has made a determination that the proposed HOHD or MHOHD has no adverse effect or has appropriately mitigated its effects on the historic cultural resource .**

2. **Adequate transit service is available to the Development Site containing four dwelling units or more. Adequate transit service from a Development Site to a permanent transit stop is:**

   a. **Less than or equal to 1,320 feet; or**

   b. **A distance greater than 1,320 feet when the Planning and Zoning Commission finds that the route to the permanent transit stop has adequate nighttime lighting and does not have a significant grade change, and the distance does not impede reasonable access to transit.**

   The distance between the permanent transit stop to the Development Site shall be measured following a continuously improved sidewalk and/or public paved trail.

Section 13. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.60: Specific to Uses, 10-40.60.260 Mixed Use, subsection D. Site Layout and Development Design Standards., to delete paragraph 2, as follows:

10-40.60.260 Mixed Use

D. **Site Layout and Development Design Standards.**

~~**2. There is no density limitation established for residential uses in mixed-use developments. Instead, applicable floor area ratio, building height, parking, landscaping, etc., standards will apply to provide a control on the bulk and mass of the development and the number of residential units permitted.**~~

Section 14. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-50.80: Parking Standards, to add 10-50.80.061 Transit Pass Parking Reduction Pilot Program, to the list of sections in numerical order, as follows:

Division 10-50.80:

Parking Standards

Sections:

10-50.80.010 Purpose

10-50.80.020 Applicability

10-50.80.030 General Parking Standards

10-50.80.040 Number of Motor Vehicle Parking Spaces Required

10-50.80.050 Bicycle Parking

10-50.80.060 Parking Adjustments

10-50.80.061 Transit Pass Parking Reduction Pilot Program

10-50.80.070 Parking Alternatives

10-50.80.080 Parking Spaces, Parking Lot Design and Layout

10-50.80.090 Development and Maintenance

Section 15. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-50.80: Parking Standards, Section 10-50.80.040 Number of Motor Vehicle Parking Spaces Required, subsection C. General to All Zones., Table 10-50.80.040.A: Number of Motor Vehicle Parking Spaces Required, as follows:

Section 10-50.80.040 Number of Motor Vehicle Parking Spaces Required

C. General to All Zones.

Table 10-50.80.040.A: Number of Motor Vehicle Parking Spaces Required

Use	Number of Required Spaces
Residential	
~~**Market Rate (all dwelling classifications)**~~ Single-Family Dwelling ~~**(Attached and Detached)**~~[1] **(Attached and Detached)**[1]	2.0 **spaces, plus 1 space for each additional bedroom above four bedrooms. The maximum number of required parking spaces shall not exceed 8 spaces.**

~~Multifamily, Dwelling Duplex[1] and Triplex~~ **Multiple-Family Development and Duplex[1] Developments**	
Unit Type	
Studio **per unit**	1.25
1 Bedroom **per unit**	1.5
2 – 3 Bedrooms **per unit**	2.0
4 Bedrooms **per unit**	2.5
5+ Bedrooms **per unit**	~~2.5~~ **3.0** spaces for the first **4 5** bedrooms plus 0.5 space for each additional bedroom
Guest Spaces ~~for Multifamily Dwelling Duplex and Triplex~~ (Includes spaces for boats and RVs)	0.25 ~~per~~ **spaces for** each ~~2+ bedroom~~ unit **with two bedrooms and greater**
Affordable (All Dwelling Classifications)	
Studio	1.0
1 Bedroom	1.0
2 – 3 Bedrooms	1.5
4+ Bedrooms	2.0
Guest Spaces for Multifamily Dwelling (Includes Boats and RVs)	0.25 per each 2+ bedroom unit
High Occupancy Housing Development	
a. Single-Family - Attached and Detached, Duplex, and Development Sites with three units or less	**1 space per bedroom**
b. Developments Sites with four units or more	**The sum of:** **1 to 75 bedrooms = 1 space per bedroom, plus** **76 to 325 bedrooms = 0.90 spaces per bedroom, plus** **326 to 650 bedrooms = 0.80 spaces per bedroom, plus** **Greater than 650 bedrooms = 0.70 spaces per bedroom**
~~Rooming and Boarding Facilities~~	
~~Private Rooms~~	~~1 per bedroom or sleeping room plus 1 for owner or manager~~
~~No Private Rooms~~	~~1 per 100 gsf plus 1 for owner or manager~~
Mixed-Use Developments	
Mixed-Use	**1. 1 per 300 gsf of non-residential floor area, plus** **2. One dwelling unit: 2 spaces** **3. Two or more dwelling units: The spaces required for a Multiple-Family Development**
Mixed-Use High Occupancy Housing Development	**1. 1 per 300 gsf of non-residential floor area, plus** **2. The spaces required for a High Occupancy Housing Development**

End Notes
[1] Parking reductions allowed in Section 10-50.80.060, Parking Adjustments, shall not apply to single-family dwellings and duplexes.

Section 16. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-50.80: Parking Standards, Section 10-50.80.050 Bicycle Parking., subsection B. Required Spaces., and add subsection C. Bicycle Parking Space Design., as follows:

10-50.80.050 Bicycle Parking

B. Required Bicycle Parking Spaces.

~~1. Two bicycle parking spaces, or five percent of required off-street parking spaces, whichever is greater, are required for all uses other than single-family uses.~~

~~2. Bicycle spaces shall be provided in accordance with the following requirements:~~

~~a. Bicycle parking shall consist of either a lockable enclosure (locker) in which the bicycle is stored or a rack to which the bicycle can be locked;~~

~~b. Lockers and racks shall be securely anchored to the pavement or a structure;~~

~~c. Racks shall be designed and installed to support the bicycle upright by its frame in two places in a manner that will not cause damage to the wheels and to permit the frame and one or both wheels to be secure;~~

~~Figure 10-50.80.050A~~

~~Correctly Designed Bicycle Rack~~

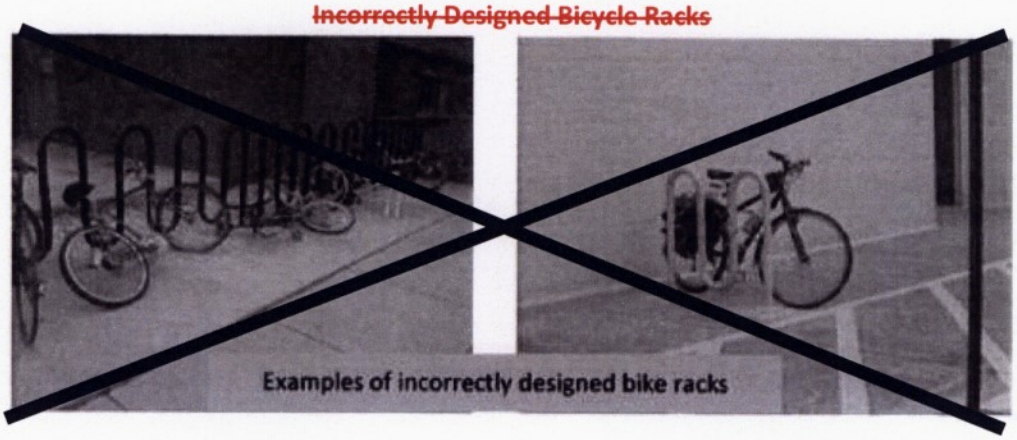
~~d. Areas containing bicycle spaces shall be surfaced with impervious surfaces such as concrete or pavers. Pervious pavements or gravel may be used where appropriate as determined by the Director;~~

~~e. When located within a parking area: curbs, fences, planter areas, bumpers, or similar barriers shall be installed and maintained for the mutual protection of bikes, motor vehicles, and pedestrians, unless determined by the Director to be unnecessary; and~~

~~f. Bicycle parking shall be placed in a convenient, highly visible, active, and well-lit location not more than 100 feet walking distance from the main entrance, but shall not interfere with pedestrian movements.~~

~~Figure 10-50.80.050B~~

~~Incorrectly Designed Bicycle Racks~~



Examples of incorrectly designed bike racks

~~C. Motor Vehicle Reduction. The Director may allow a reduction of motor vehicle parking spaces as established in Section 10-50.80.060(F).~~

~~D. Bicycle Parking Space Dimensions. All bicycle parking shall meet the following minimum dimensions:~~

~~1. Each bicycle parking space shall include a minimum area of 72 inches in length and 24 inches in width that is clear of obstructions;~~

~~2. No part of the rack shall be located closer than 30 inches to a wall or other obstruction;~~

~~3. The front or back of the rack shall be located no less than 48 inches from a sidewalk or pedestrian way; and~~

~~4. A minimum of 30 inches shall be provided between adjoining racks.~~

1. All uses, excluding a High Occupancy Housing Development and a Mixed-Use High Occupancy Housing Development.
   a. Minimum standard bicycle parking spaces required: The greater of two bicycle spaces, or 5% of the required vehicle parking.
   b. Maximum standard bicycle parking spaces required: 100 bicycle spaces.
   c. Location: Within 50 feet of the primary pedestrian entrance to the development and in accordance with the provisions of Appendix 1.4. The bicycle parking spaces shall be distributed throughout a Development Site that has multiple primary pedestrian entrances.
   d. Exceptions. Attached and Detached Single-Family and Duplex Developments are not required to provide standard bicycle parking spaces .
2. High Occupancy Housing Developments.
   a. Standard bicycle parking spaces.
      i. Minimum spaces required: Two bicycle spaces, or equal to 5% of the total number of bedrooms, whichever is greater.

ii. **Maximum spaces required: 40 bicycle spaces.**

iii. **Location: Within 50 feet of the primary resident pedestrian entrance to the development and in accordance with the provisions of Appendix 1.4.**

b. **Secure bicycle parking spaces.**

i. **Minimum spaces required: Equal to 15% of the total number of bedrooms.**

ii. **Location: A maximum of 20 secure bicycle parking spaces may be provided outside in secure bicycle lockers. The remainder of the required secure bicycle parking spaces shall be provided in a bicycle storage room or cage within a building or parking structure.**

c. **Exceptions. Single-Family and duplex High Occupancy Housing Developments are not required to provide standard or secure bicycle parking spaces .**

3. **Mixed-Use High Occupancy Housing Developments.**

a. **Minimum outdoor non-residential standard bicycle parking spaces required: Two bicycle spaces, or 5% of the required non-residential vehicle parking spaces, whichever is greater.**

b. **Location of non-residential standard bicycle parking spaces: Within 50 feet of the primary pedestrian entrance to the non-residential development and in accordance with the provisions of Appendix 1.4. The bicycle parking spaces shall be distributed throughout a Development Site that has multiple primary pedestrian entrances.**

c. **Minimum residential bicycle parking spaces required: Compliance with the High Occupancy Housing Developments requirements, subsection B.2. of this section.**

C. Bicycle Parking Space Design.

1. **Secure Bicycle Parking Spaces.**

a. **All indoor required secure bicycle parking spaces provided in a building or parking structure shall be designed in accordance with the provisions of Appendix 1.4., except as allowed in subsections C.1.b. of this section.**

b. **Bicycle lockers shall be designed in accordance with the provisions of Appendix 1.4.**

2. **Standard Bicycle Rack Design.**

a. **All required bicycle racks shall be designed in accordance with the provisions of Appendix 1.4.**

Section 17. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-50.80: Parking Standards, Section 10-50.80.060 Parking Adjustments, as follows:

10-50.80.060 Parking Adjustments

A. Transit. In all zones, a parking reduction of up to 10 percent may be approved by the Director for any use within ~~one-quarter of a mile~~ **1,320 feet** of a ~~bus stop~~ **permanent transit stop, except for a High Occupancy Housing Development (HOHD) or a Mixed-Use High Occupancy Housing Development (MHOHD). The distance between the permanent transit stop to the Development Site shall be measured following a continuously improved sidewalk and/or public paved trail.**

B. **Shared On-Site Parking.** Where two or more uses on the same site or adjacent parcels have distinct and differing peak parking usage periods (e.g., a theater and a bank), a reduction in the required number of parking spaces as determined by the Director may be allowed in the following manner:

1. The reduction in number of required parking spaces shall be based on a parking demand study. The parking demand study shall be in accordance with established professional practices.
2. Approval shall also require a recorded covenant running with the land, recorded by the owner of the parking lot, guaranteeing that the required parking will be maintained exclusively for the uses served and remain for the duration of the use.

C. Parking Demand Study – Reduced Parking. ~~**Based on the completion and submittal of a parking demand study, the Director may approve a reduction in the amount of parking from that otherwise required by this division. The parking demand study shall be in accordance with established professional practices.**~~

1. **The property owner shall submit a study/plan prepared in accordance with the established professional traffic and parking practices by a registrant licensed to practice in the State of Arizona. The study/plan shall document how any reductions are calculated and the assumptions utilized in the calculations.**
2. **The Director may approve a reduction equal to, or less than, 30 percent of the total parking spaces required by this Division, except as required in subsection C.3. of this section. Any request greater than 30 percent requires the approval of the City Council.**
3. **Any request to use a Parking Demand Study to reduce the required parking for an HOHD or MHOHD shall be approved by the City Council.**

D. Traffic Management Plan Parking Reduction. The Director shall have the ability to reduce the parking requirements for office and other uses in Section 10-50.80.040, Number of Motor Vehicle Parking Spaces Required**, except for an HOHD or MHOHD**. A traffic management plan shall be submitted with an application for site plan review. A reduction may be granted if the following standards are met:

1. The amount of the reduction shall be no more than 90 percent of the proposed reduction in employee motor vehicle trips.
2. The buildings shall have a single user/owner who can effectively exercise control over compliance with the plan.
3. The traffic management plan shall be submitted by a registered traffic engineer and shall include data on the effectiveness of similar plans elsewhere.
4. The traffic management plan shall contain information on the strategies, designated parking, **incentives, company vehicles, staggered work hours, and information indicating the owner's** ability to provide and enforce these elements over time.
5. The Director may impose conditions that are needed to ensure the long-term compliance to the plan, including but not limited to a reserve parking area, phasing, or contributions to transit or other alternative means of transportation.

E. Parking Reduction for Forest Resources. The number of parking spaces required for a new development may be reduced by no more than five percent if existing native trees such as ponderosa pine trees are located within parking areas (but not circulation areas) and these trees are required to be preserved to satisfy the requirements for forest resource protection as defined in Division 10-50.90, Resource Protection Standards**, except for an HOHD or MHOHD**. An applicant shall demonstrate to the satisfaction of the Director that by incorporating these existing native trees

within the parking area, adequate measures are taken during construction to ensure that the trees are protected from construction activity.

F. Bicycle Parking Reduction. The Director may allow a reduction of one required motor vehicle parking space for each four bicycle parking spaces provided to a maximum of five percent of the required motor vehicle parking ~~spaces.~~ **spaces, except for an HOHD or MHOHD.**

G. Motorcycle Parking Reduction. A reduction of one parking space for multifamily residential and nonresidential uses may be allowed by the Director if one motorcycle parking space for every 25 required motor vehicle spaces is provided, subject to the following standards:

1. Each motorcycle space shall be easily accessible and have adequate space for a standard-size motorcycle, i.e., a minimum dimension of four feet by nine feet.
2. Motorcycle parking areas shall be clearly identified with appropriate striping.

Section 18. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-50.80: Parking Standards, to add Section 10-50.80.061 Transit Pass Parking Reduction Pilot Program, as follows:

Division 10-50.80: Parking Standards

10-50.80.061 Transit Pass Parking Reduction Pilot Program

A. The purpose of the Transit Pass Parking Reduction Pilot Program (TPPR) is to allow:

1. Property owners the option to reduce a development's vehicle parking requirements by providing annual transit passes to tenants and employees; and

2. The City to determine the effectiveness of the program to reduce a development's parking demand, and to determine if the tenants and employees are utilizing transit.

B. Program Term. Unless otherwise extended by a separate ordinance approved by the City Council, the TPPR shall terminate at 11:59 p.m. on December 31, 2026.

C. Maximum Parking Reduction. The Director may approve up to a 20 percent reduction in the parking requirements of Section 10-50.80.040 in accordance with the minimum requirements of subsection D of this section, and the approval of a transit pass agreement specified in subsection E of this section.

1. This reduction shall not be approved on a site that utilizes any reduction specified in 10-50.80.060.

D. Minimum Requirements.

1. The TPPR is only available to HOHD and MHOHD developments.

2. This reduction may only be approved for an HOHD or MHOHD that has a vehicle parking requirement equal to, or greater than, 100 spaces.

3. The total residential parking requirement shall not be reduced to an amount less than 0.65 spaces per bedroom. The required parking for a development shall be calculated in accordance with Table 10-50.80.040.A. before any reduction is applied.

4. The TPPR is only available to a Development Site within 1,320 feet of a permanent transit stop. The distance between the permanent transit stop to the Development Site shall be measured following a continuously improved sidewalk and/or public paved trail..

5 The property owner shall make available annual transit passes to all tenants and employees of the HOHD or MHOHD. The transit pass(es) shall be provided at no cost to the tenants and employees. No tenant and employee shall be refused a transit pass.

6. The requirement to provide the transit passes shall be perpetual, unless the property owner provides the minimum number of parking spaces required (without any TPPR parking reduction) by the Zoning Code for the Development Site, and the Transit Pass Agreement of subsection E of this section is terminated.

7. The termination of the TPPR does not alleviate a property owner from providing the transit passes that are required for participation in the TPPR until the Transit Pass Agreement is terminated and the minimum parking spaces are provided as set forth herein.

E. Transit Pass Agreement.

1. The Director may enter into a Transit Pass Agreement with the property owner to allow a reduction in the required number of residential parking spaces in accordance with the provisions of this section. The agreement shall be in a form satisfactory to the City Attorney, or designee.

2. The agreement shall be perpetual unless terminated in accordance with the provisions of this section and the agreement.

3. The agreement shall include, but is not limited to:

   a. The type of transit passes to be provided;

   b. Notification requirements to tenants and employees of the availability of transit passes to them at no cost;

   c. A requirement to obtain, maintain, and provide the City with the following information:

      i. The number and types of transit passes requested and provided;

      ii. Utilization frequency reports from the transit provider;

      iii. Documentation of the annual transit pass proof of purchase;

      iv. Bedroom occupancy rates; and

      v. The number of tenant vehicles stored onsite and offsite within the city of Flagstaff.

   d. An agreement to assist the City of Flagstaff employee(s) and/or City contractor(s) in the collection of vehicle and/or transit usage data, and other City studies to determine the effectiveness of the TPPR;

   e. Reasonable access for City of Flagstaff employee(s) and/or City contractor(s) to study and count onsite parking utilization rates upon delivery of a written notice;

   f. Annual reporting requirements;

   g. Violations and remedies; and

   h. Any other provision necessary as determined by the City Attorney, Director, or designee to document the requirements and enforcement of this section and the agreement.

4. **The agreement shall be approved by the Director and property owner prior to the issuance of any building permit for the Development Site.**
5. **The City shall record the approved Transit Pass Agreement against the real property of the Development Site. Recordation fees shall be paid by the property owner prior to the issuance of any building permit for the Development Site.**

Section 19. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-50.80: Parking Standards, 10-50.80.080 Parking Spaces, Parking Lot Design and Layout, subsection K, as follows:

10-50.80.080 Parking Spaces, Parking Lot Design and Layout

K. Tandem Parking. ~~**Tandem parking is permitted in all zones for single-family residences, accessory dwelling units, and duplexes as follows:**~~

1. **Tandem parking is allowed in all:**
   a. **Zones for single-family attached and detached dwelling units, and accessory dwelling units; and**
   b. **Non-Transect Residential Zones for duplex developments.**

~~**1.**~~**2.** Both tandem parking spaces satisfy the parking requirement of ~~**one**~~ **one-dwelling unit.** ~~**residential unit; and**~~

2. 3. Neither of the tandem parking spaces shall be for required accessible parking spaces.

Section 20. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-50.110: Specific to Building Types, Section 10-50.110.080 Bungalow Court, subsection F, as follows:

10-50.110.080 Bungalow Court

F. Vehicle Access and Parking
Parking spaces may be enclosed, covered or open.
Spaces may be individually accessible by the units and/or via a common parking area located at the rear or side of the lot.
~~**Tandem parking is allowed for off-street parking to meet the requirements for a residential unit.**~~

Section 21. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-50.110: Specific to Building Types, Section 10-50.110.090 Duplex, Side-by-Side, subsection F, as follows:

10-50.110.090 Duplex, Side-by-Side

F. Vehicle Access and Parking
Parking spaces may be enclosed, covered or open.
~~Tandem parking is allowed for off-street parking to meet the requirements for a residential unit.~~

Section 22. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-50.110: Specific to Building Types, Section 10-50.110.100 Duplex Stacked, subsection F, as follows:

10-50.110.100 Duplex, Stacked

F. Vehicle Access and Parking
Parking spaces may be enclosed, covered or open.
~~Tandem parking is allowed for off-street parking to meet the requirements for a residential unit.~~

Section 23. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-50.110: Specific to Building Types, Section 10-50.110.110 Duplex, Front-and-Back, subsection F, as follows:

10-50.110.110 Duplex, Front-and-Back

F. Vehicle Access and Parking
Parking spaces may be enclosed, covered or open.
~~Tandem parking is allowed for off-street parking to meet the requirements for a residential unit.~~

Section 24. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-50.110: Specific to Building Types, Section 10-50.110.120 Stacked Triplex, subsection F, as follows:

10-50.110.120 Stacked Triplex

F. Vehicle Access and Parking
Where an alley is present, parking and services shall be accessed from the alley.
Parking spaces may be enclosed, covered or open.
~~Tandem parking is allowed for off-street parking to meet the requirements for a residential unit.~~

Section 25. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-80.20: Definition of Specialized Terms, Phrases, and Building Functions, Section 10-80.20.080 Definitions, "H", to add the term "High Occupancy Housing Development (HOHD)" and related terms, as follows:

Section 10-80.20.080 Definitions, "H"

High Occupancy Housing Development (HOHD): Means any of following: High Occupancy Housing Development, Single-Family; High Occupancy Housing Development, Two-units; High Occupancy Housing Development, Three-units; and High Occupancy Housing Development, Four-units and Greater (see definitions below). HOUSING DEVELOPMENT, EITHER FOR RENTAL OR PURCHASE, IN WHICH ALL DWELLING UNITS ARE PERMANENTLY AFFORDABLE AND OFFERED AT 60 PERCENT OF THE AREA MEDIAN INCOME (AMI) IN COMPLIANCE WITH THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT REGULATIONS SHALL NOT BE CATEGORIZED AS HIGH OCCUPANCY HOUSING DEVELOPMENT, REGARDLESS OF THE NUMBER UNITS, BEDROOMS, OR ZONING.

High Occupancy Housing Development, Single-Family: A single-family attached or detached dwelling unit with:

a. **Seven or more bedrooms; or**
b. **Five or more sanitation facilities.**

High Occupancy Housing Development, Two-units: A lot or parcel containing two dwelling units, excluding an Accessory Dwelling Unit, with:

a. **More than a total of seven bedrooms; or**
b. **One or more dwelling unit(s) containing four or more sanitation facilities.**

High Occupancy Housing Development, Three-units: A lot or parcel containing three dwelling units with:

a. **More than a total of nine bedrooms; or**

b. **One or more dwelling unit(s) containing four or more sanitation facilities.**

High Occupancy Housing Development, Four-units and Greater: A Development Site containing four or more dwelling units where:

a. **More than 20 percent of the total dwelling units have four bedrooms or more;**

b. **One or more of the dwelling unit(s) containing four or more sanitation facilities; or**

c. **The total number of dwelling units per acre, or bedrooms per acre, requires a Conditional Use Permit for an HOHD in accordance with the building form and property development standards of the property's designated Non-Transect Zone; or, if the property owner has elected a Transect Zone, the density is greater than 29 dwelling units per acre or 72.5 bedrooms per acre.**

Section 26. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-80.20: Definition of Specialized Terms, Phrases, and Building Functions, Section 10-80.20.130 Definitions, "M", to add the term "Mixed-Use High Occupancy Housing Development (MHOHD)", as follows:

10-80.20.130 Definitions, "M"

Mixed-Use High Occupancy Housing Development (MHOHD):

1. **A mixed-use development with:**

   a. **More than 20 percent of the total dwelling units have four bedrooms or more;**

   b. **One or more dwelling unit(s) containing four or more sanitation facilities; or**

   c. **The total number of dwelling units per acre, or bedrooms per acre, requires a Conditional Use Permit for an MHOHD in accordance with the building form and property development standards of the property's designated Non-Transect Zone; or, if the property owner has elected a Transect Zone, the density is greater than 29 dwelling units per acre or 72.5 bedrooms per acre.**

2. **MIXED-USE HOUSING DEVELOPMENT, EITHER FOR RENTAL OR PURCHASE, IN WHICH ALL DWELLING UNITS ARE PERMANENTLY AFFORDABLE AND OFFERED AT 60 PERCENT OF THE AREA MEDIAN INCOME (AMI) IN COMPLIANCE WITH THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT REGULATIONS SHALL NOT BE CATEGORIZED AS HIGH OCCUPANCY HOUSING DEVELOPMENT, REGARDLESS OF THE NUMBER OF UNITS, BEDROOMS, OR ZONING.**

Section 27. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-80.20: Definition of Specialized Terms, Phrases, and Building Functions, Section 10-80.20.180 Definitions, "R", to add the terms "Ratio, Bedroom-to-Dwelling Unit," and "Ratio, Bedroom-to-Sanitation Facility" as follows:

Section 10-80.20.180 Definitions, "R

Ratio, Bedroom-to-Dwelling Unit: The total number of bedrooms divided by the total number of dwelling units.

Examples: An HOHD has a total number of 1160 bedrooms and 350 dwelling units. The Bedroom-to-Dwelling Unit Ratio is:

$$\frac{\text{1160 bedrooms}}{\text{350 dwelling units}} = 3.31$$

Section 28. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-80.20: Definition of Specialized Terms, Phrases, and Building Functions, Section 10-80.20.190 Definitions, "S", to modify the term "Sanitation Facilities," as follows:

Section 10-80.20.190 Definitions, "S"

Sanitation ~~Facilities~~ **Facility:** A **delineated area for bathing** ~~bathroom~~ that contains ~~any combination of, or individually,~~ a toilet, ~~shower,~~ sink, and a shower or~~,~~ tub ~~or related bathing and sanitation fixtures~~. **The fixtures** (toilet, sink, **and a shower or** tub) **may be located in a room or in close proximity that functions as a** Sanitation **Facility as determined by the Zoning Administrator.**

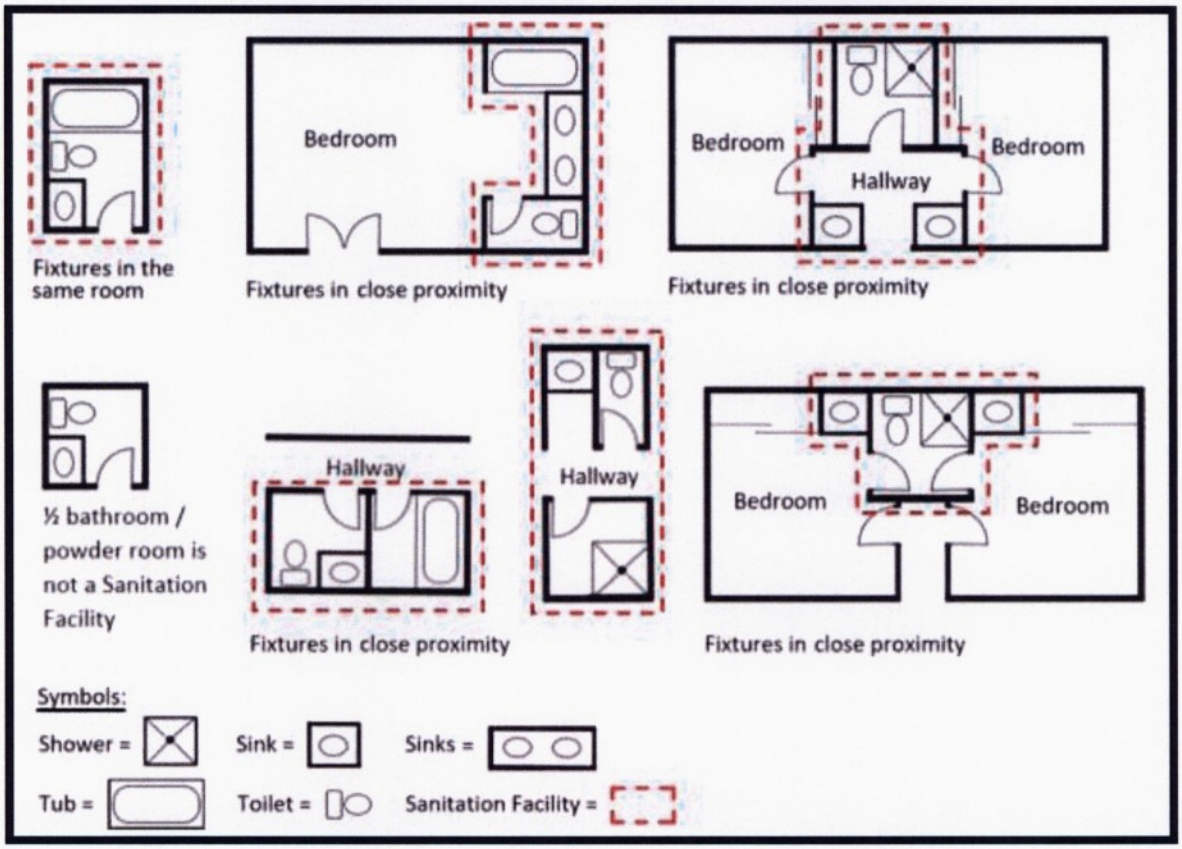


Figure 10-80.20.190 Sanitation Facility Examples

Section 29. Amend Title 10 FLAGSTAFF ZONING CODE, APPENDICES to add Appendix 1.4 Bicycle Parking Space Design Requirements, to the list, as follows:

APPENDICES

Appendix 1.1	Design Guidelines
Appendix 1.2	Additional Information on Smart Growth and Traditional Neighborhood Developments
Appendix 1.3	Sustainability Guidelines
Appendix 1.4	**Bicycle Parking Space Design Requirements**
Appendix 2	Planning Fee Schedule
Appendix 3	City of Flagstaff Landscape Plant List
Appendix 4	Outdoor Lighting Reference Material
Appendix 5	Additional Information Applicable to Division 10-50.90, Resource Protection Standards
Appendix 6	Additional Information on Affordable Housing
Appendix 7	List of Major Arterial Streets

Section 30. Amend Title 10 FLAGSTAFF ZONING CODE, APPENDICES, to add Appendix 1.4 Bicycle Space Design Requirements, as follows:

APPENDICES

Appendix 1.4
Bicycle Space Design Requirements

1.4.010 Purpose

A. It is the purpose of this Appendix to establish the minimum acceptable standards for bicycle parking spaces that are required by the Zoning Code.

1.4.020 Applicability

A. Requirements of this Appendix shall apply to all bicycle parking spaces provided on a Development Site within the Flagstaff city limits.

1.4.030 Standard Bicycle Rack Design Requirements

A. Rack Design.

1. Each rack shall be provided in accordance with one of the designs indicated in Figure 1.4.030.A., unless an alternative design is allowed in accordance with subsection C of this section.

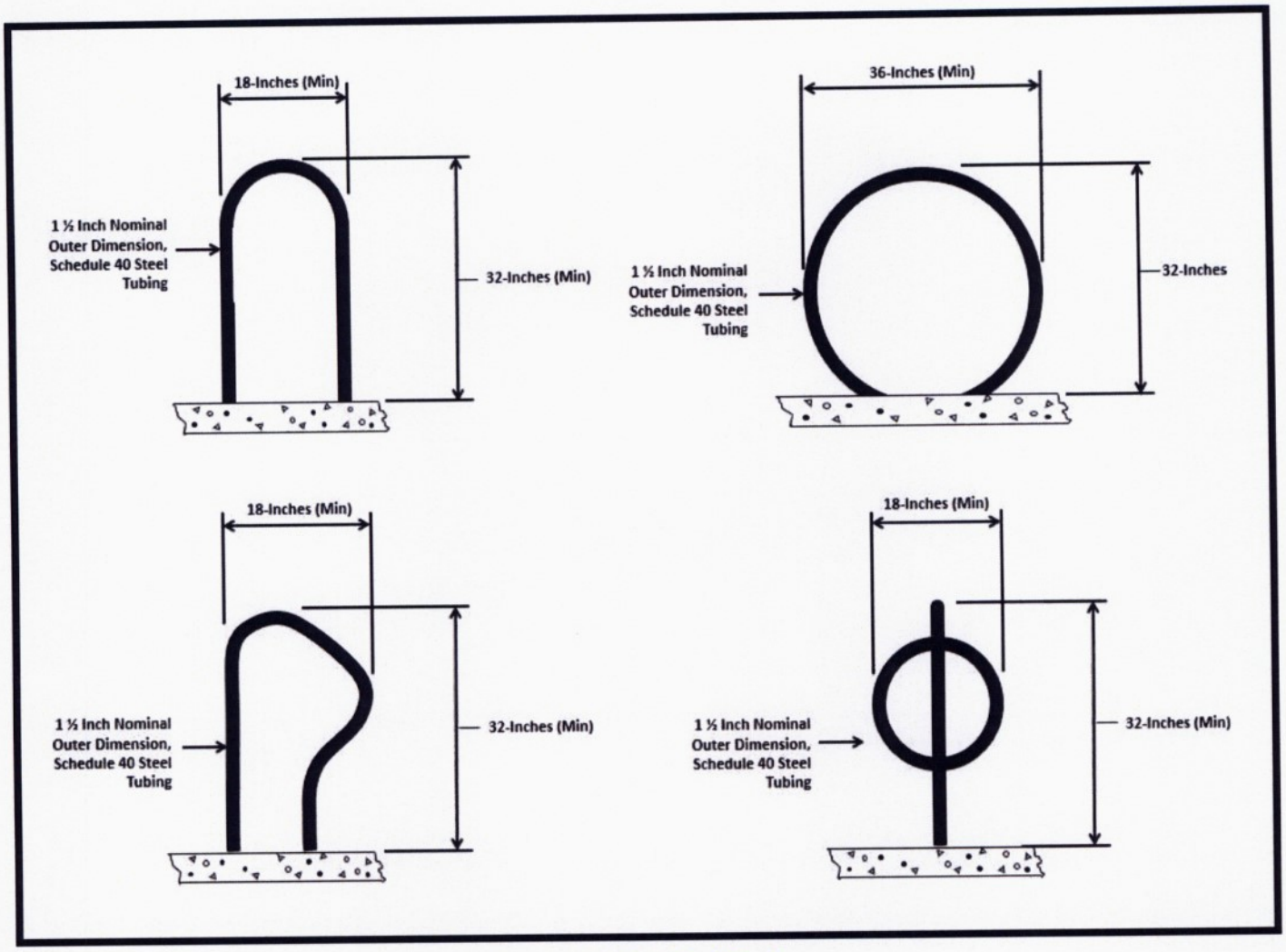


Figure 1.4.030.A. Rack Designs

B. Rack Placement.

1. The bicycle rack(s) shall be:

a. Placed in an area that complies with the location provisions of Section 10-50.80.050.B., is highly visible, well-illuminated, has frequent pedestrian activity, and is in accordance with Figure 1.4.030.B.1.;and

b. Securely mounted with a tamper-proof mounting technique to an impervious concrete, paver, or asphalt surface, unless an alternative surface is approved by the Director.

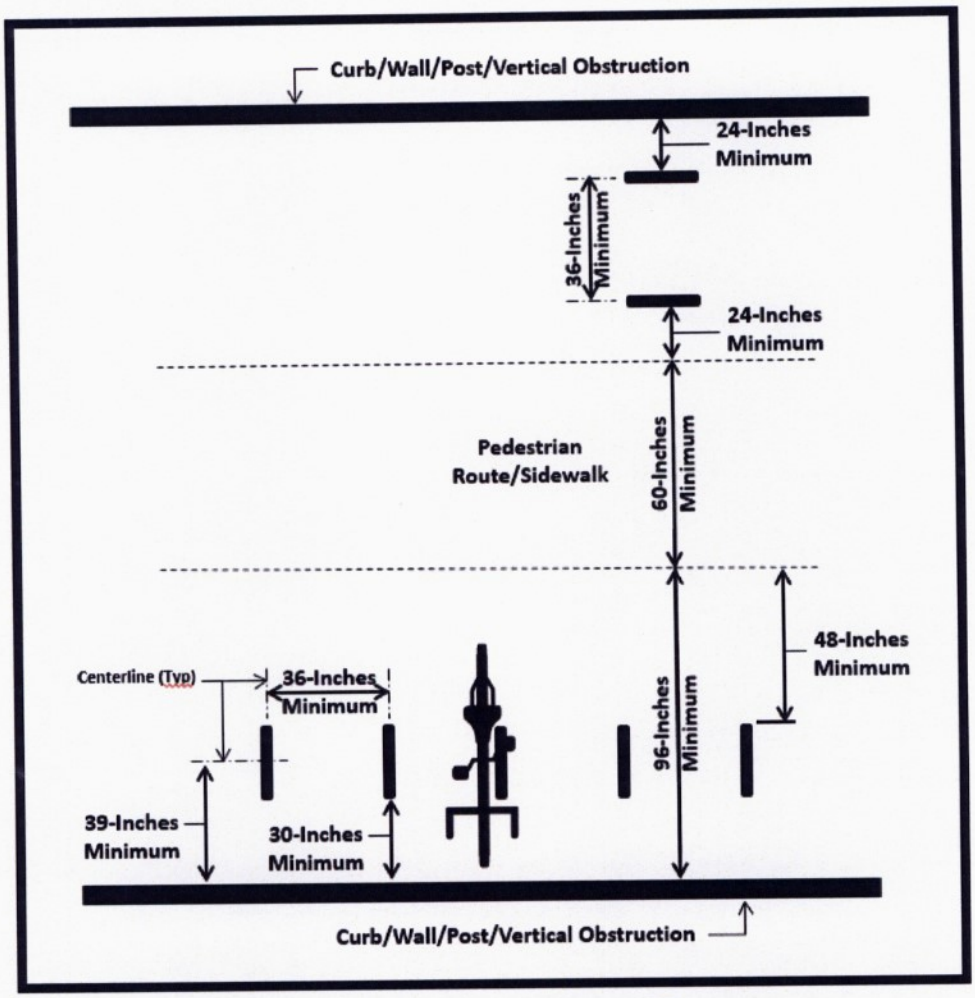


Figure 1.4.030.B.1. Bicycle Rack Placement

2. The placement of a bicycle rack shall not interfere with pedestrian movements.
3. Any bicycle rack(s) located within a parking area shall be within a barrier consisting of bollards, curbs, curb-bumpers, fences, planting areas, or a similar barrier approved by the Director.

C. Alternative Bicycle Rack Designs. The Director may approve an alternative rack design that complies with the following requirements:

1. The rack shall allow the bicycle frame and one or both wheels to be secured with a standard U-lock;
2. The rack shall be designed to support a bicycle frame in two places in a manner that does not cause damage to the wheels or allow the bicycle to tip over;
3. The rack shall be constructed of a material of sufficient strength that resists cutting, rust, bending, and deformation (Schedule 40 metal pipe is the minimum standard); and
4. The rack is not a design similar to types indicated in Figure 1.4.030.C.4.

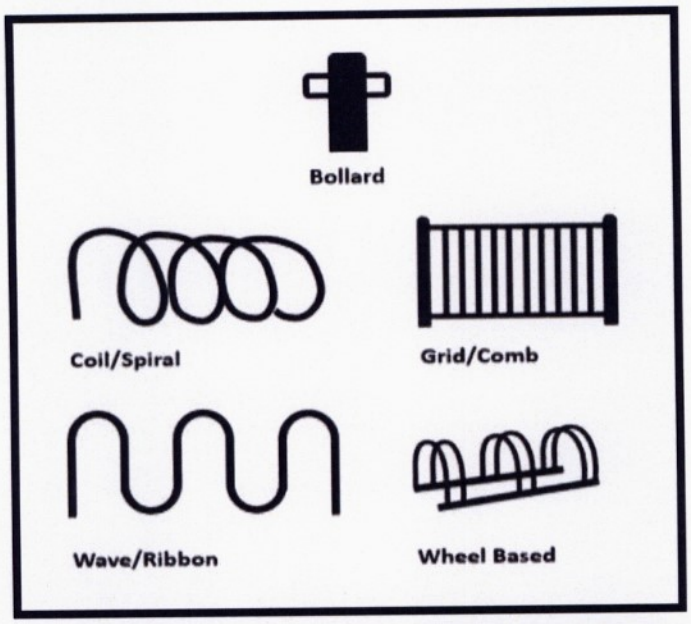


Figure 1.4.030.C.4. Unacceptable Bicycle Rack Designs

1.4.040 Standards for Indoor Secure Bicycle Parking Spaces

A. Secure Bicycle Parking Space Design.

1. The required secure bicycle parking spaces shall be in separate room(s) or cage(s) (the "Facilities") designed for bicycle storage within a building or parking structure.
2. The Facilities shall be:
    a. On the ground level, or another level that has elevator access, provided that the elevator has an interior width or depth of at least six feet;
    b. Accessed through a door or gate that utilizes an electronic keypad and code, security pass card, or a similar electronic system approved by the Director;
    c. In a location that is illuminated in accordance with the Illuminating Engineering Society (IES) of North America (IESNA) standards for security;
    d. Limited to the storage of bicycles; and
    e. Include bicycle racks or lockers.
3. The bicycle rack(s) shall:
    a. Conform with Section 1.4.030.A., unless an alternative design is allowed in accordance with Section 1.4.030.C.;
    b. Be securely mounted with a tamper-proof mounting technique to an impervious concrete, paver, or asphalt surface; and
    c. Be placed in accordance with Figure 1.4.040.A.3.c., unless an alternative configuration is approved by the Director.

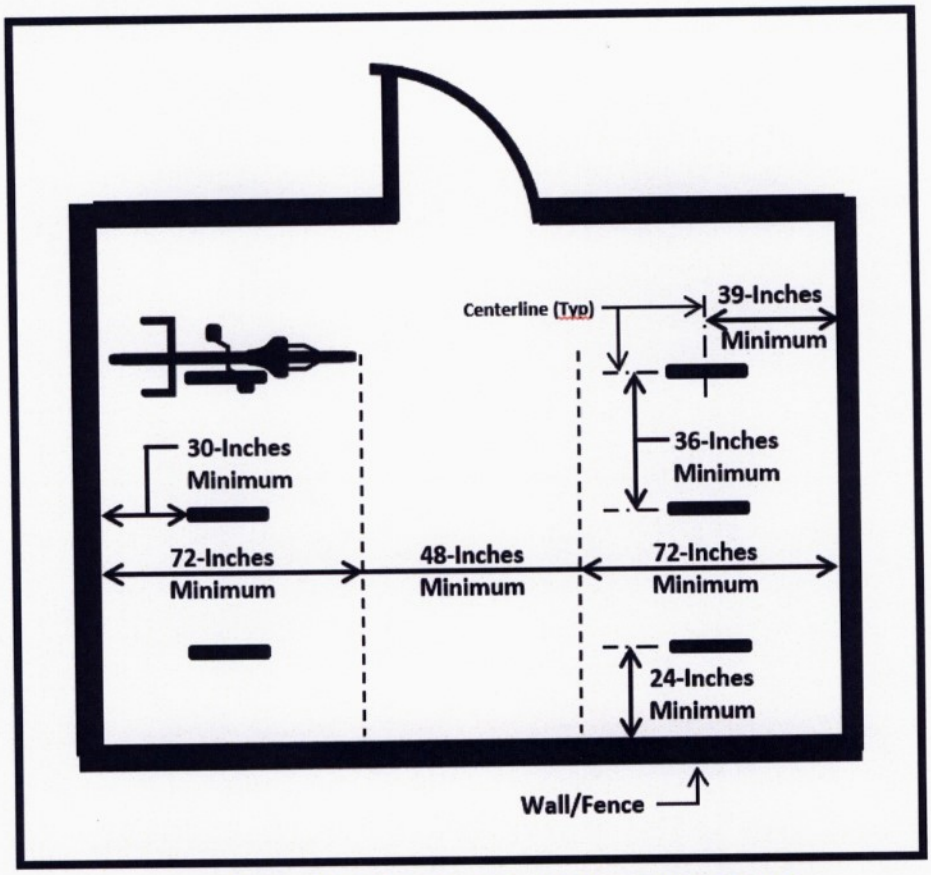


Figure 1.4.040.A.3.c. Bicycle Storage Room/Cage

1.4.050 Standards for Bicycle Lockers

A. Bicycle Locker Design and Location Requirements.

1. The lockers shall be constructed of metal. If windows are provided in the locker, the windows shall be constructed with unbreakable material. Plastic lockers are prohibited.
2. The lockers shall utilize an integral mechanical or digital ("smart") locking mechanism. Lockers that use hasp or mechanisms that allow the use of user locks is prohibited.
3. Stacked lockers shall have a wheel track to guide the bicycle into the locker.
4. Lockers located within a parking area shall be within a barrier consisting of bollards, curbs, curb-bumpers, fences, planting areas, or similar barriers approved by the Director.
5. Lockers placed outdoors shall be within 50 feet of a primary resident entry to a building. The locker(s) shall not be placed between a building and a street.
6. The lockers shall be in a location that is illuminated in accordance with the Illuminating Engineering Society (IES) of North America (IESNA) standards for security.
7. Lockers placed in a building or parking structure shall be on the ground level, or another level that has elevator access, provided that the elevator has an interior width or depth of at least six feet.
8. The placement of a locker shall not interfere with pedestrian movements.

9. **The size and placement of the lockers shall conform with Figure 1.4.050.A.9., unless an alternative configuration is approved by the Director.**

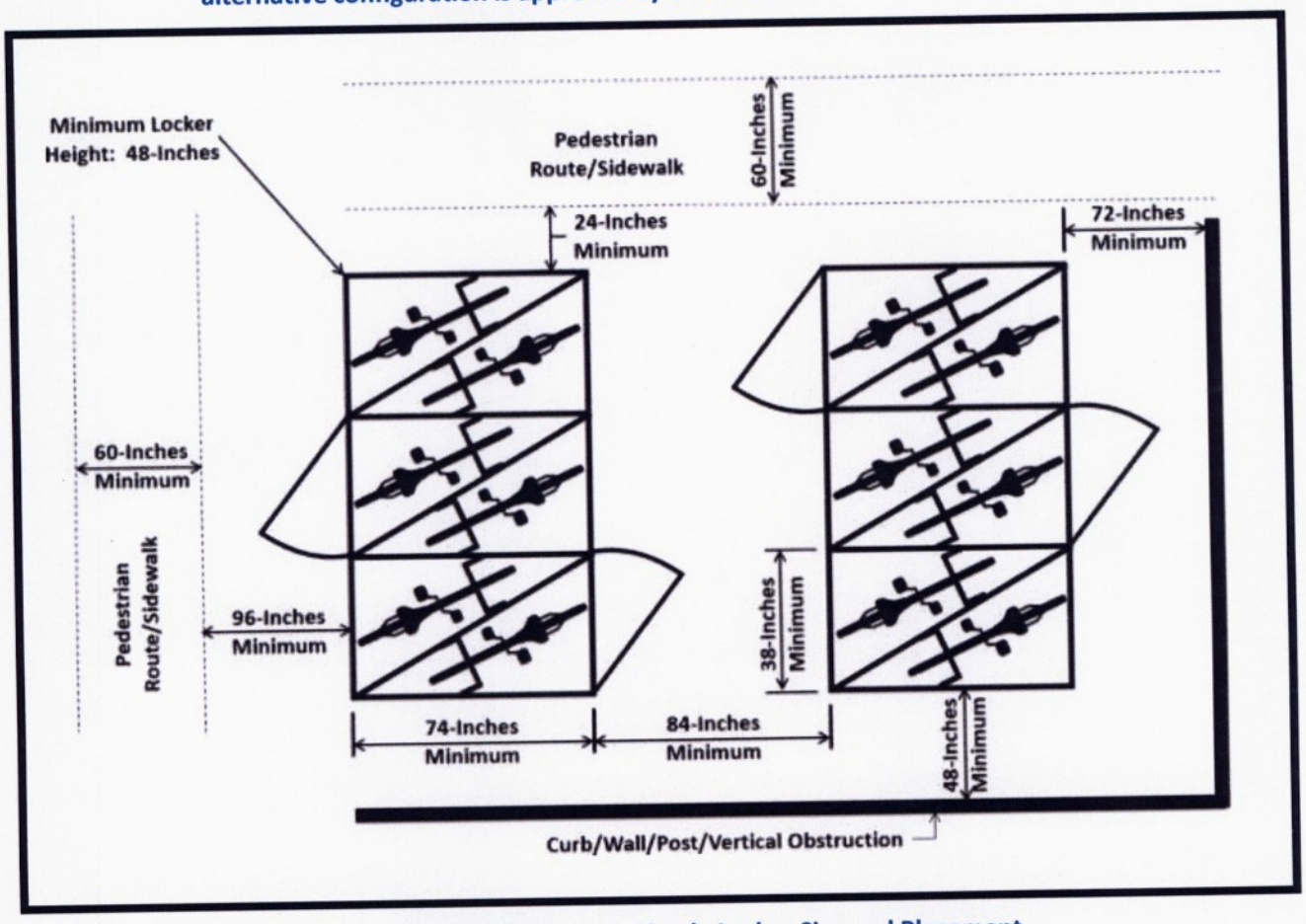


Figure 1.4.050.A.9. Bicycle Locker Size and Placement

Prop 207 Claims

Binding Waivers of Enforcement

Christina Rubalcava

Senior Assistant City Attorney

TEAM FLAGSTAFF

WE MAKE THE CITY BETTER

Background

Ordinance 2020-28

- On November 17, 2020, the Flagstaff City Council adopted Ordinance 2020-28, which made various amendments to the Flagstaff Zoning Code.
- The amendments made certain changes regulating High Occupancy Housing ("HOH"), including:
  - Requiring a Conditional Use Permit for HOH
  - Restricting HOH of 4 units or more to the pedestrian shed of an activity center
  - Adding parking, bedroom/bathroom, and other HOH regulations

Background

Prop 207 Claims

- During June through December 2022, the City received Prop 207 claims on behalf of 5 parcels of land.

- The owners claim that, as the result of the November 2020 code amendments, their properties lost a collective $25 million dollars.

Overview of Prop 207

- A.R.S. § 12-1134 (also known as Prop 207) provides that if "the existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law enacted after the date the property is transferred to the owner and such action reduces the fair market value of the property the owner is entitled to just compensation from this state or the political subdivision of this state that enacted the land use law."
- The landowner must make a written demand for a specific amount of just compensation.
- The city has 90 days to pay, amend the law, or permanently waive enforcement of the new land use law on the landowner's parcel.

Overview of Prop 207

- If the city does not act, the landowner may file a claim for just compensation in superior court within three years of the date the land use law took effect.
- Just compensation for diminution in value is the reduction in fair market value for the property resulting from the land use law.
- Fair market value is the most likely price which the land would bring if exposed for sale in the open market by a purchaser who buys with knowledge of all the uses and purposes to which it is adapted and for which it is capable.

Binding Waiver of Enforcement

- If approved by Council, the City will agree and declare that the HOH Zoning Code amendments will not be enforced nor applicable to the entirety, or any portion of, the 5 properties identified in Binding Waiver of Enforcement, attached to the staff summary as Exhibit A to the Resolution.

Questions?

TEAM FLAGSTAFF
WE MAKE THE CITY BETTER

Any questions?

10. B.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Jerry Bills, Deputy Fire Chief
Co-Submitter:	Stacey Brechler-Knaggs
Date:	01/12/2023
Meeting Date:	01/17/2023

TITLE:

Consideration and Adoption of Resolution No. 2023-01: A resolution for consideration and approval of Intergovernmental Agreement (IGA) between the City of Flagstaff and the Greater Flagstaff Region (GFR) partnering agencies (Summit Fire District, Highlands Fire District, Ponderosa Fire Department, and Pinewood Fire Department)

STAFF RECOMMENDED ACTION:

1) Read Resolution No. 2023-01 by title only
2) City Clerk reads Resolution No. 2023-01 by title only (if approved above)
3) Adopt Resolution No.2023-01

Executive Summary:

Approval of the IGA will enable the City of Flagstaff to partner in the utilization of Assistance to Firefighter Grant (AFG) funding for the regional training of All-Risk incidents within the region.

Financial Impact:

Expenditures and revenues related to this grant are budgeted within the Fire Grants Section. There is a 10% match for this grant that is split up based on the number of employees being trained by each department listed in the IGA (See IGA Exhibit A).

Policy Impact:

There are no policy impacts.

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

Priority Based Budget Key Community Priorities and Objectives

Safe and Heathy Community

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

Carbon Neutrality Plan

CR-2: Strengthen existing community systems to create resilience to both short-term shocks and long-term change.

Regional Plan

Goal PF.1.Work across all government operations and services to prepare for the impacts of natural and human caused
hazards.

Policy PF.1.4. Build, sustain, and leverage partnerships with local and regional stakeholders for collective investment, efficient action, and shared responsibility in the building of local resiliency.

Has There Been Previous Council Decision on This:

The council has approved a similar project in 2016 between the City and the Fire Districts which originally stared this training program, the current request will continue the training program into the future.

Options and Alternatives:

Approve the IGA between the City and the GFR partners.
Reject the IGA between the City and the GFR partners.

Background/History:

This IGA will allow the use of FEMA AFG funding and collaboration of training within the regional Fire Departments. The primary goal of the AFG is to meet the firefighting and emergency response needs of fire departments and nonaffiliated emergency medical service organizations. Since 2001, AFG has helped firefighters and other first responders to obtain critically needed equipment, protective gear, emergency vehicles, training, and other resources needed to protect the public and emergency personnel from fire and related hazards.

Key Considerations:

By approving this IGA, the GFR would benefit greatly though the grant funding by certifying senior instructors as train-the-trainers (T-t-T) to educate and certify command staff and operations personnel in a recognized all-hazard incident ICS program. Funding also provides for purchasing the equipment for a comprehensive portable incident simulator training center. This training would meet the requirements of NIMS as directed by HSPD-5: Management of Domestic Incidents, NFPA 1500 standard on fire department occupational safety, health program and NFPA 1561: Standard on Emergency Incident Management System and Occupational Safety and Health (OSHA) 29CFR1910.120(q)(3)(i) Procedures for handling emergency response. Certification in ICS and the simulator will enhance day to day operations, accountability, and safety of firefighters. To meet the goal outlined in this grant request, we would first send 10 instructor qualified personnel (Inst./Eval. NFPA 1041) to be certified by the third party vendor. Qualified instructors would then utilize the Blue Card Program to deliver the command training and certification programs to our organization; after which, we would deliver the program to the partnering organizations. The T-t-T course includes 50 hours of on-line training and 64 hours of classroom to teach instructors how to deliver the command simulation training and evaluate students. Instructors then receive the resources to deliver the program customized with local and regional building, hazards, maps and critical infrastructure to develop realistic and relevant incident simulations using ICS. Travel and lodging to attend the courses at the command training center are included. When the new instructors provide the class students in this course will be certified by the instructors outlined above as NIMS local type-4 and 5 incident commanders. The course consists of students running all-hazard incident simulations in various ICS positions from division/group supervisor to command and general staff as they would as part of their daily response duties. The grant will also update the kit that includes 9 iPads with incident simulation software, a communications component, carrying cases, and accessories to present realistic scenarios. This comprehensive ICS training certification and incident simulator will provide GFR personnel the required basic level of training and realistic simulation experience that will give them skills to effectively implement ICS on daily responses, elevated alarms, as well as local and regional manmade and natural disasters. This training is a necessary adjunct to Federal Emergency Management Agency NIMS ICS 100-400 courses.

Expanded Financial Considerations:

The total grant is for $133,786 of which 90% is Federal funding ($121,623) and the additional 10% ($12,163) is split up between GFR departments with the City of Flagstaff's total commitment being $6,482 (See IGA Exhibit A). This includes all training for Fire officer, equipment, travel, lodging and meals for train the trainers, and overtime for backfill for the instructor to attend the train the trainer course.

Community Benefits and Considerations:

By supporting this IGA we will have better efficiency on working incidents amongst partners in the region which will create safer scenes for the community we serve. This allows for better collaborative efforts between resource limited agencies in the region and will assist in sharing of qualified command and operational staff personnel for mitigation purposes

Community Involvement:

Inform the Council, Fire Boards and public on the grant application and corresponding IGA to allocate funds

Expanded Options and Alternatives:

1. Approve IGA as recommended.
2. Reject the IGA with the City and GFR partners which will make the City of Flagstaff ineligible for the grant (due to it being awarded by AFG as a regional grant).

Attachments: Res. 2023-01
IGA

RESOLUTION NO. 2023-01

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE HIGHLANDS FIRE DISTRICT, PONDEROSA FIRE DEPARTMENT, PINEWOOD FIRE DEPARTMENT, SUMMIT FIRE AND MEDICAL DISTRICT AND THE CITY OF FLAGSTAFF FOR THE ASSISTANCE TO FIREFIGHTERS REGIONAL TRAINING GRANT PROGRAM

RECITALS:

WHEREAS, the PARTIES desire to enter into this Agreement for administration of grant funds provided by U.S. Department of Homeland Security, Federal Emergency Management Administration (FEMA) 2021 Assistance to Firefighters Grant Program to the City of Flagstaff for Regional Training; and

WHEREAS, the PARTIES recognize the importance of interagency cooperation; and

WHEREAS, the 2021 Assistance to Firefighters Grant program is designed to provide Regional Training.

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 the Highlands Fire District, Ponderosa Fire Department, Pinewood Fire Department, Summit Fire and Medical District and the City of Flagstaff, Arizona, attached hereto as Exhibit A.

SECTION 2. Effective Date.

This resolution shall be immediately effective upon adoption.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 17th day of January, 2023.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Exhibits:
A - IGA

INTERGOVERNMENTAL AGREEMENT
FOR ASSISTANCE TO FIREFIGHTER GRANT PROGRAM
between
the City of Flagstaff
and
Highlands Fire Department,
Pinewood Fire Department,
and Summit Fire and Medical District

This intergovernmental agreement ("Agreement") is entered into this ___ day of_____, 2022, between the City of Flagstaff ("CITY"), an Arizona municipal corporation, with offices at 211 West Aspen Avenue, Flagstaff, Arizona, and Highlands Fire Department, Pinewood Fire Department, and Summit Fire and Medical District, all of which are independent political subdivisions of the State of Arizona, duly organized and administered pursuant to Chapter 5 of Title 48 of the Arizona Revised Statutes (all of the foregoing entities hereafter collectively together referred to as the "PARTIES OR PARTY").

RECITALS

A. The PARTIES desire to enter into this Agreement for administration of grant funds provided by FEMA and the U.S. Department of Homeland Security entitled Assistance to Firefighters Grant Program; and

B. The PARTIES recognize the importance of interagency cooperation; and

C. The PARTIES participate in the "Cooperative Greater Flagstaff Area Fire Agencies All Risk Emergency Intergovernmental Agreement," an IGA intended to maximize interagency cooperation to include training; and

D. The PARTIES of this agreement make up those who will benefit from the Assistance to Firefighters Grant monies awarded to the CITY.

E. Emergency service training is required for the PARTIES to maintain their legally mandated training requirements, provide for maintenance of skills, and provide for consistency of operations; and

F. The PARTIES concur that working collaboratively yields the highest levels of services in conjunction with the most effective use of local fire, rescue, and emergency medical department resources.

NOW THEREFORE, pursuant to A.R.S. § 11-952, authorizing contracts between public agencies for services or the joint exercise of powers common to both, and the inherent powers of each PARTY to protect the health and welfare of its constituents, for and in consideration of the mutual obligations and covenants set forth herein, the PARTIES agree as follows:

AGREEMENT

1. Purpose

The purpose of this Agreement is to administer the funds received by the City from FEMA and the U.S. Department of Homeland from the Assistance to Firefighters Grant Program for certification of instructors to educate and training command staff and operations personnel in a recognized all-hazard Incident Command System and the purchase of equipment for a comprehensive portable incident simulator training center.

2. Scope

The PARTIES agree to the following Procedures:

A. The City of Flagstaff will serve as the host agency and serve as the grant administer of the 2022-2023 AFG grant award.

B. Pursuant to the AFG program guidelines, all items approved under the Application will be procured and administered through the City of Flagstaff.

C. The City of Flagstaff agrees, as host agency, to provide accountability for the assets acquired under the regional AFG grant award and provide reporting requirement deliverables. As such, participating agencies agree to provide the City of Flagstaff with this information on a timely basis to remain in compliance with the requirements of the grant.

D. The participating agencies agree to accept the 2022-2023 regional AFG grant program award and accept their respective items as listed in the AFG grant Award Agreement (see Exhibit B).

E. The participating agencies agree to provide the required cash match in the amount of approximately 10% of the total cost of their requested funds as detailed in the attached spread sheet As Exhibit A. The required match shall be paid by the participating agencies upon receipt of an invoice from Flagstaff.

F. The funds disbursed by the City under this Agreement shall be used only for the project as described in the grant application and award agreement. Any modification to quantity or scope of work must be approved in writing by the City. City will disburse funds to the participating agencies on a reimbursement bases only (see Exhibit A), conditioned upon receipt of proof of payment and applicable, accurate and complete reimbursement documents, as deemed necessary by the City. Payment will be contingent upon receipt of all reporting requirements of participating agencies under this Agreement.

G. During the term of this Agreement, participating agencies will be monitored periodically by City staff, both programmatically and financially, to ensure that the

project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met.

H. Any expenditure beyond the grant award for an agency's approved item(s) remain the sole responsibility of that agency.

I. The participating agencies agree to participate in cooperative training on all equipment procured under this grant award as appropriate. As host agency, training will be coordinated through the Flagstaff Fire Department.

J. The participating agencies agree to maintain/repair all items awarded to them under the grant in accordance with the manufacturer's warranty, and to replace the equipment if it becomes inoperable for a period of three years after official close out of the grant agreement.

K. The participating agencies agree to promptly provide any additional documentation to Flagstaff as requested, which may be necessary in connection with the grant.

L. Participating agencies agree to promptly return any equipment or deliverables that are received in error to Flagstaff.

M. The grant award to each agency is outlined in Exhibit A.

3. Indemnification

Each PARTY to this Agreement shall indemnify, defend and hold harmless the other PARTY, their members, directors, officers, employees, agents, attorneys and assigns from and against any and all claims, losses, liability, costs or expenses resulting from the negligence or willful misconduct of the indemnifying PARTY or PARTIES, provided however, nothing herein shall be construed to expand the liability of any PARTY or its employees beyond the gross negligence/intentional misconduct standard applicable to emergency medical technicians or paramedics providing emergency medical aid as provided for in A.R.S. §48-818. This indemnification shall survive termination of this Agreement or the termination of the participation of any of its PARTIES.

4. Worker's Compensation Claims

The PARTIES shall comply with the provisions of A.R.S. §23-1022 (E) by posting the public notice required. As provided for in A.R.S. §23-1022(D), an employee of a public agency who works under the jurisdiction or control of or within the jurisdictional boundaries of another public agency pursuant to a specific intergovernmental agreement or contract entered into between the public agencies is deemed to be an employee of both public agencies. However, the primary employer is solely liable for the payment of Workers' Compensation benefits. As such, each PARTY shall maintain Workers' Compensation insurance coverage on all of its own employees providing services pursuant to this Agreement.

5. Insurance

Each PARTY shall bear the risk of its own actions and shall determine for itself an appropriate level of insurance coverage and maintain such coverage. Nothing in this Agreement shall be construed as a waiver of any limitation on liability that may apply to a PARTY.

6. Effective Date; Term; Effect of Termination on Remaining PARTIES;

A. Effective Date. This Agreement will become effective for each PARTY after approval by its governing body (the "Effective Date").

B. Term. Except as otherwise provided in this Agreement, this Agreement will remain in effect for a period of one (1) year.

C. Termination. Any PARTY may terminate its participation in this Agreement by providing the other PARTY (or PARTIES) thirty (30) days written notice.

D. The termination by one or more of the PARTIES to this Agreement shall not affect the operation of the Agreement as between the other PARTIES thereto.

7. Cancellation for Conflict of Interest

This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511.

8. Compliance with All Laws

Each PARTY shall comply with all federal, state, and local laws, rules and regulations.

9. Execution Procedure

This Agreement will be executed in counterparts by the governing body of each PARTY.

10. Non-Discrimination

Each PARTY warrants that it complies with any state and federal laws, rules and regulations which mandate that all persons, regardless of race, color, pregnancy, religion, sex, sexual orientation, gender identify, genetic information, age, national origin, disability, veterans status, care-giving responsibilities, or familial status shall have equal access to employment opportunities. Each PARTY shall take affirmative action to ensure that it will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Pregnancy Discrimination Act of 1978, Americans with Disabilities Act of 2008 as amended, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, Age Discrimination and Employment Act of 1967 as amended, Genetic Information Nondiscrimination Act of 2008.

11. Legal Arizona Workers Act Compliance

PARTIES are required to comply with A.R.S. §41-4401, and hereby warrants that they will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to the employment of their respective employees, the requirements of A.R.S. §41-4401, and with the e-verification requirements of A.R.S. §23-214(A) (together the "state and federal immigration laws"). PARTIES further agree to ensure that each subcontractor that performs any work under this Agreement likewise complies with the state and federal immigration laws.

A breach of a warranty regarding compliance with the state and federal immigration laws shall be deemed a material breach of the Agreement and the PARTY who breaches may be subject to penalties up to and including termination of the Agreement.

Each PARTY retains the legal right to inspect the papers of any contractor or subcontract employee working under the terms of the Agreement to ensure that the other PARTY is complying with the warranties regarding compliance with the state and federal immigration laws.

12. Non-appropriation

This Agreement shall be subject to available funding for each PARTY, and nothing in this Agreement shall bind any PARTY to expenditures in excess of funds appropriated and allotted for the purposes outlined in this Agreement.

13. No Third Party Beneficiaries

The PARTIES acknowledge and agree that the terms, provisions, conditions, and obligations of this Agreement are for the sole benefit of, and may be enforceable solely by, the PARTIES, and none of the terms, provisions, conditions, and obligations of this Agreement are for the benefit of, or may be enforced by, any person or entity not a PARTY to this Agreement.

14. Waiver of Potential Conflict

The HIGHLANDS FIRE DISTRICT, the PINEWOOD FIRE DISTRICT, and the SUMMIT FIRE & MEDICAL DISTRICT (these foregoing hereafter collectively referred to as the "jointly-represented PARTIES") consent to the Coconino County Attorney's Office representing all of them jointly, and acknowledge that they have all been advised of the potential for conflicts of interest, including the specific advantages and risks involved with joint representation, and potential consequences that would be created by future conflicts, if any should arise. For instance, these jointly-represented PARTIES were instructed that although joint representation could yield a cost savings on attorneys' fees and also result in easier coordination, no one PARTY's interests could be advocated above that of the others by the attorney. It was explained to all of the jointly-represented PARTIES that this could result in less favorable terms for either one or another of them, because negotiations could not be conducted in a partisan manner with the assistance of counsel as between and amongst the jointly-represented PARTIES. It was further explained to the jointly-represented PARTIES that as amongst them only, joint representation would result in the loss of confidentiality as to each other with regard to the subject matter of the joint representation. It was further explained that if the joint representation should result in an irreconcilable conflict in the future, which either required or resulted in one or more of their number filing a lawsuit against one or more of the others with respect to the subject matter of the joint representation, or else

resulted from another non-waivable conflict, then the Coconino County Attorney's Office would be required to withdraw from representing all PARTIES involved with the irreconcilable and non-waivable conflict, and all such PARTIES involved therewith would have to incur the expense of retaining new replacement counsel. The jointly-represented PARTIES additionally acknowledge that they have been advised and are aware that the Coconino County Attorney does represent several fire districts, including the undersigned. The jointly-represented PARTIES additionally acknowledge that they have the right to have independent counsel review this Agreement and/or the Coconino County Attorney's Office's joint representation in this matter, and all of the jointly-represented PARTIES hereby acknowledge that they have consulted such counsel or have waived the right to consult such counsel. The jointly-represented PARTIES further acknowledge that they understand their rights, and notwithstanding this disclosure, do hereby confirm their waiver any conflict of interest that may arise by reason of the Coconino County Attorney's Office's representation of the undersigned in this matter, and consent to the joint representation of all of the jointly-represented PARTIES by the Coconino County Attorney's Office.

15. Signatures

Each PARTY represents and warrants that all necessary approvals for this agreement have been obtained, and the persons whose signatures appear below have the authority necessary to execute this agreement on behalf of the PARTIES indicated.

City of Flagstaff

_____

Mayor

Attest:

_____

City Clerk

Approved as to form:

_____

City Attorney

INTERGOVERNMENTAL AGREEMENT
FOR ASSISTANCE TO FIREFIGHTER GRANT PROGRAM
SIGNATURE PAGE

IN WITNESS WHEREOF, the PARTIES each sign this Intergovernmental Agreement on a separate
signature page. The signatories warrant that they have been duly authorized to bind the jurisdiction
to the terms and conditions in this Agreement by formal approval of the jurisdiction's governing body.

Party:

_____

Authorized signatory:

_____

Name: _____

Title: _____

Attest:

_____ Date of formal approval by governing body:

Name: _____

Title: _____ _____

Attorney's Approval:

_____

Name: _____

Title: _____

Exhibit A

FEMA Assistance to Firefighters (AFG) #EMW-2021-FG-04025 - REGIONAL TRAINING GRANT

Agencies	Instructors	total ot	Training class	TLM trn	Total Grant Award	Fedral Share 90%	Applicant Share 10%
Flagstaff Fire	5	$39,078	$22,500	$4,250	$65,828	$59,346	$6,482
Summit Fire District	2	$12,024	$9,000	$1,700	$22,724	$20,452	$2,272
Highlands Fire District	2	$12,024	$9,000	$1,700	$22,724	$20,452	$2,272
Pinewood Fire District	1	$6,012	$4,500	$850	$11,362	$10,226	$1,136
	Totals	69138	45000		$122,638	$121,623	$12,163
				Indirect Cost	$11,148		
				Total	$133,786		

AFG Budget Object Classes

Object Class	Units	Cost	Agency	Notes
Personnel	5	$39,078	FFD	FFD Salaries and ERE
Travel	10	$8,500	ALL	TLM, Per Diem, Shared by all
Contrctual	5	$75,060	Disrticts	All contracual cost
Indirect Cost	1	$11,148	City	City Indirect award
		$133,786	Total Award	

Exhibit B

Award Letter

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

Effective date: 09/02/2022

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

EMW-2021-FG-04025

Dear Stacey Brechler-Knaggs,

Congratulations on behalf of the Department of Homeland Security. Your application submitted for the Fiscal Year (FY) 2021 Assistance to Firefighters Grant (AFG) Grant funding opportunity has been approved in the amount of $121,623.63 in Federal funding. As a condition of this grant, you are required to contribute non-Federal funds equal to or greater than 10.0% of the Federal funds awarded, or $12,162.37 for a total approved budget of $133,786.00. Please see the FY 2021 AFG Notice of Funding Opportunity for information on how to meet this cost share requirement.

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

- Summary Award Memo - included in this document
- Agreement Articles - included in this document
- Obligating Document - included in this document
- 2021 AFG Notice of Funding Opportunity (NOFO) - incorporated by reference

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

Sincerely,

PAMELA WILLIAMS
Assistant Administrator, Grant Programs

Summary Award Memo

Program: Fiscal Year 2021 Assistance to Firefighters Grant
Recipient: CITY OF FLAGSTAFF
UEI-EFT: XMMUMPKTLVQ3
DUNS number: 088302625
Award number: EMW-2021-FG-04025

Summary description of award

The purpose of the Assistance to Firefighters Grant program is to protect the health and safety of the public and firefighting personnel against fire and fire-related hazards. After careful consideration, FEMA has determined that the recipient's project or projects submitted as part of the recipient's application and detailed in the project narrative as well as the request details section of the application - including budget information - was consistent with the Assistance to Firefighters Grant Program's purpose and was worthy of award.

Except as otherwise approved as noted in this award, the information you provided in your application for Fiscal Year (FY) 2021 Assistance to Firefighters Grants funding is incorporated into the terms and conditions of this award. This includes any documents submitted as part of the application.

Amount awarded table

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

The following are the budgeted estimates for object classes for this award (including Federal share plus your cost share, if applicable):

Object Class	Total
Personnel	$41,482.80
Fringe benefits	$0.00
Travel	$8,500.00
Equipment	$0.00
Supplies	$0.00
Contractual	$72,655.20
Construction	$0.00
Other	$0.00
Indirect charges	$11,148.00
Federal	$121,623.63
Non-federal	$12,162.37
Total	$133,786.00
Program Income	$0.00

Approved scope of work

After review of your application, FEMA has approved the below scope of work. Justifications are provided for any differences between the scope of work in the original application and the approved scope of work under this award. You must submit scope or budget revision requests for FEMA's prior approval, via an amendment request, as appropriate per 2 C.F.R. § 200.308 and the FY2021 AFG NOFO.

Approved request details:

Training

Officer I-IV

DESCRIPTION

15, 24 hour shifts of back-fill coverage Flagstaff fire personnel.

QUANTITY	UNIT PRICE	TOTAL
360	$75.15	$27,054.00

BUDGET CLASS

Personnel

Officer I-IV

DESCRIPTION

Overtime for regional trainers to attend the class

QUANTITY	UNIT PRICE	TOTAL
128	$75.15	$9,619.20

BUDGET CLASS

Contractual

Officer I-IV

DESCRIPTION

10 Fema contracted indirect cost.

QUANTITY	UNIT PRICE	TOTAL
1	$11,148.00	$11,148.00

BUDGET CLASS

Indirect charges

Officer I-IV

DESCRIPTION

Cost of the Blue Card train the Trainer class for 10.

QUANTITY	UNIT PRICE	TOTAL
10	$4,500.00	$45,000.00

BUDGET CLASS

Contractual

Officer I-IV

DESCRIPTION

10 rooms and Per diem for 5 days at GSA travel rates.

QUANTITY	UNIT PRICE	TOTAL
50	$170.00	$8,500.00

BUDGET CLASS

Travel

Officer I-IV

DESCRIPTION

6 personnel, overtime of flagstaff personnel to attend the training. full burden rate.

QUANTITY	UNIT PRICE	TOTAL
192	$75.15	$14,428.80

BUDGET CLASS

Personnel

Officer I-IV

DESCRIPTION

10, 24 hours overtime backfill for regional participants.

QUANTITY	UNIT PRICE	TOTAL
240	$75.15	$18,036.00

BUDGET CLASS

Contractual

Agreement Articles

Program: Fiscal Year 2021 Assistance to Firefighters Grant
Recipient: CITY OF FLAGSTAFF
UEI-EFT: XMMUMPKTLVQ3
DUNS number: 088302625
Award number: EMW-2021-FG-04025

Table of contents

Article 1	**Assurances, Administrative Requirements, Cost Principles, Representations and Certifications**
Article 2	**General Acknowledgements and Assurances**
Article 3	**Acknowledgement of Federal Funding from DHS**
Article 4	**Activities Conducted Abroad**
Article 5	**Age Discrimination Act of 1975**
Article 6	**Americans with Disabilities Act of 1990**
Article 7	**Best Practices for Collection and Use of Personally Identifiable Information**
Article 8	**Civil Rights Act of 1964 – Title VI**
Article 9	**Civil Rights Act of 1968**
Article 10	**Copyright**
Article 11	**Debarment and Suspension**
Article 12	**Drug-Free Workplace Regulations**
Article 13	**Duplication of Benefits**
Article 14	**Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX**
Article 15	**Energy Policy and Conservation Act**
Article 16	**False Claims Act and Program Fraud Civil Remedies**
Article 17	**Federal Debt Status**
Article 18	**Federal Leadership on Reducing Text Messaging while Driving**
Article 19	**Fly America Act of 1974**
Article 20	**Hotel and Motel Fire Safety Act of 1990**
Article 21	**John S. McCain National Defense Authorization Act of Fiscal Year 2019**
Article 22	**Limited English Proficiency (Civil Rights Act of 1964, Title VI)**
Article 23	**Lobbying Prohibitions**
Article 24	**National Environmental Policy Act**
Article 25	**Nondiscrimination in Matters Pertaining to Faith-Based Organizations**

Article 26	**Non-Supplanting Requirement**
Article 27	**Notice of Funding Opportunity Requirements**
Article 28	**Patents and Intellectual Property Rights**
Article 29	**Procurement of Recovered Materials**
Article 30	**Rehabilitation Act of 1973**
Article 31	**Reporting of Matters Related to Recipient Integrity and Performance**
Article 32	**Reporting Subawards and Executive Compensation**
Article 33	**Required Use of American Iron, Steel, Manufactured Products, and Construction Materials**
Article 34	**SAFECOM**
Article 35	**Terrorist Financing**
Article 36	**Trafficking Victims Protection Act of 2000 (TVPA)**
Article 37	**Universal Identifier and System of Award Management**
Article 38	**USA PATRIOT Act of 2001**
Article 39	**Use of DHS Seal, Logo and Flags**
Article 40	**Whistleblower Protection Act**
Article 41	**Environmental Planning and Historic Preservation (EHP) Review**
Article 42	**Applicability of DHS Standard Terms and Conditions to Tribes**
Article 43	**Acceptance of Post Award Changes**
Article 44	**Disposition of Equipment Acquired Under the Federal Award**
Article 45	**Prior Approval for Modification of Approved Budget**
Article 46	**Indirect Cost Rate**
Article 47	**Award Performance Goals**

Article 1	**Assurances, Administrative Requirements, Cost Principles, Representations and Certifications** I. DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non-Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances as instructed by the awarding agency. II. DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200 and adopted by DHS at 2 C.F.R.Part 3002. III. By accepting this agreement, recipients, and their executives, as defined in 2 C.F.R. § 170.315, certify that their policies are in accordance with OMB's guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.
Article 2	**General Acknowledgements and Assurances** All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. I. Recipients must cooperate with any DHS compliance reviews or compliance investigations conducted by DHS. II. Recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities or personnel. III. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports. IV. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law, or detailed in program guidance. V. Recipients (as defined in 2 C.F.R. Part 200 and including recipients acting as pass-through entities) of federal financial assistance from DHS or one of its awarding component agencies must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award for the first award under which this term applies. Recipients of multiple awards of DHS financial assistance should only submit one completed tool for their organization, not per award. After the initial submission, recipients are required to complete the tool once every two (2) years if they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

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

Article 9	**Civil Rights Act of 1968** Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. § 3601 et seq.), as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)
Article 10	**Copyright** Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.
Article 11	**Debarment and Suspension** Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.
Article 12	**Drug-Free Workplace Regulations** Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).
Article 13	**Duplication of Benefits** Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

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

Article 20	**Hotel and Motel Fire Safety Act of 1990** Recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a
Article 21	**John S. McCain National Defense Authorization Act of Fiscal Year 2019** Recipients, subrecipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute – as it applies to DHS recipients, subrecipients, and their contractors and subcontractors – prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons
Article 22	**Limited English Proficiency (Civil Rights Act of 1964, Title VI)** Recipients must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: https://www.dhs.gov/guidance- published-help-department- supported-organizations-provide-meaningful-access-people-limited and additional resources on http://www.lep.gov.
Article 23	**Lobbying Prohibitions** Recipients must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.
Article 24	**National Environmental Policy Act** Recipients must comply with the requirements of the National Environmental Policy Act of 1969, (NEPA) Pub. L. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq. and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans

Article 25	**Nondiscrimination in Matters Pertaining to Faith-Based Organizations** It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statues, regulations, and guidance governing the participations of faith- based organizations in individual DHS programs.
Article 26	**Non-Supplanting Requirement** Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.
Article 27	**Notice of Funding Opportunity Requirements** All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.
Article 28	**Patents and Intellectual Property Rights** Recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq, unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.
Article 29	**Procurement of Recovered Materials** States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.
Article 30	**Rehabilitation Act of 1973** Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973), (codified as amended at 29 U.S.C. § 794,) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article 31	**Reporting of Matters Related to Recipient Integrity and Performance** General Reporting Requirements: If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.
Article 32	**Reporting Subawards and Executive Compensation** Reporting of first tier subawards. Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.
Article 33	**Required Use of American Iron, Steel, Manufactured Products, and Construction Materials** Recipients and subrecipients must comply with the Build America, Buy America Act (BABAA), which was enacted as part of the Infrastructure Investment and Jobs Act §§ 70901-70927, Pub. L. No. 117-58 (2021); and Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers. See also Office of Management and Budget (OMB), Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure. Recipients and subrecipients of federal financial assistance programs for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless: (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or

	permanently affixed to the infrastructure project. When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. (a) When the federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that: (1) applying the domestic content procurement preference would be inconsistent with the public interest; (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the OMB Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described. For awards by the Federal Emergency Management Agency (FEMA), existing waivers are available and the waiver process is described at 'Buy America' Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov. For awards by other DHS components, please contact the applicable DHS FAO. To see whether a particular DHS federal financial assistance program is considered an infrastructure program and thus required to include a Buy America preference, please either contact the applicable DHS FAO, or for FEMA awards, please see Programs and Definitions: Build America, Buy America Act | FEMA.gov.
Article 34	**SAFECOM** Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.
Article 35	**Terrorist Financing** Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.
Article 36	**Trafficking Victims Protection Act of 2000 (TVPA)** Trafficking in Persons. Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106 (g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. § 7104. The award term is located at 2 C.F.R. § 175.15, the full text of which is incorporated here by reference.

Article 37	**Universal Identifier and System of Award Management** Requirements for System for Award Management and Unique Entity Identifier Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.
Article 38	**USA PATRIOT Act of 2001** Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.
Article 39	**Use of DHS Seal, Logo and Flags** Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
Article 40	**Whistleblower Protection Act** Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.
Article 41	**Environmental Planning and Historic Preservation (EHP) Review** DHS/FEMA funded activities that may require an Environmental Planning and Historic Preservation (EHP) review are subject to the FEMA EHP review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires the recipient to comply with all federal,state and local laws. DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP review process, as mandated by: the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and any other applicable laws and executive orders. To access the FEMA EHP screening form and instructions, go to the DHS/FEMA website. In order to initiate EHP review of your project(s), you must complete all relevant sections of this form and submit it to the Grant Programs Directorate (GPD) along with all other pertinent project information. The EHP review process must be completed before funds are released to carry out the proposed project; otherwise, DHS/FEMA may not be able to fund the project due to noncompliance with EHP laws, executive orders, regulations, and policies. If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archeological resources are discovered the applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

Article 42	**Applicability of DHS Standard Terms and Conditions to Tribes** The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to subrecipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.
Article 43	**Acceptance of Post Award Changes** In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ASK-GMD@fema.dhs.gov if you have any questions.
Article 44	**Disposition of Equipment Acquired Under the Federal Award** For purposes of original or replacement equipment acquired under this award by a non-state recipient or non-state subrecipients, when that equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, you must request instructions from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. section 200.313. State recipients and state subrecipients must follow the disposition requirements in accordance with state laws and procedures.

Article 45	**Prior Approval for Modification of Approved Budget** Before making any change to the FEMA approved budget for this award, you must request prior written approval from FEMA where required by 2 C.F.R. section 200.308. For purposes of non-construction projects, FEMA is utilizing its discretion to impose an additional restriction under 2 C.F.R. section 200.308(f) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Threfore, for awards with an approved budget where the federal share is greater than the simplified acquisition threshold (currently $250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget FEMA last approved. For purposes of awards that support both construction and non-construction work, FEMA is utilizing its discretion under 2 C.F.R. section 200.308(h)(5) to require the recipient to obtain prior written approval from FEMA before making any fund or budget transfers between the two types of work. You must report any deviations from your FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.
Article 46	**Indirect Cost Rate** 2 C.F.R. section 200.211(b)(15) requires the terms of the award to include the indirect cost rate for the federal award. If applicable, the indirect cost rate for this award is stated in the budget documents or other materials approved by FEMA and included in the award file.
Article 47	**Award Performance Goals** FEMA will measure the recipient’s performance of the grant by comparing the number of items requested in its application, the numbers acquired (ordered, paid, and received) within the period of performance. In order to measure performance, FEMA may request information throughout the period of performance. In its final performance report submitted at closeout, the recipient is required to report on the recipients compliance with the applicable industry, local, state and national standards described in the NOFO.

Obligating document

1.Agreement No.	2. Amendment No.	3. Recipient No.	4. Type of Action	5. Control No.
EMW-2021-FG-04025	N/A	866000244	AWARD	WX00671N2022T

6. Recipient Name and Address	7. Issuing FEMA Office and Address	8. Payment Office and Address
CITY OF FLAGSTAFF 211 W ASPEN AVE FLAGSTAFF, AZ 86001	Grant Programs Directorate 500 C Street, S.W. Washington DC, 20528-7000 1-866-927-5646	FEMA, Financial Services Branch 500 C Street, S.W., Room 723 Washington DC, 20742

9. Name of Recipient Project Officer	9a. Phone No.	10. Name of FEMA Project Coordinator	10a. Phone No.
Stacey Brechler-Knaggs	9286995585	Assistance to Firefighters Grant Program	1-866-274-0960

11. Effective Date of This Action	12. Method of Payment	13. Assistance Arrangement	14. Performance Period / Budget Period
09/02/2022	OTHER - FEMA GO	COST SHARING	**Performance Period** 09/09/2022 to 09/08/2024 **Budget Period** 09/09/2022 to 09/08/2024

15. Description of Action a. (Indicate funding data for awards or financial changes)

Program Name Abbreviation	Assistance Listings No.	Accounting Data(ACCS Code)	Prior Total Award	Amount Awarded This Action + or (-)	Current Total Award	Cumulative Non-Federal Commitment
AFG	97.044	2022-F1-GB01 - P410-xxxx-4101-D	$0.00	$121,623.63	$121,623.63	$12,162.37
		Totals	$0.00	$121,623.63	$121,623.63	$12,162.37

b. To describe changes other than funding data or financial changes, attach schedule and check here:
N/A

~~16.FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address)~~
This field is not applicable for digitally signed grant agreements

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title)	DATE
18. FEMA SIGNATORY OFFICIAL (Name and Title) PAMELA WILLIAMS, Assistant Administrator, Grant Programs	DATE 09/02/2022

10. C.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Saltzburg, City Clerk
Date:	01/12/2023
Meeting Date:	01/17/2023

TITLE:

Ratification of a previous City Council's instruction to City Attorney to initiate litigation against Desert Mountain Energy.

STAFF RECOMMENDED ACTION:

Ratify a previous City Council's instruction to the City Attorney to initiate litigation against Desert Mountain Energy based on information provided in executive session.

Executive Summary:

The Flagstaff City Council proposes to ratify prior instruction/action given by a previous City Council to the City Attorney. The City Attorney was instructed in executive session held on December 2, 2020, to initiate and prosecute litigation against Desert Mountain Energy seeking an injunction ordering Desert Mountain Energy to stop drilling a helium well(s) near Red Gap Ranch.

A detailed written description of the instruction/action to be ratified, and deliberations, consultations and decisions by the City Council that preceded and related to the instruction/action that was taken, is attached hereto and posted at City Hall. The complaint is attached.

Financial Impact:

Funds for litigation are budgeted annually by the City Council and were also budgeted in previous years.

Policy Impact:

Continue to protect and provide water resource to citizens of Flagstaff.

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

Previous Council Decision on This:

See executive summary above.

Attachments:

Written Description of Instruction/Action to be Ratified
Application for TRO
Proposed Preliminary Injunction
Verified Complaint for TRO
Temporary Restraining Order

First Amended Complaint
Preliminary Injunction
Order Declining Special Action

Detailed written description of the instruction/action to be ratified, and deliberations, consultations and decisions by the City Council that preceded and related to the instruction/action that was taken:

The Flagstaff City Council proposes to ratify prior instruction/action given by a previous City Council to the City Attorney. The City Attorney was instructed in executive session held on December 2, 2020, to initiate and prosecute litigation against Desert Mountain Energy seeking an injunction ordering Desert Mountain Energy to stop drilling a helium well(s) near Red Gap Ranch. Prior to the instruction/action given on December 2, 2020, the City Council consulted with its legal counsel in executive session on December 1, 2020. The City Council decided to provide the instruction to initiate litigation based on the information discussed and advice given in both executive sessions.

Lee A. Storey (011989)
Alexandra M. Arboleda (016673)
Ethan B. Minkin (019022)
Sara V. Ransom (024099)
TSL LAW GROUP, PLC
8096 N. 85th Way, Suite 105
Scottsdale, Arizona 85258
Telephone: (602) 803-8811
lee@tsllawgroup.com
alex@tsllawgroup.com
ethan@tsllawgroup.com
sara@tsllawgroup.com
Attorneys for the City of Flagstaff

RECEIVED
DEC 11 2020
VALERIE WYANT
Clerk of the Superior Court

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

THE CITY OF FLAGSTAFF,

Plaintiff,

v.

DESERT MOUNTAIN ENERGY CORP.,

Defendant.

No.: CV2020-006624

PLAINTIFF'S EMERGENCY APPLICATION FOR TEMPRORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION WITH NOTICE

[EXPEDITED RELIEF REQUESTED]

[ORAL ARGUMENT REQUESTED]

Plaintiff City of Flagstaff ("City" or "Plaintiff"), hereby moves pursuant to Ariz. R. Civ. P. 65 for immediate issuance of a temporary restraining order and preliminary injunction, in the forms submitted herewith, prohibiting Defendant Desert Mountain Energy Corp. ("DME" or "Defendant") from commencing construction or, if already commenced, halting construction or other operations of a well for the purpose of engaging in mining activities (the "Well") until such time as it demonstrates compliance with all voluntarily-assumed and legally-mandated conditions necessary to confirm that DME's construction practices and operations will not degrade C aquifer water quality, thereby ensuring the safety of the City's future municipal drinking water supply.

Due to the urgency and concerns that construction may be on-going despite notice from the City of its objections and the request for assurances sought by this Application, the City seeks entry of the attached proposed Temporary Restraining Order ***with*** notice.

The City has provided a copy of this Application by hand delivery to the statutory agent identified in DME's public filings. This Application is supported by the allegations in the Verified Complaint filed herewith, the *Declaration of Mark Nicholls in Support of Plaintiff's Application for Temporary Restraining Order and Preliminary Injunction With Notice* ("**Nicholls Dec.**"), attached hereto as **Exhibit 1**, the *Declaration of Bradley Hill in Support of Plaintiff's Application for Temporary Restraining Order and Preliminary Injunction With Notice* ("**Hill Dec.**"), attached hereto as **Exhibit 2**, and upon the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In March 2019, in response to concerns expressed by the citizens of the City regarding the safety of water supplies if DME undertakes helium and hydrocarbon mining activities, DME's then-CEO represented that DME "won't do a well for helium if there's any danger of contaminating the water supply at all," further remarking "It's just not going to happen." Hill Dec. at ¶ 19 and Exhibit C thereto. Since that time, and without notifying the City despite its known concerns and objections to its activities, DME secured a permit to undertake helium and hydrocarbon mining activities within ***two miles*** of a well field that the City has invested millions of dollars in developing as a future source of municipal water supply. Documents the City has since obtained via public sources confirm that the proposed Well is upgradient of the City's well field and Defendant DME apparently believes that it is authorized to contaminate water below its own self-created "base treatment level," thus heightening the City's concerns that the planned drilling threatens the quality of the City's future domestic water supply.

A press release recently issued by DME indicates that it intends to commence construction on the Well in December 2020. By correspondence dated December 7, 2020, the City notified DME of its objections to the proposed Well and advised that it would initiate legal action if it did not receive additional information and assurances from DME

that it has ensured protection of the City's water supply as it previously pledged to the public in March 2019.

As of the filing of this Application, DME has not responded to the City's correspondence. Having failed, despite attempt, to secure assurances of proper safety protocols from DME, the City must apply to this Court for emergency injunctive relief prohibiting commencement or, if already underway, halting construction of the Well to ensure that the City's future municipal supply is not irreversibly contaminated.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The City Has Invested Millions Over More Than A Decade Developing The Only Feasible Water Supply In The Region For Its Future Population At Red Gap Ranch.

The City, with more than 75,000 residents, is the largest community in Northern Arizona. It also hosts more than 5,000,000 tourists annually. The City has enjoyed economic and population growth for several decades. Hill Dec. at ¶ 4. It anticipates reaching a population of approximately 150,000 full-time residents within the next fifty (50) years or so. Hill Dec. at ¶ 5.

To accommodate the municipal needs of its continued and anticipated population growth, including providing safe drinking water supplies for residents and visitors, in 2005 the City purchased 8500 deeded acres of land and several thousand acres of State Land's grazing leases along the I-40 corridor approximately 40 miles east of the City's incorporated limits. Hill Dec. at ¶ 6. The City's plans to use the land, which is commonly referred to as "Red Gap Ranch," as a future source of municipal water supply has been a frequent subject of attention in the press and in the community. Hill Dec. at ¶ 7.

The City is recognized as a leader in Arizona with respect to its water conservation and reclaimed water reuse measures. The City intends to continue to implement and improve upon those measures to decrease its municipal water needs, but projections indicate that its growing population will nonetheless need additional water supplies. Hill Dec. at ¶ 8. That is why the City purchased Red Gap Ranch nearly fifteen (15) years ago and has invested millions of dollars in developing Red Gap Ranch for its intended purpose as a

municipal water supply. The City's plans for Red Gap Ranch are to drill multiple wells into the Coconino aquifer (the "C aquifer") to withdraw groundwater, which will then be conveyed via pipeline and introduced into the City's existing municipal water infrastructure system. Hill Dec. at ¶ 9.

The City has completed certain aspects of its plans for Red Gap Ranch. They completed Phase I of an engineering analysis towards confirming the feasibility of the project in 2009, drilled multiple water supply wells in 2011, secured a Designation of Adequate Water Supply from the Arizona Department of Water Resources in 2013, entered into an agreement in 2016 with the Arizona Department of Transportation to advance the process of approving a water pipeline within the I-40 right of way, and completed multiple water quality analyses to confirm that the water underlying Red Gap Ranch continues to be suitable as a drinking water source. Hill Dec. at ¶ 10. A Phase II engineering analysis is slated for completion within the next year, as are other on-going measures by the City towards its continued planning to use Red Gap Ranch as a municipal water supply in the future. Hill Dec. at ¶ 11.

Hydrogeologic analysis and other regional land ownership restrictions confirm that the area in and around Red Gap Ranch is the only feasible source of water suitable for municipal use in the region that is available to the City in the future. Hill Dec. at ¶ 12. Maintenance of Red Gap Ranch's water quality, including ensuring it remains free from harmful or toxic substances that will render it inadequate for human consumption or cause the City to incur potentially exorbitant treatment costs, is crucial to the City's future water security. Hill Dec. at ¶ 13.

B. DME Assures The City That It Will Consult With It And Ensure Safe Operations To Protect The City's Municipal Water Supplies From Contamination

In early 2019, after representatives of Desert Mountain Energy Corp. (DME) approached the City for permission to cross Red Gap Ranch for the purpose of exploring whether it could mine for helium on nearby lands owned by the Arizona State Lands Department ("ASLD"), the City entered a License for Access and Seismic Testing on Red

Gap Ranch (the "DME License Agreement") and a Memorandum of Understanding with DME (the "DME MOU"). Hill Dec. at ¶ 14 and Exhibits A and B thereto.

By the DME License Agreement, the parties acknowledged that the lands comprising "Red Gap Ranch" were acquired by the City "for their water rights." By the DME License Agreement, the City authorized DME to cross Red Gap Ranch via designated rights of way to complete its due diligence on neighboring ASLD lands and authorized DME to conduct limited seismic testing on City lands as long as DME bore the costs of such testing and provided the City with the results of that testing. Hill Dec. at ¶ 15. The DME MOU required DME to consult with and work cooperatively with the City regarding its activities with respect to helium or hydrocarbon mining. The parties also noted that the City encouraged access to areas in the region that may have helium resources ***except*** in the vicinity of federal or state parks or other highly sensitive areas, including areas with water resources. Hill Dec. at ¶ 16.

From the point of view of the City's then-Water Services Director, Mr. Bradley Hill, the two agreements allowed the City to ensure that it was notified of DME's activities and could verify that those activities would not threaten the quality of or the City's ability to access the waters underlying Red Gap Ranch. Hill Dec. at ¶ 17. During interactions with DME representatives in 2019, City representatives repeatedly expressed the City's interest in protecting Red Gap Ranch from water quality or water accessibility issues resulting from DME's proposed operations. Hill Dec. at ¶ 18.

Following public outcry regarding the potential threats posed by DME's anticipated mining operations, the City subsequently determined not to proceed with the DME MOU or the License Agreement. In March 2019, then-Chief Executive Officer of DME, Mr. Olian Irwin, is quoted by Scott Buffon of the Arizona Daily Sun stating that DME "won't do a well for helium if there's any danger of contaminating the water supply at all," further remarking "It's just not going to happen." Hill Dec. at ¶ 19 and Exhibit C thereto. Thereafter, the City did not hear further from DME regarding any plans to proceed with mining activities near Red Gap Ranch.

C. DME Misrepresents Local Support In Its Well Application, Surreptitiously Secures The Well Permit And Indicates Its Intent To Proceed With Construction Without Advising The City.

Via publicly available documents, in late November 2020, the City discovered that DME had secured Well permit No. 1255, which allows it to drill a well labeled Desert Mountain 26-1 State (the "Well") within two miles of Red Gap Ranch for the purpose of mining helium. Well permit No. 1255 was issued by the Arizona Oil and Gas Conservation Commission ("AOGCC") on November 18, 2020. Hill Dec. at ¶ 21 and Exhibit D thereto.

Via its Well Permit Application issued to the AOGCC on or about November 2, 2020, DME also represents in the Application that it has met with and "local leaders" and "legislators" regarding its project and has been "welcomed" and encouraged by those representatives. *See* Well Permit Application, Justification letter to M. Hodan, Director of AOGCC, at p. 2, attached hereto as **Exhibit 3**. DME does not identify the governments or local leaders that it met with, but it has not met with representatives of the City with respect to the Well despite its knowledge of the City's ***objections*** to its operations being in such proximity to the City's drinking water supplies. DME thus represents local government support of its project to AOGCC, despite that it neglected to consult with the City and is aware of the multiple concerns of the City regarding any well or mining operations near Red Gap Ranch. Hill Dec. at ¶ 18.

DME's Well Permit Application also makes reference to seismic testing that it has completed. Per the DME Licensing Agreement, DME was to provide the City with any seismic testing that it completed on Red Gap Ranch. The City has not received any seismic or other geologic data from DME. Although the City issued notice of termination of the DME License Agreement, it did not terminate by its terms for another six (6) months. The City reasonably believes that DME entered Red Gap Ranch on or about May – June 2019 and completed seismic testing while the License Agreement was still in effect. Notwithstanding DME's entering Red Gap Ranch for seismic testing, DME failed to share the information with the City to obfuscate its on-going plans to conduct mining activities near the City's municipal water supply well field.

D. DME's Well And Intended Operations Threaten To Cause Irreparable Injury To The City By Creating An Avenue For Introduction Of Pollutants Into The City's Future Municipal Water Supply.

1. DME's "Base Treatable Water" Calculation Indicates An Intent To Contaminate Below That Level.

Per documents that the City has been able to obtain to date, DME intends to drill an exploratory well down to the "base treatable water" of the C aquifer. Nicholls Dec. at ¶ 8, Exhibit 1. It is unclear how DME derived the depth of "base treatable water" within the C aquifer. Nicholls Dec. at ¶ 9. The implication of this depth determination seems to be that DME intends to (or at least believes it can) contaminate waters within the C aquifer below that "base treatable water" level it has identified. Nicholls Dec. at ¶ 10.

2. DME's Well Is Upgradient Of Red Gap Ranch Wellfield.

As noted above, the C aquifer is the location of the City's municipal wells at Red Gap Ranch. Hill Dec. at ¶ 22. Based upon the stated location of the intended Well, any pollutants or toxic substances introduced into the Well—now or in the future—or released by operations of the Well into the C aquifer will be upgradient of Red Gap Ranch. Hill Dec. at ¶ 23; *see also* Nicholls Dec. at ¶ 12. Thus, any harmful constituents, pollutants or toxic chemicals introduced into the Well will migrate towards the municipal well fields located at Red Gap Ranch. Hill Dec. at ¶ 24; *see also* Nicholls Dec. at ¶ 13.

3. DME's Disclosed Construction Methods Allow For Introduction of Toxic Or Harmful Substances Into Aquifers, Including the C Aquifer That Supplies Red Gap Ranch.

By its own documents, DME intends to drill to a total depth of 2000 feet and cement the entire length of the casing. Nicholls Dec. at ¶ 14. DME would then use a perforating tool to punch holes through the Well casing in the zones that appear most promising for production of helium gases. Nicholls Dec. at ¶ 15. Although DME represents that the Well casing will be sealed through the Kaibab, Coconino, and Supai formations, which are the primary water bearing formations, significant risks remain with construction and inadequate maintenance or use of toxic constituents in the mining process once perforations are completed along the Well casing. These activities can allow a variety of contaminants to

be introduced into the C aquifer (and the other aquifers through which DME's well will traverse) while the Well is under construction and during its period of use. Nicholls Dec. at ¶ 16. Wells of this type are frequently in operation for decades. Nicholls Dec. at ¶ 17.

4. DME's Disclosed Extraction Methods Allow For Introduction of Toxic Or Harmful Substances Into Aquifers, Including the C Aquifer That Supplies Red Gap Ranch.

DME plans to drill using the air rotary method, with the addition of drilling fluid additives, which are essentially "misting" agents to assist in lifting cuttings if necessary. Nicholls Dec. at ¶¶ 18-19. The air rotary method disclosed by DME allows it to commence operations quickly if the Well strikes a deposit of the helium it wishes to extract, but the method that DME has selected also creates that risk that if it encounters highly fractured zones or large quantities of water, DME may have to change drilling methods, which would include altering its drilling fluid additives. Nicholls Dec. at ¶ 20.

The misting agents are usually detergent based foaming compounds. Nicholls Dec. at ¶ 19. Given that the boring will penetrate a drinking water aquifer, the drilling fluids, including the foaming agent should be a National Sanitation Foundation ("NSF") certified product to ensure it is safe for drinking water use. Nicholls Dec. at ¶ 21. The same requirement should apply if they have to switch drilling fluids due to formation conditions - all drilling fluids should be certified to NSF Standard 60. Nicholls Dec. at ¶¶ 21-22. Unfortunately, nothing in DME's publicly available documents represents or guarantees that DME will only use NSF Standard 60 drilling fluids. Nicholls Dec. at ¶ 23.

Moreover, DME represents itself to be a concern with experience in drilling oil wells, which frequently use diesel fuels or diesel fuel additives as drilling fluids. Nicholls Dec. at ¶ 24. Groundwater impacted with additives may not be safe or suitable for human consumption or other municipal uses. Nicholls Dec. at ¶ 25. Even if it does not use diesel fuel constituents, other drilling fluids like brine degrade water quality, potentially rendering it unfit for human consumption.

If DME does not use NSF Standard 60 certified drilling fluids, it could contaminate the C aquifer. Nicholls Dec. at ¶ 26. As the Well is within two miles of the City's Red Gap Ranch wells, and is up-gradient of the Red Gap Ranch wells, it is highly likely that any such contaminants would migrate to the City's municipal supply wells, and result in water unfit for human consumption. Nicholls Dec. at ¶ 27.

Should DME's air rotary method result in the need to change drilling additives, it is unclear whether DME would disclose its changed chemical additives, or whether it would secure a permit from the AOGCC or the Arizona Department of Environmental Quality ("ADEQ"). It does not appear that DME has sought any such permits, and although it has indicated that it does not intend to use "fracking" additives, it has not pledged that it will ***not*** use them. Nicholls Dec. at ¶ 28. To the contrary, DME's reference in its application to "base treatable water" appears to indicate that DME is making a distinction regarding the lowermost extent of potential drinking water, which implies that DME inaccurately believes it is authorized to pollute water below this depth.[1] Nicholls Dec. at ¶ 29.

III. LEGAL ARGUMENT

The standard for obtaining emergency injunctive relief has been set forth by the Supreme Court of Arizona in *Smith v. Arizona Citizens Clean Elections Commission,* 212 Ariz. 407, 132 P.3d 1187 (2006); *see also Burton v. Celentano*, 134 Ariz. 594, 595, 658 P. 2d 247, 248 (App. 1982). In *Smith*, the Arizona Supreme Court identified the following elements that must be established by a party seeking injunctive relief:

(1) A strong likelihood of success on the merits;

(2) Irreparable harm if the stay is not granted;

(3) The harm to the requesting party outweighs the harm to the party opposing the stay; and

---

[1] Arizona considers all saturated formations to be drinking water aquifers, so DME should apply for an Arizona Aquifer Protection Permit. It is concerning that DME apparently does not understand this obligation, but intends to commence construction this month.

(4) Public policy favors the granting of the stay.

212 Ariz. at 410.

Furthermore, the *Smith* Court indicated that the scale upon which these factors are weighed is not absolute and the factors should not be applied by counting the number of factors on each side of the balance. The Court stated as follows:

> Rather, the moving party may establish either (1) probable success on the merits and the possibility of irreparable injury; or (2) the presence of serious questions and that the balance of hardships tips sharply in favor of the moving party. [] The greater and less reparable the harm, the less the showing of a strong likelihood of success on the merits need be. Conversely, if the likelihood of success on the merits is weak, the showing of irreparable harm must be stronger.

Id. at 411 (internal citations omitted). As further detailed below, the City is entitled to the temporary restraining order and preliminary injunction it seeks by this Application.

A. The City Has A Strong Likelihood of Success On The Merits, And Has Demonstrated The Possibility Of Irreparable Injury.

In this case, City has a strong likelihood of success on the merits and the extent of harm is both great and irreparable. By its separately-filed Complaint, the City alleges a claim for misrepresentation or fraudulent omissions and asks this Court to invalidate the Well Permit because DME falsely represented to the AGOCC in order to justify issuance of the Well Permit that it had support of "local leaders" and "legislators." Indeed, DME intentionally failed to consult with the City and was well-aware of the City's objections to having a helium mining well located near its future public water supplies at Red Gap Ranch. *Compare* Exhibit 3 hereto *with* Hill Dec. at ¶¶ 17-19. Additionally, DME has falsely represented, or, at a minimum, made a negligent misrepresentation in its Well Permit Application that it will not engage in "large" hydraulic fracturing. It has not, however, warranted that it will not engage in well stimulation during the course of its operations, and any discharges into the C aquifer require an Aquifer Protection Permit ("APP") pursuant to A.R.S. §§ 49-241, *et seq.*

Where, as here, a permit is not legitimately issued due to falsehoods or inaccuracies within the submissions to the issuing agency, the permit should be revoked. *Rivera v. City of Phoenix*, 186 Ariz. 600, 602, 925 P.2d 741, 743 (App. 1996). As DME's own representations in the press reveal it knows of the objections of "local leaders" and further because its "base treatment level" indicates that it intends to discharge into an aquifer despite its representations that it does not intend to engage in fracking, the City has shown a likelihood of success on its claims for misrepresentation and declaratory relief.

In addition, or in alternative, to its likelihood of success on the merits of its misrepresentation claims, the City is also likely to succeed on its declaratory relief claim seeking a declaration from this Court that DME must secure an APP from ADEQ, including completing the required public notice and comment period, before it introduces any constituents into the Well that may degrade C aquifer water quality. DME appears to believe that it is authorized to introduce potentially harmful drilling additives or other constituents so long as it does so beneath its own self-devised "base treatable water level." Nicholls Dec. at ¶ 29. This is mistaken, as Arizona does not recognize such a standard, and instead mandates an APP for any planned well stipulation involving the types of constituents that DME may use. *See* Arizona Administrative Code R12-7-117 (an APP is required if any well stimulation is planned).

The City is additionally likely to prevail on its breach of contract claim. As noted above, in its Well Permit Application packet, DME makes reference to "seismic" and other geologic data that it has collected. *See* Well Permit Application, Justification letter at p. 2, Exhibit 3. The DME License Agreement, which was in effect through the fall of 2019, required DME to share the results of any seismic testing it completed on Red Gap Ranch in exchange for waiver of the City's licensing fees. *See* DME Licensing Agreement, Exhibit B to Hill Dec. The City understands that DME completed seismic testing on Red Gap Ranch in the spring or summer of 2019, but failed to share that seismic data in breach of the DME Licensing Agreement. This breach is material not only due to the City being deprived of the benefit of its bargain via the loss of licensing fees, but also because DME's

subterfuge allowed it to further conceal its on-going plans to engage in mining activities that threaten the City's future municipal water supplies.

The City has thus established a likelihood of success on one or more of the counts of its Complaint. The City need only demonstrate a likelihood of success as to one of its claims in order to secure the injunctive relief sought by this Application. *See Compass Bank v. Hartley,* 430 F. Supp. 2d 973, 983 (D. Ariz. 2006) ("Plaintiff alleges additional counts including breach of loyalty provisions, implied covenant of good faith and fair dealing, violations of the Trade Secrets Act, A.R.S. § 44–401, Conversion, Tortious Interference with Contract, and Unjust Enrichment. *See* Complaint. The Court need not address the validity of each and every claim. Rather, for purposes of determining Plaintiff's likelihood of success on the merits, it is sufficient that the Court finds that Plaintiff is likely to succeed on the breach of contract claims.").

The second consideration under *Smith*—the possibility of irreparable injury—is easily established here. The City has a duty to supply its citizens with safe drinking water and water for other municipal uses. That the City has a protectable interest in fulfilling its duties to its residents is demonstrated in the terms of the injunctive relief statute itself, which prohibits injunctive relief against a public official seeking to enforce the laws of the State of Arizona for the public benefit. *See* A.R.S. § 12-1802(4); *cf. Wallace v. Shields*, 175 Ariz. 166, 174, 854 P.2d 1152, 1160 (Ct. App. 1992) (observing that a plaintiff could not reasonably expect injunctive relief regarding government's threatened removal of property if the property at issue turned out to be stolen).

DME's misrepresentations in its Well Permit Application and its apparent intended failure to comply with its obligations to obtain an APP as well as its breach of its obligations to provide the City with seismic testing completed on Red Gap Ranch deprives the City of its protectable interest in fulfilling its statutory duties to the public. Under Arizona law, "once a protectable interest is established, irreparable injury is presumed to follow if the interest is not protected." *Phoenix Orthopaedic Surgeons, Ltd. v. Peairs,* 164 Ariz. 54, 59, 790 P.2d 752, 757 (Ct. App. 1989), disapproved on other grounds by *Valley Med.*

Specialists v. Farber, 194 Ariz. 363, 372, 982 P.2d 1277, 1286 (1999) ("Because the trial court found that POS had a protectable interest, irreparable injury can be presumed."). Since DME's conduct threatens the City's protectable interest in ensuring safe drinking water for its residents and ensuring compliance with State laws, the Court should presume irreparable harm.

As detailed above, contamination of the C-aquifer will cause irreparable harm. Additionally, the City cannot simply abandon the millions of dollars it has invested in developing Red Gap Ranch and purchase a different property to develop as a municipal water supply; Red Gap Ranch is one of the few areas in the entire region susceptible to water development. Hill Dec. ¶¶ 9-12. Should DME be allowed to proceed with construction or commence operations without adequate assurances that it is both capable and willing to implement all reasonable precautions needed to guard against contamination of the C aquifer, the City—and the tens of thousands of residents and millions of tourists who rely upon it for clean, safe drinking water—will be irreversibly and irreparably injured. Irreparable injury is established.

B. The City Has Established That Serious Questions Exist Regarding The Security Of Its Water Supply If DME Is Allowed To Continue Unchecked And That The Balance Of Hardships Tips Sharply In Favor Of The City.

The City also satisfies the second, alternative set of criteria required for issuance of injunction relief—that serious questions exist and the balance of hardships tip in the City's favor. *Smith*, 212 Ariz. at 410. The City seeks to protect the irreversible contamination of the future water supply of majority of the regions' populace. Presently, DME has represented, falsely, that it has consulted in "local leaders" and "legislators" who proclaimed support for the project, despite its knowledge that the City does not support DME's allegedly "encouraged" project as it is presently described.

DME also publicly represented that it does not intend to pursue any wells that could result in contaminated drinking water supplies. *See* Exhibit C to Hill Dec. If that is the case, then why fail to notify the City of its plans? Why hide the seismic test results? Why not apply for an APP? And why does it believe it needs a "base treatable water level"?

DME's "base treatable water" representation implies that DME has no intention of ensuring the safety of municipal water supplies, and instead believes that it is allowed or authorized to contaminate water below this self-imposed standard. The C aquifer is a massive aquifer that underlies most communities in Northern Arizona and serves as a drinking water source for hundreds of thousands of people, including the City. Thus, in addition to the City's concern regarding the integrity of Red Gap Ranch's water supply, the entire region must know:

(1) What does DME mean by the "base treatable water" level?,

(2) How did DME derive the "base treatable water" level?,

(3) Does DME intend to inject constituents beneath the "base treatable water" level,

(4) What drilling additives and/or constituents does DME intend to inject/introduce, and

(5) How does the "base treatable water" level impact its decision with respect to those drilling additives and/or constituents?

These and other serious questions exist regarding the risks and harms resulting from DME's contemplated project in the event relief is not requested.

The harm to the City significantly outweighs any potential harm to DME. DME cannot argue that it will be harmed by being required to adhere to its representations in the press and in its Well Permit Application that it does not intend to engage in operations that threaten the City's water supplies, which includes foregoing the introduction of "fracking" constituents into the Well. Given its public assurances, DME should not object to warranting and representing that it will only use NSF Standard 60 drilling fluids in its operations; nor should it object to securing an APP or enter a monitoring plan in light of its intention to conduct mining operations that may involve discharges into the C aquifer.

The balance of interests favor granting injunctive relief. Groundwater impacted with the additives the City is concerned may be introduced by DME will render the water unsafe or not suitable for human consumption or other municipal purposes. Nicholls Aff. at ¶¶ 21-27. If a financially-motivated mining interest such as DME is allowed, without disclosure,

oversight or regulation, to introduce toxic or otherwise harmful constituents into a Well situated within two miles of the future municipal water supply of the majority of the region's population, uncertainty is created, risk is increased, and the stability of a safe, clean drinking water supply to tens of thousands of people is irreparably jeopardized. DME should not be allowed to proceed without first demonstrating satisfaction with its own voluntary representations regarding protection of municipal water supplies, as well as complying with Arizona law regarding discharges into aquifers.

C. No Bond Required.

Pursuant to Rule 65(c), the City, as an Arizona municipality, is not required to post a bond to secure the relief requested herein. Ariz. R. Civ. P., Rule 65 ("The State of Arizona and its agencies, counties, municipalities, and other governmental entities - and their respective officers - are not required to give security.").

IV. CONCLUSION

For the reasons set forth herein, the City respectfully requests that the Court set a hearing and enter a Temporary Restraining Order as soon as practicable and, after hearing, enter a preliminary and (if necessary) permanent injunction requiring DME to:

a. Halt any construction of the Well until or unless it obtains an aquifer protection permit;

b. Halt any construction of the Well until or unless DME certifies, warrants and represents that it will use only NSF Standard 60 drilling additives in its Well and other mining operations;

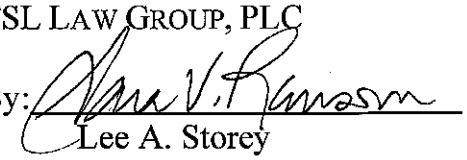
c. Certifies, warrants and represents that it will not use, inject or otherwise introduce any "fracking" or other chemicals, constituents or other materials into the Well that may degrade the existing water quality underlying Red Gap Ranch; and

d. Enters into an oversight and monitoring plan with the City and other necessary parties to ensure the foregoing representations for the life of the DME project.

Proposed forms of Temporary Restraining Order and Preliminary Injunction are submitted herewith.

DATED this 11th day of December 2020.

TSL LAW GROUP, PLC

By: 

Lee A. Storey
Alex M. Arboleda
Ethan B. Minkin
Sara V. Ransom
Attorneys for City of Flagstaff

Exhibit 1

Lee A. Storey (011989)
Alexandra M. Arboleda (016673)
Ethan B. Minkin (019022)
Sara V. Ransom (024099)
TSL LAW GROUP, PLC
8096 N. 85th Way, Suite 105
Scottsdale, Arizona 85258
Telephone: (602) 803-8811
lee@tsllawgroup.com
alex@tsllawgroup.com
ethan@tsllawgroup.com
sara@tsllawgroup.com
Attorneys for the City of Flagstaff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

THE CITY OF FLAGSTAFF, Plaintiff, v. DESERT MOUNTAIN ENERGY CORP., Defendant.	No.: **DECLARATION OF MARK D. NICHOLLS IN SUPPORT OF COMPLAINT FOR INJUNCTIVE RELIEF AND APPLICATION FOR TEMPRORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION WITH NOTICE**

1. I am a Hydrogelogist for Haley & Aldrich, a national engineering and geotechnical firm.

2. I earned by Bachelor of Science in Geology and hold a master's degree in Geology with emphasis on hydrogeology, both from Brigham Young University.

3. The City of Flagstaff ("City") has provided me with the following information related to this litigation, all of which I have reviewed: Well Permits 1250, 1251, and 1255, each issued by the Arizona Oil and Gas Conservation Commission ("AOGCC"), to Desert Mountain Energy Corp. ("DME") and the DME website. I have also reviewed the Arizona Department of Environmental Quality ("ADEQ") website information pertaining to helium gas extraction in Arizona, draft Aquifer Protection Permits ("APP") No. P-512364, and P-513196 pertaining to proposed helium gas extraction operations in Arizona, AOGCC Rules

pertaining to well stimulation, United States Environmental Protection Agency ("USEPA") website pertaining to the Underground Injection Control ("UIC") program, and the Baroid Industrial Drilling Products website.

4. I understand that this proceeding is being filed on an emergency basis, so my analysis is preliminary in nature, dependent upon the information I have been able to access to date and is subject to change.

5. Based upon the information I have seen to date, and as further detailed in this Declaration, the City's concerns that DME's planned drilling poses a current and on-going threat to the quality of its future drinking water supplies underlying the property generally referred to as the Red Gap Ranch are justified.

6. I have 24 years of experience in hydrogeology, including representing clients in the water supply and mining industries. A current copy of my curriculum vitae detailing my representative experience is attached hereto as **Exhibit A**.

7. I have never heard of DME in my years of experience, nor am I familiar with any of the principals identified on the documents provided to me by the City to date.

8. Per documents that I have been able to review to date, DME intends to drill an exploratory well down to, and below, the point they define as the "base treatable water" in the C aquifer.

9. It is unclear how DME derived the depth of "base treatable water" within the C aquifer.

10. The implication of this depth determination seems to be that DME intends to (or at least believes it can) contaminate waters within the C aquifer below that "base treatable water" level it has identified.

11. The C aquifer serves many water users throughout the region and will supply water to the City's intended municipal wells at Red Gap Ranch.

12. Based upon the stated location of the intended DME Well, any pollutants or toxic substances introduced into the well—now or in the future—or released by operation of the well into the C aquifer will be upgradient of Red Gap Ranch.

13. Any constituents, pollutants or toxic chemicals introduced into the well will migrate towards the existing wells located at Red Gap Ranch, which are intended for the City's future municipal use.

14. Per its Well Permit, DME intends to drill the exploratory well to a total depth of approximately 2,000 feet and cement the entire length of the casing.

15. DME would then use a perforating tool to penetrate the well casing and cement seal in the zones that appear most promising for production of helium gas.

16. Although DME represents that the well casing will be sealed through the Kaibab, Coconino, and Supai formations, which are the primary water bearing formations, well construction problems, inadequate maintenance or use of toxic constituents in the production process once perforation is completed can allow a variety of contaminants to be introduced into the C aquifer (and the other aquifers penetrated by DME's well) while the well is under construction or during gas production.

17. Wells of this type, if successful, are frequently in operation for decades.

18. DME plans to drill using the air rotary method, with the addition of drilling fluid additives for "misting" to assist in lifting drill cuttings.

19. Misting agents used for drilling are commonly composed of detergent based foaming compounds.

20. The air rotary method disclosed by DME allows it to commence operations quickly if the well strikes a deposit of the helium it wishes to extract, but the method that DME has selected also creates that risk that if it encounters highly fractured zones or large quantities of water, other drilling fluids or additives may be required to enhance circulation or prevent loss of circulation.

21. Given that the boring will penetrate a drinking water aquifer, the drilling fluids, including the selected misting agent should be a National Sanitation Foundation ("NSF") certified product to ensure it is safe for drinking water use.

22. The same requirement should apply if they have to switch drilling fluids due to formation conditions - all drilling fluids should be certified to NSF Standard 60.

23. Unfortunately, nothing in the information obtained by the City and provided to me to date represents or guarantees that DME will only use NSF Standard 60 drilling fluids.

24. Moreover, DME represents itself to be a concern with experience in drilling oil wells, which operations commonly employ drilling fluid additives that are not suitable for use in drinking water aquifers.

25. Groundwater impacted with such additives may not be safe or suitable for human consumption or other municipal uses.

26. If DME does not use NSF Standard 60 certified drilling fluids and additives, it could contaminate the C Aquifer.

27. As the well is within two miles of the City's Red Gap Ranch wells, and up-gradient of the Red Gap Ranch wells, it is possible that any such contaminants could migrate to the City's wells, which are intended to satisfy its future municipal supply.

28. DME has not provided with their application or accompanying materials, any analysis of potential groundwater quality impacts, chemical characteristics of planned drilling fluids, or information describing how they plan to protect drinking water aquifers.

29. DME has indicated that it does not intend to conduct hydraulic fracturing (commonly referred to as "fracking") requiring the use of fracking solution additives, but it has not pledged that it will ***not*** conduct fracking or use-related solutions. DME's reference in its application to "base treatable water" appears to indicate that DME is making a distinction regarding the lowermost extent of potential drinking water, which implies that DME inaccurately believes it is authorized to pollute water below this depth.

///

///

///

///

///

///

30. Once chemical constituents used to drill, develop, or operate the well enter the C Aquifer, they may be difficult to isolate and extract. Thus, if a harmful or toxic substance is introduced, it will intermingle with the water within the aquifer and, if introduced in sufficient quantities, may impact water quality.

In accordance with Arizona Rules of Civil Procedure, Rule 14, I declare under penalty of perjury that the foregoing is true and correct.

DATED: 12/8/2020

MARK NICHOLLS

Exhibit A

HALEY ALDRICH

MARK D. NICHOLLS, R.G., P.G., C.H.G.

Haley & Aldrich Inc.
400 East Van Buren Street
Suite 545
Phoenix, Arizona 85004

EDUCATION
M.S., Hydrogeology, Brigham Young University, 1998
B.S., Geology, Brigham Young University, 1995

PROFESSIONAL REGISTRATION
2003 / CA: Professional Geologist (Reg. No. 7530)
2005 / CA: Certified Hydrogeologist (Reg. No. 835)
2003 / AZ: Registered Geologist (Reg. No. 39869)
2015 / MO: Registered Geologist (Reg. No. 2015014902)
2015 / KS: Professional Geologist (Reg. No. 881)

Mr. Nicholls has practiced hydrogeology in the southwestern U.S. for more than 20 years. During this time, he has conducted focused water resource studies, assisted with complex policy decisions, provided public testimony, and developed guidance documents to support industry organizations, state agencies, and non-governmental organizations in identifying, developing, and restoring sustainable surface and groundwater supplies in the Southwest. Mr. Nicholls has planned, supervised, conducted, and contributed to groundwater resource studies in support of both private and public sector clients engaged in *Mining, Power Generation, Manufacturing, and Water Supply*. Mr. Nicholls has directed or participated in basin scale groundwater investigations, watershed characterization, recharge site evaluation, well siting, water supply development, groundwater contamination characterization, mine permitting, compliance monitoring, nuclear repository characterization, power plant siting, and power plant discharge compliance in California, Arizona, Nevada, New Mexico, Utah and other states.

Haley & Aldrich, Phoenix, Arizona
Lead Hydrogeologist
2012 – Present

RESPONSIBILITIES (2012-2016):
Mr. Nicholls plans, directs, and supervises groundwater and watershed characterization studies, well siting and well design, water supply development studies, State and Federal mine permitting, implementation of groundwater characterization and monitoring requirements of the newly promulgated Federal Rule regarding the disposition of Coal Combustion Residuals (CCR), study of environmental impacts from industrial activities, groundwater supply evaluation, aquifer testing, spring and stream characterization, geologic mapping in support of well siting, and installation of industrial water supply wells. Responsibilities include team supervision; planning hydrogeologic studies; directing teams engaged in the preparation of project specifications and drilling contractor oversight; assembling and directing teams engaged in geologic mapping, stream, and spring flow monitoring; water source characterization; watershed mapping and other field data collection; evaluation of groundwater conditions in fractured bedrock aquifers; direct agency interaction with the United States Environmental Protection Agency (USEPA), Arizona Department of Environmental Quality (ADEQ), Arizona Department of Water Resources (ADWR), Arizona State Land Department (ASLD), United States Forest Service (USFS), Kansas Department of Health and the Environment (KDHE), California Department of Health Services (CDHS), and California State Water Resource Control Board (SWRCB).

Brown and Caldwell, Phoenix, Arizona
Principal Hydrogeologist
2006 – 2012

RESPONSIBILITIES: (2006-2012)
As Brown and Caldwell Water Resource Lead, Mr. Nicholls supervised, planned, and participated in watershed characterization studies, basin scale groundwater model development, groundwater characterization studies, recharge facility siting studies, evaluation of artificial recharge facility performance, environmental impacts from artificial recharge facilities, municipal and private water supply well siting and installation, aquifer testing, State and Federal mine permitting, spring and stream characterization, geologic mapping, evaluation of environmental impacts to groundwater from industrial facilities, and stable isotope characterization of precipitation and groundwater sources. Responsibilities included team supervision; planning hydrogeologic studies; directing groundwater modeling teams engaged in the development of basin scale groundwater models in support of both State and Federal permitting for water supply development mine operations in California and Arizona; directing teams engaged in the preparation of project specifications and drilling contractor oversight; directing teams engaged in the evaluation of aquifer and vadose conditions at proposed recharge facility locations; assembling and directing teams engaged in geologic mapping, stream and spring flow monitoring, water source characterization, watershed mapping and other field data collection; evaluation of groundwater conditions in fractured bedrock aquifers; direct agency interaction with the USEPA, CDHS, ADEQ, and ADWR.

Malcolm Pirnie, Phoenix, Arizona
Senior Hydrogeologist
2005 – 2006

RESPONSIBILITIES (2005-2006):
Planned, directed, and participated in groundwater characterization studies, watershed characterization, municipal and private water supply well siting and installation, aquifer testing, spring and stream characterization, geologic mapping, and evaluation of historic water supply tunnels. Responsibilities included team supervision; planning hydrogeologic studies; preparing project specifications; drilling and geophysical contractor oversight; assembling and directing teams engaged in stream and spring flow monitoring, water source characterization, geologic mapping, and other field data collection; direct agency interaction with the CDHS and USFS. Projects included installation of municipal and private water supply wells, and evaluation of historic water supply infrastructure in the San Gabriel Mountains.

Woodward Clyde/URS, Las Vegas, Nevada; Rancho Cucamonga, California; Phoenix, Arizona
Staff Hydrogeologist
1998 – 2005

RESPONSIBILITIES (2001-2005):
Planned, oversaw, and participated in groundwater characterization studies, watershed characterization, municipal and private water supply well siting and installation, aquifer testing, recharge facility siting studies, power plant siting and permitting, spring and stream characterization, geologic mapping, and evaluation of environmental impacts to groundwater from industrial facilities. Responsibilities included team supervision; planning hydrogeologic studies; planning geophysical studies for hydrogeologic characterization; preparing project specifications; drilling and geophysical contractor oversight; assembling and directing teams engaged in stream

and spring flow monitoring, water source sampling, geologic mapping, and other field data collection; direct agency interaction with the California Energy Commission (CEC) and the California SWRCB. Projects included groundwater characterization in support of State and Federal permitting of gas fired power plants in southern California and one in southern Nevada; evaluation of the potential for artificial groundwater recharge within the upper Mojave River Basin; watershed characterization in support of private water source development; evaluation of more than 70 railroad water well locations in the California Central Valley and Mojave Desert; installation of deep groundwater monitoring wells in San Bernardino, California; evaluation of existing municipal and private water supply wells; and installation of municipal water supply wells in California and Arizona.

RESPONSIBILITIES (1998-2001):
Directed a team of geologists, engineers, and nuclear scientists in the development of geologic, hydrogeologic, water quality, and material characteristic inputs for computer models and analyses of the planned Yucca Mountain Nuclear Repository in support of Federal Nuclear Regulatory Commission (NRC) permitting of the planned facility. Mr. Nicholls' team was responsible for performing compilation, synthesis, and peer review of regional and site-specific geoscience and engineering data in support of project numerical models, and was directly responsible for identifying and qualifying geoscience and engineering data to be used as model inputs for hydrologic, vapor phase, and thermal models developed for the project. Responsibilities included team supervision, preparation of hydrogeologic reports that were peer reviewed by Sandia National Laboratory, Los Alamos National Laboratory, the U.S. Geological Survey (USGS), and non-governmental project participants; peer review of project geologic and hydrogeologic reports generated by others; direct interface with Department of Energy Office of Civilian Radioactive Waste Management (DOE-OCRWM), and the NRC regarding geoscience interpretations and data quality matters.

Mayo and Associates, Lindon Utah
Staff Hydrogeologist
1996 – 1998

RESPONSIBILITIES (1996-1998):
Planned and participated in hydrographic surveys and groundwater source studies of watersheds overlying underground coal mines and prospective coal leases in support of Federal and State mine permitting. Hydrographic surveys included geologic mapping, stream and spring mapping, stream flow monitoring, spring source characterization and monitoring, isotopic studies, water quality studies, and groundwater flow analyses. Responsibilities included planning and participation in all field survey activities, data reduction, data analysis, and reporting. Field survey activities included field mapping, underground flow sampling, flow measurement, and sampling.

Representative Projects

Mr. Nicholls has planned, directed, and performed a wide range of hydrologic analyses and environmental characterization in support of projects completed on behalf of clients in mining, power generation, manufacturing, and water supply industries. A partial list of projects is provided below:

- In-situ Copper Recovery, Florence Copper Project (FCP), APP, UIC Permitting, Design, Installation, and Testing of Injection and Recovery Wellfield, Curis Resources, Florence, AZ Hydrologic Characterization of In-Situ Copper Project, Confidential Client, Dragoon, AZ
- Freeport McMoRan Inc., Copper Queen Branch Water Quality Study Phases I & II, Bisbee, AZ
- Cucamonga Valley Water District, Thayer Tunnel Hydraulic Plug, San Bernardino County, CA
- Confidential Client, Hydrogeologic Characterization, Operating Aggregate Mine, Levine, AZ
- Proposed Aggregate Mine, Groundwater Availability and Well Siting Study, Pearblossom, CA

- Aggregate Mine Water Well Assessment, and Well Siting Study, Tucson, AZ
- Aggregate Mine Water Well Evaluation, Coolidge, AZ
- Aggregate Mine Water Well Installation, San Emidio, CA
- Heap Leach Optimization Study, Confidential Mining Client, Miami, AZ
- Hydrologic Impact and Mine Pit Dewatering Evaluation, OMYA Limestone, Superior, AZ
- Twin Springs Canyon Tunnel, Hydrologic Characterization, Monrovia, CA
- Hydrologic Characterization, Tunnel A, Deer Canyon, San Bernardino County, CA
- Department of Energy, Yucca Mountain Project, Hydrogeologic Data Evaluation for Underground Nuclear Repository, Las Vegas, NV
- Skyline Mine, West Tract Lease Hydrologic Baseline Characterization, Scofield, UT
- The Pines, Proposed Coal Tract Lease Hydrologic Baseline Characterization, Helper, UT
- Crandall Canyon, Fault Water Mitigation Study, Genwal, Helper, UT
- Artificial Recharge Facility Underground Storage Facility Expansion and APP Amendment Vidler Water, Harquahala Valley, AZ
- Sub-Basin Scale Hydrologic Study, Special Planning Area 3 (SPA 3) Water Reclamation Facility Hydrogeologic Characterization, Surprise, AZ
- Artificial Recharge Facility Design and Permitting, including APP, USF and WS Permits, City of Surprise, AZ
- Special Planning Area 1 Water Reclamation Facility Vadose Zone Recharge Well Installation, Surprise, AZ
- APP Amendment, Rainbow Valley Water Treatment Facility, City of Goodyear, AZ
- APP Amendment, Water Treatment Facility, Arizona City, AZ
- Basin Scale Groundwater Model, Indian Wells Valley Water District, Ridgecrest, CA
- Analysis of Groundwater Sustainability, Proposed San Simon Irrigation Non-Expansion Area (INA), Consortium of Farmers, San Simon, AZ
- Analysis of Groundwater Sustainability, Harquahala INA, Confidential Client, Harquahala, AZ
- Groundwater Characterization and Evaluation of Impacts to Groundwater from Placement of Coal Combustion Residuals, Coronado Generating Station, St. Johns, AZ
- Groundwater Characterization and Evaluation of Impacts to Groundwater from Placement of Coal Combustion Residuals, Navajo Generating Station, Page, AZ
- Groundwater Characterization and Evaluation of Impacts to Groundwater from Placement of Coal Combustion Residuals, Jeffrey Energy Center, St Marys, KS
- Groundwater Characterization and Evaluation of Impacts to Groundwater from Placement of Coal Combustion Residuals, Lawrence Energy Center, Lawrence, KS
- Groundwater Characterization and Evaluation of Impacts to Groundwater from Placement of Coal Combustion Residuals, Tecumseh Energy Center, Tecumseh, KS
- Groundwater Characterization and Evaluation of Impacts to Groundwater from Placement of Coal Combustion Residuals, New Madrid Power Plant, New Madrid, MO
- Groundwater System Characterization and Evaluation of Impacts to Groundwater from Placement of Coal Combustion Residuals, Thomas Hill Energy Center, Thomas Hill, MO
- Evaluation of Coal Combustion Residuals Placement Methods and Potential Impacts to Groundwater Quality, Cholla Generating Station, Joseph City, AZ
- Evaluation of Coal Combustion Residuals Placement Methods and Potential Impacts to Groundwater Quality, Four Corners Generating Station, Farmington, NM
- Supplemental Groundwater Characterization, Evaluation of Regional Ambient Groundwater Quality, Navajo Generating Station, Page, AZ

- Supplemental Groundwater Characterization, Evaluation of Regional Ambient Groundwater Quality, Coronado Generating Station, St Johns, AZ
- Supplemental Groundwater Characterization, Evaluation of Regional Ambient Groundwater Quality, Lawrence Energy Center, Lawrence, KS
- Supplemental Groundwater Characterization, Evaluation of Regional Ambient Groundwater Quality, Thomas Hill Energy Center, Thomas Hill, MO
- Evaluation or Perched Water in the Carmel Formation, Navajo Generating Station, Page, AZ.DEIS Comment Response Support, Navajo Generating Station, Page, AZ
- Hydrologic Analysis completed in support of NEPA analysis of Water Conveyance Pipeline Through the San Bernardino National Forest
- SR-85 Landfill Site, Groundwater Characterization and Monitoring, Buckeye, AZ
- Groundwater Monitoring, BNSF Railyard, Winslow, AZ
- Recharge Area Characterization, Arrowhead Tunnels 2 and 3, San Bernardino County, CA
- Hydrologic Characterization, Tunnel A, Deer Canyon, San Bernardino County, CA
- Twin Springs Canyon Tunnel, Hydrologic Characterization, Monrovia, CA
- San Bernardino Valley Municipal Water District, Deep Monitor Well Installation, San Bernardino, CA
- Confidential Client, Hydrologic Characterization of Spring Water Sources, Arizona, California, Nevada, Oregon, and Utah
- Hydrologic Analysis of Spring Water Flow and Travel Time, Using Dye Tracers, Rimforest, CA
- Basin Scale Recharge Demand Analysis, Transition Zone Study Phase I, Mojave Water Agency, Apple Valley, CA
- Basin Scale Recharge Siting Study, Transition Zone Recharge Study Phase II, Mojave Water Agency, Apple Valley, CA
- Recharge Groundwater Quality Evaluation, Artificial Recharge Facility, Vidler Water, Harquahala Valley, AZ
- Recharge Area Estimation Using Stable Isotopes and Groundwater Age Dating Methods at Spring Sites, San Bernardino and San Gabriel Mountains, CA
- Arizona Department of Transportation, Spring Characterization, Oak Creek Canyon, AZ
- U.S. Army Corps of Engineers, Spring Characterization, Brickwood Canyon, Nogales, AZ
- South Buckeye 555-11 LLC, Analysis of Adequate Water Supply, Buckeye, AZ
- Pueblo del Sol Water Company, Analysis of Adequate Water Supply, Sierra Vista, AZ
- Arrow Canyon Power Project, Garnet Valley Supplementary Water Resource Study, Apex, NV
- Tulare County, Program Environment Impact Report Phase II, Assessment of Groundwater Quality Impacts, Tulare County, CA
- Recovery Well Field Assessment, Artificial Recharge Facility, Harquahala Valley, AZ
- Burlington Northern and Santa Fe Railway Company, Central Valley Well Assessment at Historic Railway Stations and Section Houses, San Joaquin Valley, CA
- Tucson Country Club, Well Field Capacity Assessment and Well Siting Study, Tucson, AZ
- Water Supply Wellfield Siting Study, Proposed Ocotillo Power Plant, InterGen, Desert Hot Springs, CA
- Public Water Supply Well Siting Study, Morongo Band of Mission Indians, Cabazon South Well, Cabazon, CA
- Confidential Water Bottling Client, Well Siting Study, Ontario, CA
- Confidential Client, Well Siting in Support of Analysis of Assured Water Supply, Buckeye, AZ
- Well Siting Study, U.S. Air Force Tonopah Test Range, NV
- Private Industrial Water Supply Well, Confidential Food Processing Client, Riverside County, CA

- Private Water Supply Well, Microsoft Corporation, Quincy, WA
- Public Water Supply Wells, Morongo Band of Mission Indians, Cabazon North Well and Cabazon South Well, Cabazon, CA
- Irrigation Water Supply Well No. 6-13, (Replace and Abandon), Maricopa Water District, Surprise, AZ
- Irrigation Water Supply Well No. 3-36, (Site, Replace, and Abandon), Maricopa Water District, Surprise, AZ
- Irrigation Water Supply Well No. 8-25, (Replace and Abandon), Maricopa Water District, Surprise, AZ
- Public Water Supply Well, Orangewood Well, Southern California Water Company, Tustin, CA
- Water Supply Well Condition Assessment and Replacement, Well No. 23, City of Avondale, AZ
- Water Supply Well, Alamosa No.4 Well, City of Chandler, AZ
- Water Supply Well, Layton Lakes Well, City of Chandler, AZ
- Water Supply Well No. E1-B, Oro Valley Water Utility, Oro Valley, AZ
- Water Supply Well Siting and Installation, Indigo Power Plant, Wildflower Energy, North Palm Springs, CA

Expert Testimony 2014 – 2018

2014

On behalf of Florence Copper before the Arizona Office of Administrative Hearings, Case No. 12-005-WQAB. THE TOWN OF FLORENCE; SWVPGTIS MR, LLC; and PULTE HOME CORPORATION, Appellants, vs. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY, Respondent, FLORENCE COPPER INC., Intervenor.

2018

On behalf of Florence Copper before the Arizona Water Quality Appeals Board, Case No. 12-005-WQAB. THE TOWN OF FLORENCE; SWVPGTIS MR, LLC; and PULTE HOME CORPORATION, Appellants, vs. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY, Respondent, FLORENCE COPPER INC., Intervenor.

Exhibit 2

Lee A. Storey (011989)
Alexandra M. Arboleda (016673)
Ethan B. Minkin (019022)
Sara V. Ransom (024099)
TSL LAW GROUP, PLC
8096 N. 85th Way, Suite 105
Scottsdale, Arizona 85258
Telephone: (602) 803-8811
lee@tsllawgroup.com
alex@tsllawgroup.com
ethan@tsllawgroup.com
sara@tsllawgroup.com
Attorneys for the City of Flagstaff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

THE CITY OF FLAGSTAFF, Plaintiff, v. DESERT MOUNTAIN ENERGY CORP., Defendant.	No.: **DECLARATION OF BRADLEY M. HILL, R.G. IN SUPPORT OF COMPLAINT FOR INJUNCTIVE RELIEF AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION WITH NOTICE**

1. I am the former Water Services Director for the City of Flagstaff ("City"). I retired on December 2, 2019, having worked for the City for over a decade, and having worked in various municipal water management positions for more than twenty-two years.

2. As the City's Water Services Director, I was responsible for the overall management, operation, maintenance and security of the City's water supply and infrastructure. I also ensured the implementation of best management practices with respect to the City's water supplies for its residents, and planning for new or alternative water supplies to account for future anticipated growth.

3. In the course of my employment with the City, I have been involved in the evaluation of and investment in developing alternative or additional water supplies for its current and anticipated population.

4. The City, with more than 75,000 residents, is the largest community in northern Arizona. It also hosts more than 5,000,000 tourists annually.

5. The City has enjoyed economic and population growth for several decades. It anticipates reaching a population of approximately 150,000 full-time residents within the next fifty (50) years or so.

6. To accommodate the municipal needs of its continued and anticipated population growth, including providing safe drinking water for residents and visitors, in 2005 the City purchased 8500 deeded acres of land and several thousand acres of State Lands grazing leases along the I-40 corridor approximately 40 miles east of the City's incorporated limits.

7. The City plans to use the land, which is commonly referred to as "Red Gap Ranch," as a future source of municipal water supply which has been a frequent subject of attention in the press and in the community.

8. The City is recognized as a leader in Arizona with respect to its water conservation and reclaimed water reuse measures. I understand that the City intends to continue to implement and improve upon those measures to decrease its municipal water needs, but projections indicate that its growing population will nonetheless need additional water supplies.

9. That is why the City purchased Red Gap Ranch nearly fifteen (15) years ago and has invested millions in developing Red Gap Ranch for its intended purpose as a municipal water supply. The City's plans for Red Gap Ranch are to drill multiple wells into the Coconino aquifer (the "C aquifer") to withdraw groundwater, which will then be conveyed via pipeline and introduced into the City's existing municipal water infrastructure system.

10. The City has completed certain aspects of its plans for Red Gap Ranch. They completed Phase I of an engineering analysis towards confirming the feasibility of the project in 2009, drilled wells in 2011, secured a Designation of Adequate Water Supply from the Arizona Department of Water Resources in 2013, entered into an agreement in 2016 with the Arizona Department of Transportation to advance the process of approving a water pipeline within the I-40 right of way, and completed multiple water quality analyses

to confirm that the water underlying Red Gap Ranch continues to be suitable as a drinking water source.

11. A Phase II engineering analysis is slated for completion within the next year, as are other on-going measures by the City towards its continued planning to use Red Gap Ranch as a municipal water supply in the future.

12. Hydrogeologic analysis and other regional land ownership restrictions confirm that the area in and around Red Gap Ranch is the only feasible source of groundwater suitable for municipal use in the region that is available to the City in the future.

13. Maintenance of Red Gap Ranch's water quality, including ensuring it remains free from harmful or toxic substances that will render it inadequate for human consumption or cause the City to incur potentially exorbitant treatment costs is crucial to the City's future water security.

14. In early 2019, after representatives of Desert Mountain Energy Corp. (DME) approached the City for permission to cross Red Gap Ranch for the purpose of exploring whether it could mine for helium on nearby lands owned by the Arizona State Lands Department ("ASLD"), the City entered a License for Access and Seismic Testing on Red Gap Ranch (the "DME License Agreement") and a Memorandum of Understanding with DME (the "DME MOU"). A true and correct copy of the DME MOU is attached hereto as **Exhibit A**. A true and correct copy of the DME License Agreement is attached hereto as **Exhibit B**.

15. By the DME License Agreement, the parties acknowledged that the lands comprising "Red Gap Ranch" were acquired by the City "for their water rights." By the DME License Agreement, the City authorized DME to cross Red Gap Ranch via designated existing roads and new paths to complete its due diligence on neighboring ASLD lands and authorized DME to conduct limited seismic testing on City lands and provide the City with the results of that testing in exchange for a waiver of the license fee.

16. The DME MOU required DME to consult with and work cooperatively with

the City regarding its activities with respect to helium or hydrocarbon mining and to share all available technical and geological data. The parties also noted that the City encouraged access to areas in the region that may have helium resources ***except*** in the vicinity of federal or state parks or other highly sensitive areas, including areas with water resources.

17. From my point of view as the Water Services Director at the time, the two agreements allowed the City to ensure that it was notified of DME's activities and could verify that those activities would not threaten the quality of or accessibility to groundwater underlying Red Gap Ranch.

18. During my interactions with DME representatives in 2019, City representatives repeatedly expressed the City's interest in protecting Red Gap Ranch from water quality or water accessibility issues resulting from DME's proposed operations.

19. In March 2019, then-Chief Executive Officer of DME, Mr. Olian Irwin, is quoted by Scott Buffon of the Arizona Daily Sun stating that DME "won't do a well for helium if there's any danger of contaminating the water supply at all," further remarking "It's just not going to happen." A true and correct copy of the article containing Mr. Irwin's statement is attached hereto as **Exhibit C**.

20. By the time of my retirement in December 2019, to my knowledge the City had never received any seismic testing results or the results of any geological testing or analysis from DME.

21. Via publicly available documents, in late November 2020, the City discovered that DME had secured rights to drill an exploratory well within two miles of Red Gap Ranch (the "Well"). The Well is for the purpose of exploring the mining of helium, and may be drilled to a proposed depth of 2,000 feet, which is within and may be below the C aquifer. A true and correct copy of the Well Permit No. 1255, which authorizes the Well, is attached hereto as **Exhibit D**.

22. The C aquifer is the location of the City's municipal wells at Red Gap Ranch.

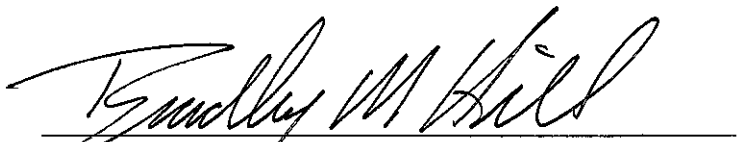
23. Based upon the stated location of the Well, any harmful constituents, pollutants or toxic substances introduced into the Well or released by the operation of the

Well will be upgradient of Red Gap Ranch.

24. Any harmful constituents, pollutants or toxic chemicals introduced into the Well will migrate towards the City's wells located at Red Gap Ranch.

In accordance with Arizona Rules of Civil Procedure, Rule 14, I declare under penalty of perjury that the foregoing is true and correct.

DATED:



BRADLEY M. HILL, R.G.

Exhibit A

MOU-2019-146-AG2

DESERT MOUNTAIN ENERGY

January 22, 2019

MEMORANDUM OF UNDERSTANDING

MUTUAL COOPERATION AND STRATEGIC DEVELOPMENT OF HELIUM AND HYDROCARBON RESOURCES IN THE GREATER FLAGSTAFF REGION AND IN COCONINO COUNTY, ARIZONA

WHEREAS, the CITY OF FLAGSTAFF ("Flagstaff") is the largest city in Northern Arizona and serves as the regional, cultural and county seat for Coconino County, and comprises over 64 square miles at the base of the San Francisco Peaks;

WHEREAS, Flagstaff is a governmental, educational, economic, cultural and Community center for Northern Arizona and Coconino County;

WHEREAS, Flagstaff desires to encourage appropriate economic development in order to create cash flow for Flagstaff and local communities, with a view toward furthering local education, job creation, increasing local and regional infrastructure and generally increasing the well-being of the people;

WHEREAS, Flagstaff desires to maintain and preserve the beautiful Northern Arizona landscape and environment as a long-term legacy, whilst at the same time encouraging reasonable, appropriate economic development that is mindful of preserving the environment and not impinging significantly on the rights and customs of local indigenous communities; and

WHEREAS, DESERT MOUNTAIN ENERGY CORP. ("DME"), a public energy company with offices in Phoenix, AZ that is focused on development of helium and hydrocarbon resources in Arizona, via an outlook using renewable resources where economically feasible, has an experienced and highly qualified technical team of professionals and senior management who are familiar with exploration, drilling, production and distribution of helium, oil & gas resources; and

WHEREAS, DME has identified potential targets for exploration and development of helium and hydrocarbon resources in the greater Flagstaff region and Coconino County, and is requesting the support of Flagstaff in carrying out reasonable exploration and development activities which do not significantly compromise the environment or impinge the material rights of the indigenous communities;

NOW THEREFORE, THE PARTIES DO HEREBY AGREE:

That Flagstaff and DME shall work together on a cooperative basis to evaluate potential resources and if mutually beneficial, to develop reasonable plans for the strategic development of helium and hydrocarbon resources in the greater Flagstaff region and in Coconino County generally;

That the parties shall share all available technical and geological data related to helium and hydrocarbon resources in the Flagstaff region and in Coconino County generally;

That DME will fully consult with Flagstaff concerning each major exploration, drilling, development and or production program in the area with a view toward limiting environmental impact whilst allowing for successful extraction of valuable resources in order to generate cash flow for Flagstaff and the local communities, to encourage job creation and enhancement of local infrastructure; and to generally improve the well-being of the people;

That the parties will work together on a cooperative basis to encourage access to areas identified as highly prospective for helium and hydrocarbon resources in Coconino County which are not in designated national or state parks or are otherwise recognized as highly sensitive from the standpoint of environmental, water resources, cultural, or existing grazing or livestock considerations.

The Term of this Memorandum of Understanding shall be One year from the date hereof to and including January 10, 2020, unless terminated by either party on ten days' prior written notice and without further liability or obligation to the other party. It is contemplated that the parties may enter into one or more written agreements from time to time to further the objectives of this Memorandum of Understanding.

IN WITNESS WEREOF, the parties do set their hand to this Memorandum of Understanding as of the date above written:

DESERT MOUNTAIN ENERGY CORP.

By_____
Irwin A. Olian, CEO & Director

THE CITY OF FLAGSTAFF

By_____
BARBARA GOODRICH
CITY MANAGER

City of Flagstaff
Memorandum of Understanding
Desert Mountain Energy Corp.

ATTEST:

Stacy Saltzburg
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibit B

LIC-2019-146-AG1

CITY OF FLAGSTAFF
LICENSE FOR ACCESS AND SEISMIC TESTING
ON RED GAP RANCH

This License Agreement ("License") is entered into this 23 day of January, 2019 by and between the City of Flagstaff, a municipal property corporation ("City") and Desert Energy Corp., a Nevada for-profit corporation doing business as Desert Mountain Energy Corp. ("Licensee").

RECITALS

A. City owns tracts of vacant land located east of the City of Flagstaff, and known as Red Gap Ranch. The lands were acquired for their water rights and are subject to grazing leases. The City lands are interspersed with State Land Department parcels ("state lands") in a checkerboard pattern.

B. Desert Mountain Energy Corp. has obtained approximately 19 non-competitive oil and gas leases of state lands from the State Land Department to conduct seismic testing, drilling, and production of helium gas on state lands.

C. City desires to grant Desert Mountain Energy Corp. a license across City lands so that Desert Mountain Energy Corp. is able to access State lands and conduct seismic testing.

NOW, THEREFORE, in consideration for the conditions of this License, the parties agree as follows:

1. Term. The License will commence on January 23, 2019and continue for a period of one (1) year, unless sooner revoked or terminated pursuant to this License. The License may be renewed upon written approval of the City Manager and Licensee.

2. License for Ingress and Egress, and Seismic Testing. City hereby grants Licensee a non-exclusive license for ingress and egress, including the right to drive small equipment, four-wheelers, vibroseis rubber track vehicle and small trucks (collectively "Equipment"), across City lands identified as:

> Township and Range section numbers: T20N R12E Sections 3, 11, 13; and T20N R13E Sections 18, 19, 21, 22, 27, 29, and 33 also identified respectively as Coconino County Assessor Parcel Nos. 40607002C (690.24 acres), 40607002B (754.24 acres), 40608001K (2,479.74 acres), collectively ("City Lands")

but only within the existing roads ("Existing Roads") and within the transect lines ("New Paths") identified in the documents attached hereto as Exhibit A. The New Paths and the crossings at state/city owned corners are fifteen feet (15') wide. The crossings at the corners run at 45' degree angle and are often referred to as butterfly easements. Licensee shall use the same access routes in and out of City Lands where possible, so as to minimize disturbance to the land.

City hereby further grants License a non-exclusive license to conduct seismic testing on City Lands using Equipment operated on the Existing Roads and New Paths. The seismic testing

activities involve operating the Equipment and identifying the geologic structures at a depth of approximately 3,850 to 1,400 feet below surface by means of vibration. No explosives will be used.

3. Fees. In consideration of the grant, Licensee shall pay City:

   a. A one-time administration fee of $1,500.00;

   b. A License fee for the initial term (one year) is waived in exchange for a copy of the report compiling seismic testing information on City Lands. Licensee will provide City with an electronic copy of both the underlying data and the report at no expense.

   c. A Security Deposit of $6,000 which may be drawn upon by City in the event Licensee does not promptly complete restoration work under this License, to pay for City costs in doing such restoration work. This deposit will not accrue interest to Licensee but will be refunded to Licensee upon conclusion of the License if not otherwise applied to restoration work. If the Security Deposit is drawn down, Licensee shall restore it to the original amount.

4. Adjustments to License Fee. Fees and deposits may be adjusted upon renewal of the License.

5. Reserved.

6. City Representative. The City of Flagstaff Water Services Director will serve as the City's representative and will have authority to approve Licensee's activities on City Lands. Any City approval shall not have the effect of waiving Licensee's obligation to comply with this License and other applicable laws and regulations. Contact information: Brad Hill, (928) 213-2400.

7. Request to Use Other Areas. Licensee shall submit a request to the City Representative at least 10 days prior to commencing any proposed activities on City Lands other than in the Access Ways and Butterfly Easements, except in case of an emergency and in such event, notice will be provided to City as soon as practicable (within 48 hours).

8. Responsibility for Employees, Contractors, and Subcontractors. Licensee shall ensure that all its employees, contractors and subcontractors ("Agents") comply with the terms and conditions of this License, and Licensee will be responsible for any violation of the License by an Agent. Prior to commencing any activities on City Lands, Licensee shall:

   a. Provide a copy of this License to each of its Agents who will be engaged in the maintenance; and

   b. Require compliance with this License as a condition of Licensee's contract with any contractor who will be engaged in the maintenance, and require each such contractor to include compliance with this License as a condition of its subcontracts.

9. Access Across Adjacent Properties. Licensee must obtain separate approval from adjacent property owners as necessary to access City Lands.

10. Approvals. Licensee shall acquire any necessary permits or approvals from the federal government, City of Flagstaff, Coconino County, Arizona Parks Department, Arizona Department of Transportation, Arizona State Museum and State Historic Preservation Office and/or the County Highway Department prior to grading or disturbing any City Lands.

11. Archaeological and Historic Preservation. City is not aware of any archaeological resources along Existing Roads, and has not conducted an assessment of all City Lands. If Licensee detects or finds any archaeological resources or historical artifacts on City Lands, all work shall cease, and Licensee shall notify the City Representative with the location, observations, and photographs. City Representative shall notify the Arizona State Museum and all work must comply with the Arizona Antiquities Act.

12. Flora and Native Plants. Prior to driving on New Paths, Licensee shall submit a request to the City of the amount of flora, if any, proposed to be cut, removed, or destroyed by use of the Equipment and shall pay the City such sum of money as the City may determine to be the full value of the flora to be so cut, removed or destroyed.

If the removal of plants protected under the Arizona Native Plant Law is necessary to enjoy the privilege of this License, the Licensee hereunder must previously acquire the written permission of the Arizona State Land Department and the Arizona Department of Agriculture to remove those plants.

13. Grazing. City has grazing leases across City Lands: Lease Agreement dated February 20, 2007 with Manterola Sheep Company, Inc., an Arizona corporation ("Grazing Lease"), a copy of which has been provided to Licensee.

a. Licensee or its Agents shall notify the grazing lessee(s) at least 10 days prior to entering City Lands.

b. If Licensee activities on City Lands occur during periods of livestock grazing, Licensee will take the necessary measures to insure livestock protection and containment. This may require temporary fencing.

c. Any damage to rangeland improvements by the Licensee or its Agents (i.e., fencing, gates, pipelines, earthen structures, etc.) will be replaced and/or reconstructed with new material to grazing lessee's satisfaction and at Licensee's expense.

d. Licensee shall provide City with documentation of the grazing lessee's consent prior to making any alterations to existing improvements.

e. Licensee shall not engage in any activity that will substantially interfere with or otherwise cause a breach of the Grazing Lease.

14. Materials. Licensee shall not remove or allow removal of any materials (including but not limited to dirt and rocks) from City lands without the prior written consent of the City.

15. Public Use. Licensee shall not exclude from use of U.S. Forest Service, State of Arizona, City of Flagstaff its lessees or licensees, or the general public the right of ingress and egress over

City lands. City may approve temporary fencing to protect work areas.

16. Soil. Licensee shall conduct all maintenance activities in a manner that will minimize disturbance to all land values including, but not limited to, vegetation, drainage channels, and streambanks. Work methods shall be designed to prevent degradation of soil conditions in areas where such degradation would result in detrimental erosion or subsidence. Licensee shall take such other soil and resource conservation and protection measures on the land under grant or permit as determined necessary by the City.

17. Trees. Licensee shall not cut nor allow to be cut or removed any timber or standing trees on City lands, without the prior written consent of the City.

18. Restoration following Activities. Within thirty (30) days of completion of any activities on City Lands, Licensee shall submit to City a statement of work completed and thereafter shall restore any land or improvements it has disturbed including, but not limited to, restoration of the surface, revegetation, and fencing as determined necessary by the City. Licensee shall reseed any disturbed surface area with native seed sourced from the Colorado Plateau. In the event Licensee does not promptly complete restoration work, City reserves the right to do such restoration work and Licensee shall pay for the City's costs. City will apply the Security Deposit towards City's costs and invoice Licensee for any remaining balance.

19. Compliance with Laws. Licensee shall adhere to all applicable laws, rules, regulations, ordinances and building codes related to use of the City Lands.

20. Indemnification. Licensee shall indemnify, defend and hold harmless the City, its council, boards and commissions, officers, employees from all losses, claims, suits, payments and judgments, demands, expenses, attorney's fees or actions of any kind resulting from personal injury to any person, including employees, subcontractors or agents, guests or invitees of Licensee or damages to any property arising or alleged to have arisen out of the negligent performance of the License, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. This indemnification provision shall survive termination or expiration of the License.

21. Environmental Indemnification. Licensee shall protect, defend, indemnify and hold harmless the City from and against all liabilities, costs, charges and expenses, including attorneys' fees and court costs arising out of or related to the presence of or existence of any substance regulated under any applicable federal, state or local environmental laws, regulations, ordinances or amendments thereto because of: (a) any substance that came to be located on the City Lands due to Licensee's use or occupancy of the lands by the Licensee before or after the issuance of the License; or (b) any release, threatened release or escape of any substance in, on, under or from said City Lands that is caused, in whole or in part, by any conduct, actions or negligence of the Licensee, regardless of when such substance came to be located on the City Lands.

For the purposes of this License, the term "regulated substances" shall include substances defined as "regulated substances", "hazardous waste", hazardous substances", "hazardous materials", "toxic substances" or "pesticides" in the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the relevant local and state environmental laws, and the regulations, rules and

ordinances adopted and publications promulgated pursuant to the local, state and federal laws. This indemnification shall include, without limitation, claims or damages arising out of any violations of applicable environmental laws, regulations, ordinances or subdivisions thereof, regardless of any real or alleged strict liability on the part of City. This environmental indemnity shall survive the expiration or termination of this License and/or any transfer of all or any portion of the City Lands and shall be governed by the laws of the State of Arizona.

In the event any such action or claim is brought or asserted against the City, the Licensee shall have the right, subject to the right of the City to make all final decisions with respect to City's liability for claims or damages, (i) to participate with City in the conduct of any further required cleanup, removal or remedial actions and/or negotiation and defense of any claim indemnifiable under this environmental indemnity provision, having reasonable regard to the continuing conduct of the operation/business located on the City Lands and (ii) to participate with the City in negotiating and finalizing any agreement or settlement with respect to any such claim or cleanup.

22. Termination by Licensee. Licensee may terminate this License upon at least thirty (30) days written notice to City for convenience. In such event Licensee shall provide City with a copy of any seismic testing on City Lands completed as of the termination date.

23. Revocation by City. City may revoke this License in the event of any of the following:

a. Licensee has violated a term or condition of this License, City has provided written notice and reasonable opportunity to cure, and Licensee has failed to cure the same; or

b. Licensee has engaged in activities that will have the effect of causing City to violate its Grazing Leases as determined in the discretion of City after consultation with the Lessee; or

c. The City Manager shall have the right to revoke this License upon at least six (6) months' advance written notice to Licensee for convenience.

The City of Flagstaff shall be forever wholly absolved from any liability for damages which might result to the Licensee upon cancellation or revocation.

24. Restoration upon Conclusion of License. Within thirty (30) days after cancellation, revocation, expiration or termination of the License, Licensee shall, as far as is reasonably possible, restore and/or rehabilitate the land to its natural condition to the satisfaction of the City. Licensee shall reseed any disturbed surface area with native seed sourced from the Colorado Plateau. Licensee may, with written permission of City, allow abandonment of improvements in place. If improvements are not removed and/or restoration is not completed within thirty (30) days or other reasonable time allowed by City, City shall do such work and charge the actual costs of such work against the Security Deposit and invoice Licensee for any balance of the costs incurred.

25. Reserved.

26. Fire Treatment Use. City reserves the right to engage in or allow fire treatment (including but not limited to, cutting of timber, clearing, prescribed burns, and fire-fighting) in the City Lands and such Fire Treatment Use shall have priority rights over any use permitted pursuant to this License.

27. Other Non-Fire Treatment Uses. City reserves the right to execute licenses or grants within the City Lands for other non-fire treatment uses, so long as the same do not interfere with Licensee's proper use of the Access Ways and Butterfly Easements.

28. Laws. City reserves the right to amend this License to conform with current law, including any amendments or repeals of existing laws as may hereafter be made, and no provisions of this License shall create any vested right in conflict with the same.

29. Governing Law. This License shall be construed in accordance with laws of Arizona. The courts of Arizona shall have exclusive jurisdiction and Coconino County shall be the venue.

30. Nondiscrimination. The parties agree to be bound by applicable State and Federal rules governing Equal Employment Opportunity, Non-discrimination and Disabilities, including Executive Order No. 99-4.

31. Conflict of Interest. This contract is subject to cancellation pursuant to A.R.S. § 38-511.

32. Assignment. Licensee may assign this License with prior written consent of City, and upon assignee's assumption of all rights and obligations of the License.

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

If to Licensee: Robert W. Rohlfing, Director Desert Mountain Energy Corp. 1153 56th Street Delta, B.C. V4L 2P8 Canada	With a copy to: Arizona Statutory Agent per Arizona Corporation Commission records
If to City: City Flagstaff Water Services Director City of Flagstaff 211 W. Aspen Avenue Flagstaff, AZ 86001	With a copy to: City Real Estate Manager City of Flagstaff 211 W. Aspen Avenue Flagstaff, Arizona 86001

Or such other person designated by the party in writing.

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

CITY OF FLAGSTAFF

City Manager

LICENSEE

Title:

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Attachments:

Exhibit A – Documents showing Access Ways and New Paths

Exhibit C

Council meeting to shed light on Red Gap Ranch helium mining

- Scott Buffon

- Feb 12, 2019 Updated Mar 19, 2019

- 0

SALE! Subscribe for $1/mo.

Red Gap Ranch with the San Francisco Peaks in the distance.
Emery Cowan

- Facebook
- Twitter
- Email
- Print
- Save

Scott Buffon

The Flagstaff City Council hopes to clarify the city's stance on an agreement they entered into allowing Desert Mountain Energy to access city property for helium and hydrocarbon that could be present beneath the surface.

The land in question, Red Gap Ranch, was purchased by the city with taxpayer money for a different resource also found beneath the surface — potential drinking water. City voters **approved** a $15 million bond for the purchase to extend the city's water resources, with city officials only spending $6.9 million for the land and water access in 2005.

The city is holding a council meeting on Tuesday about a Desert Mountain Energy press release that city officials say "overstates" the city's commitment to their agreement that included exploration and production, according to the **online council agenda**.

Alicyn Gitlin, conservation coordinator at the Sierra Club, is concerned about the city's lack of transparency and communication on the mining and exploration prospect, which she believes could risk damaging the city's water.

"It's a very big violation of the public trust by not including public input and notification prior to making a decision like this that could affect our future water supply," Gitlin said.

Red Gap Ranch is located east of Flagstaff, south of the Navajo Nation and adjacent to the I-40 highway and has not yet been developed for city use.

Jessica Drum, spokesperson for the City of Flagstaff, encouraged people to attend the council meeting for further information.

The Desert Mountain Energy **press release** and focus for the concern states: "The parties agree to work together to limit the environmental impact of the work and production programs whilst allowing for the successful extraction of valuable resources."

Olian Irwin, CEO for Desert Mountain Energy, said he stands by the information in the press release as accurate, but said there is always a possibility of misinterpretation.

Irwin also alleged that the company had no intention to build a well on the city's land or damage the city's water supply, despite the press release stating it could allow for hydrocarbon resource development. Hydrocarbons can include multiple different compounds but often occur in petroleum and natural gas.

"We won't do a well for helium if there's any danger of contaminating the water supply at all," Irwin said. "It's just not going to happen."

A city council **report** from mid-January explains that the city will only allow seismic testing and mining if both Desert Mountain Energy and the city agreed to pursue the project.

"The memorandum of understanding: expresses the parties' desire to explore possibilities for helium exploration and mining if mutually beneficial and to cooperatively work together," the memo to the city council explained.

The agreement details the use of seismic testing to explore the presence for helium. Taylor McKinnon, public lands campaigner with the Center for Biological Diversity, said he is also concerned with how little public input has been allowed on the project, which he feels might endanger the Red Gap Ranch property.

"It's bad public policy," McKinnon said. "Secondly, a question arises, how does facilitating hydrocarbon exploration and development fit with the city's new **climate action plan**?"

Desert Mountain Energy describes itself as a producer of helium, oil and gas on their website. Irwin alleges they included hydrocarbon in the agreement, because other gases and minerals can be found while exploring for helium.

"There's no intent, this is not about looking for oil wells," Irwin said. "Maybe that will be clarified with an amendment to the agreement."

City officials also recommend revising the agreement to clarify their perspective, according to the council agenda item.

"Any decisions or forward path by the city would be fully vetted with the council and public to achieve a complete understanding of the process to do any extraction, the environmental impacts, water quality impacts, and other factors that would be related to any decision in moving forward should any helium resource be discovered," the city agenda said.

Helium is a nonrenewable resource and is used in items like computer hard drives and MRI machines as coolant.

Scott Buffon can be reached at **sbuffon@azdailysun.com**, on Twitter @scottbuffon or by phone at (928) 556-2250.

0 comments

Exhibit D

APPLICATION FOR PERMIT TO DRILL OR RE-ENTER

APPLICATION TO DRILL ✓ RE-ENTER OLD WELL INJECTION WELL

OIL X GAS X CO2 HELIUM WELL OTHER Helium

AIR QUALITY DIVISION

2020 NOV -3 PM 12:45

NAME OF COMPANY OR OPERATOR

Desert Mountain Energy Corp

Address	City	State	Phone Number
6300 W. 23 St. N.	Muskogee	OK74401	918-752-7020

Drilling Contractor

To be Determined

Address

DESCRIPTION OF WELL AND LEASE

Federal, State or Indian Lease Number, or if fee lease, name of lessor	Well number	Elevation (ground)
13-120004	26-1	5451.8

Nearest distance from proposed location to property or lease line:	Distance from proposed location to nearset drilling, completed or applied-for well on the same lease:
1,660' feet	Not Applicable feet

Number of acres in lease	Number of wells on lease, including this well, completed in or drilling to this reservoir:
640	1

If lease purchased with one or more wells drilled, from whom purchased. Name: NA Address:

Well location (give footage from section lines)	Section - Township - Range or Block and Survey	Dedication per A.A.C. R12-7-104(A)(3)
1660 ft FEL 2,335' FNL	S26 T20N R12.5E G&SRB&M	All of Sec

Field and reservoir (if wildcat, so state)	County
Wildcat	Coconino County, AZ

Distance in miles and direction from nearest town or post office

18 Miles East to Winslow, AZ 1.2 Miles North to Meteor Crater Interchange on I40

Proposed depth:	Rotary or cable tools	Approximate date work will start
2,000'	Air/Mist	11/12/20

Bond status Amount $25,000	Organization Report On file / Or attached X	Filing Fee of $25.00 Attached Yes

Remarks

RECEIVED NOV 09 2020 ADEQ

CERTIFICATE: I, the undersigned, under the penalty of perjury, state that I am the: CEO of the Desert Mountain Energy Corp (company), and that I am authorized by said company to make this report; and that this report was prepared under my supervision and direction and that the facts stated therein are true, correct and complete to the best of my knowledge.

Mail completed form to:
Oil and Gas Program Administrator
Arizona Oil & Gas Conservation Commission
c/o Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

e-mail completed form to: azogcc@azdeq.gov

Signature

11-2-20
Date

Permit / LTF No.: 1255/ LTF#86784

Approval Date: November 18th, 2020

Approved By:

NOTICE: Before sending in this form be sure that you have given all information requested. Much unnecessary correspondence will thus be avoided.

STATE OF ARIZONA
OIL & GAS CONSERVATION COMMISSION
Application to Drill or Re-enter

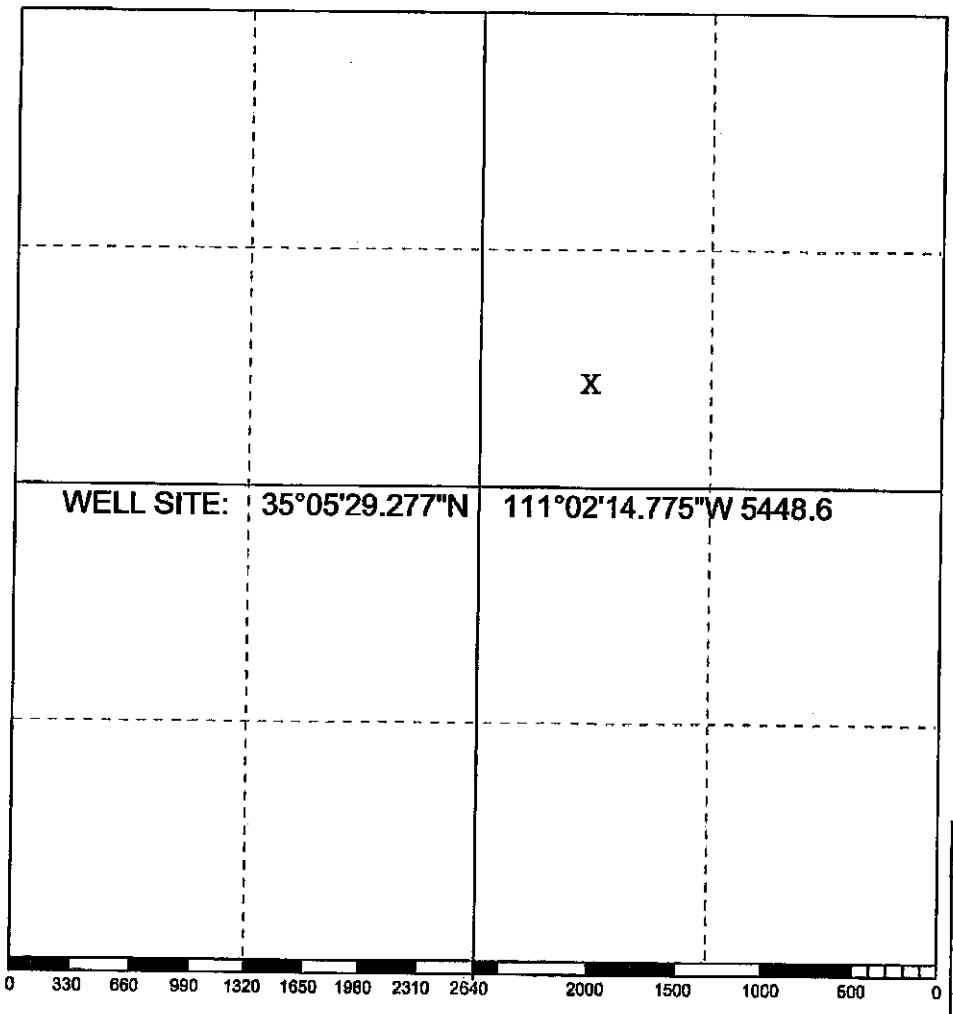
File two copies: one by mail, one electronically

Form No. 3

(Complete Reverse Side) 03/2018

1. Operator shall outline on the plat the acreage dedicated to the well in compliance with A.A.C. R12-7-107.
2. A registered surveyor shall show on the plat the location of the well and certify this information in the space provided.
3. ALL DISTANCES SHOWN ON THE PLAT MUST BE FROM THE OUTER BOUNDARIES OF THE SECTION.
4. Is the operator the only owner in the dedicated acreage outlined on the plat below ? YES X NO ____
5. If the answer to question four is no, have the interests of all owners been consolidated by communitization agreement or otherwise? YES ____ NO ____ If answer is yes, give type of consolidation ____
6. If the answer to question four is no, list all the owners and their respective interests below:

Owner	Land Description
Desert Mountain Energy Corp	In the SW1/4 NE1/4 S26 T20N R12.5E
State 26-1	



CERTIFICATION

I hereby certify that the information above is true and complete to the best of my knowledge and belief.

Name: R W Rohlfing CEO

Position: CEO , President

Company: Desert MountainEnergy

Date: 11-2-20

I hereby certify that the well location shown on the plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my knowledge and belief.

Date Surveyed: 8/21/2020

Registered Land Surveyor: Alisa J. Templeton

Certificate No.: AZ RLS 26406

PROPOSED CASING PROGRAM

Size of Casing	Weight	Grade & Type	Top	Bottom	Cementing Depths	Sacks Cement	Type
7"	23#	J-55	Sur	500'	500'-Surface	150	reg
4.5"	11.6#		Sur	1,990'	1,900'-Surf	180	Prem

ARIZONA OIL and GAS CONSERVATION COMMISSION

State of Arizona
Oil and Gas Conservation Commission
1110 W. Washington Street, Phoenix, AZ 85007
602-771-4501
www.azogcc.az.gov
Marta Hodan, Oil and Gas Administrator

Commissioners:
Frank Thorwald, Chair
J. Dale Nations, Ph.D., Vice Chair
Stephen R. Cooper
William C. Feyerabend

CERTIFICATE for PERMIT to DRILL an OIL, GAS, INJECTION or GEOTHERMAL WELL

PERMIT / LTF NUMBER 1255 / LTF #86784

Has been issued to **Desert Mountain Energy Corp.**

to drill a well known as **Desert Mountain 26-1 State**

located **1660 FEL 2335 FNL**

in Section 26 Township 20N Range 12.5E , Coconino County, Arizona

The entirety of Sec 26, T20N, R12.5E (640 acres) of said Section, Township and Range is dedicated to this well.

Said well shall be drilled substantially as described in the Application and as approved by the OGCC's letter dated November 19, 2020. Desert Mountain Energy Corp. is subject to terms and conditions of the permit to drill and all applicable Arizona Revised Statutes (A.R.S.) Title 27, Chap. 4, Art. 1 and 4, and the Arizona Administrative Code (A.A.C.) R12-7-104, R12-7-106 to 107 and R12-7-175 to 176.

Total Depth: **2,000 feet**

Issued: **November 18, 2020**

API No.: **02-005-20036**

Expires*: **May 17, 2021**

*The permit to drill expires if operations are not commenced within 180 days from date of this certificate (*see* A.A.C R12-7-104(D))

Marta Hodan, Oil & Gas Program Administrator
ogcc@azdeq.gov

OPERATOR SHALL DISPLAY THIS CERTIFICATE IN A CONSPICUOUS PLACE ON-SITE

Exhibit 3

APPLICATION FOR PERMIT TO DRILL OR RE-ENTER

APPLICATION TO DRILL ✓ RE-ENTER OLD WELL INJECTION WELL

OIL X GAS X CO2 HELIUM WELL OTHER Helium

AIR QUALITY DIVISION
2020 NOV -2 PM 12:15

NAME OF COMPANY OR OPERATOR

Desert Mountain Energy Corp

Address	City	State	Phone Number
6300 W. 23 St. N.	Muskogee	OK74401	918-752-7020

Drilling Contractor

To be Determined

Address

DESCRIPTION OF WELL AND LEASE

Federal, State or Indian Lease Number, or if fee lease, name of lessor	Well number	Elevation (ground)
13-120004	26-1	5451.8

Nearest distance from proposed location to property or lease line:	Distance from proposed location to nearest drilling, completed or applied-for well on the same lease:
1,660' feet	Not Applicable feet

Number of acres in lease	Number of wells on lease, including this well, completed in or drilling to this reservoir:
640	1

If lease purchased with one or more wells drilled, from whom purchased. Name: NA Address:

Well location (give footage from section lines)	Section - Township - Range or Block and Survey	Dedication per A.A.C. R12-7-104(A)(3)
1660 ft FEL 2,335' FNL	S26 T20N R12.5E G&SRB&M	All of Sec

Field and reservoir (if wildcat, so state)	County
Wildcat	Coconino County, AZ

Distance in miles and direction from nearest town or post office

18 Miles East to Winslow, AZ 1.2 Miles North to Meteor Crater Interchange on I40

Proposed depth:	Rotary or cable tools	Approximate date work will start
2,000'	Air/Mist	11/12/20

Bond status Amount $25,000	Organization Report On file / Or attached X	Filing Fee of $25.00 Attached Yes

Remarks

RECEIVED NOV 09 2020 ADEQ

CERTIFICATE: I, the undersigned, under the penalty of perjury, state that I am the: CEO of the Desert Mountain Energy Corp (company), and that I am authorized by said company to make this report; and that this report was prepared under my supervision and direction and that the facts stated therein are true, correct and complete to the best of my knowledge.

Mail completed form to:
Oil and Gas Program Administrator
Arizona Oil & Gas Conservation Commission
c/o Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

e-mail completed form to: azogcc@azdeq.gov

Signature

11-2-20
Date

Permit / LTF No.: 1255/ LTF #86784

Approval Date: November 18th, 2020

Approved By:

NOTICE: Before sending in this form be sure that you have given all information requested. Much unnecessary correspondence will thus be avoided.

STATE OF ARIZONA
OIL & GAS CONSERVATION COMMISSION
Application to Drill or Re-enter

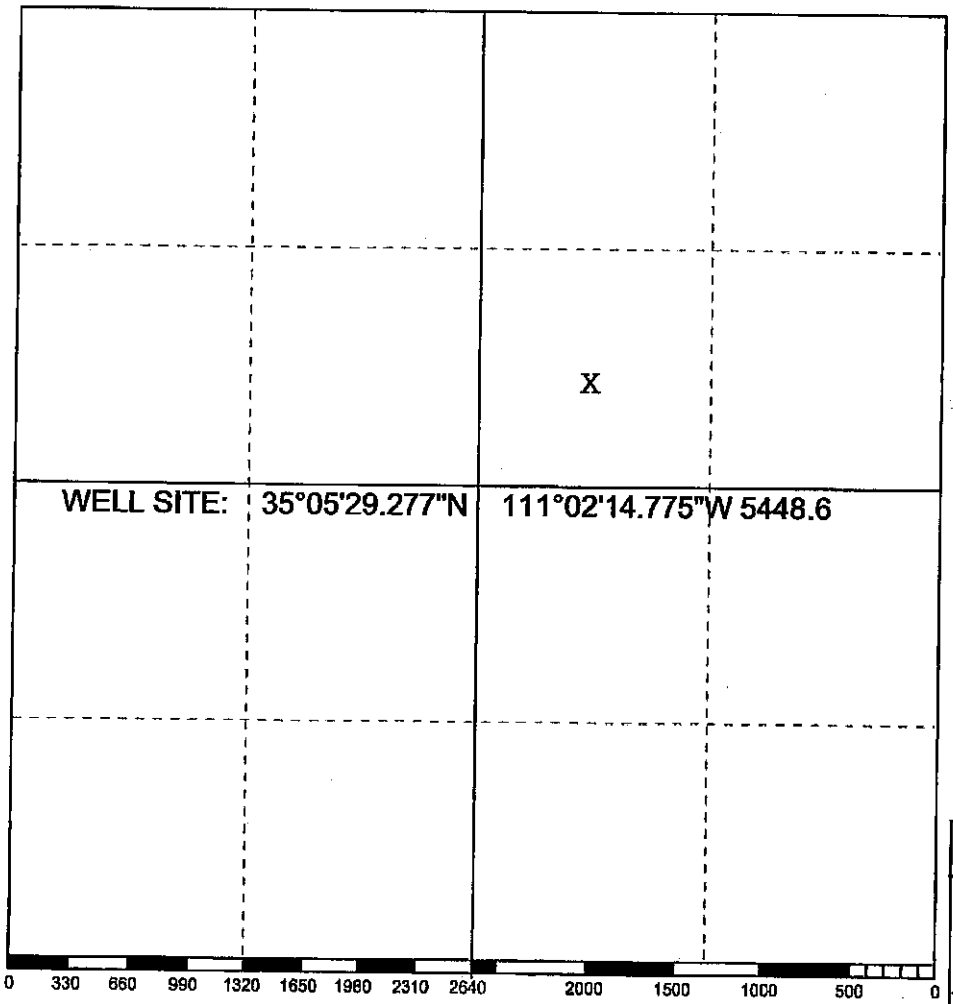
File two copies: one by mail, one electronically

Form No. 3

(Complete Reverse Side) 03/2018

1. Operator shall outline on the plat the acreage dedicated to the well in compliance with A.A.C. R12-7-107.
2. A registered surveyor shall show on the plat the location of the well and certify this information in the space provided.
3. ALL DISTANCES SHOWN ON THE PLAT MUST BE FROM THE OUTER BOUNDARIES OF THE SECTION.
4. Is the operator the only owner in the dedicated acreage outlined on the plat below? YES X NO _____
5. If the answer to question four is no, have the interests of all owners been consolidated by communitization agreement or otherwise? YES _____ NO _____ If answer is yes, give type of consolidation _____
6. If the answer to question four is no, list all the owners and their respective interests below:

Owner	Land Description
Desert Mountain Energy Corp	In the SW1/4 NE1/4 S26 T20N R12.5E
State 26-1	



CERTIFICATION

I hereby certify that the information above is true and complete to the best of my knowledge and belief.

Name: R W Rohlfing CEO

Position: CEO , President

Company: Desert MountainEnergy

Date: 11-2-20

I hereby certify that the well location shown on the plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my knowledge and belief.

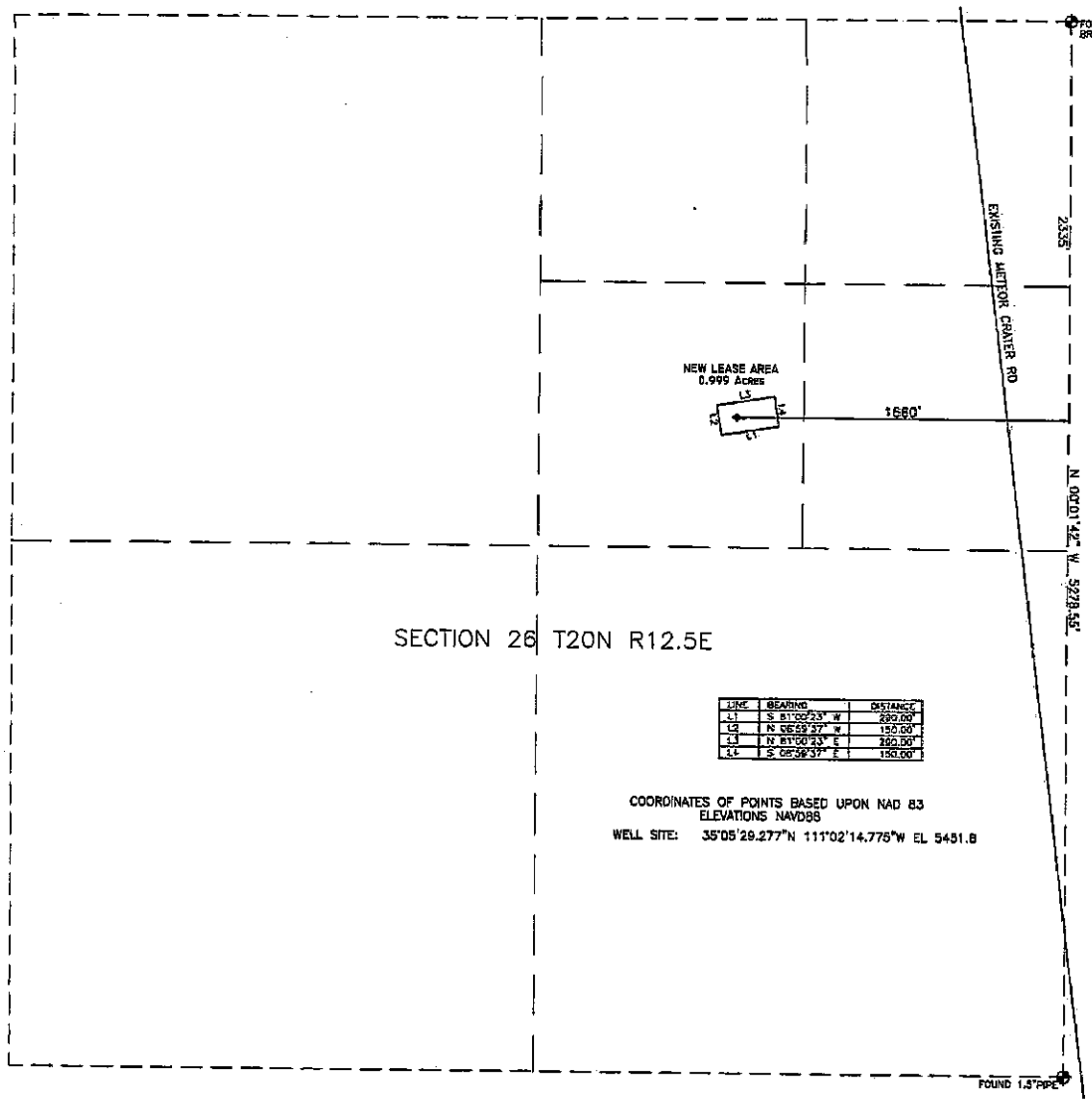
Date Surveyed: 8/21/2020

Registered Land Surveyor: Alisa J. Templeton

Certificate No.: AZ RLS 26406

PROPOSED CASING PROGRAM

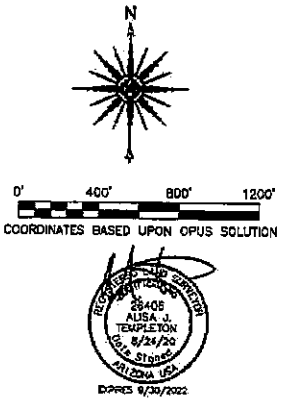
Size of Casing	Weight	Grade & Type	Top	Bottom	Cementing Depths	Sacks Cement	Type
7"	23#	J-55	Sur	500'	500'-Surface	150	reg
4.5"	11.6#		Sur	1,990'	1,900'-Surf	180	Prem



LINE	BEARING	DISTANCE
L1	S 81°00'23" W	290.00'
L2	N 08°59'37" W	150.00'
L3	N 81°00'23" E	290.00'
L4	S 08°59'37" E	150.00'

COORDINATES OF POINTS BASED UPON NAD 83
ELEVATIONS NAVD88

WELL SITE: 35°05'29.277"N 111°02'14.775"W EL 5451.8



COORDINATES BASED UPON OPUS SOLUTION

THIS IS TO CERTIFY THAT THE WELL LOCATION SHOWN UPON THIS PLAT WAS PLOTTED FROM FIELD NOTES OF AN ACTUAL SURVEY MADE BY ME AND THE SAME IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SCALE: 1"=400' (PLOTTED ON 11X24)
SURVEYED: ALISA TEMPLETON
DRAWN: ALISA TEMPLETON
CHKD: ROBERT BRAHAM ENERGY CORP
DATE: 24 AUGUST 2020

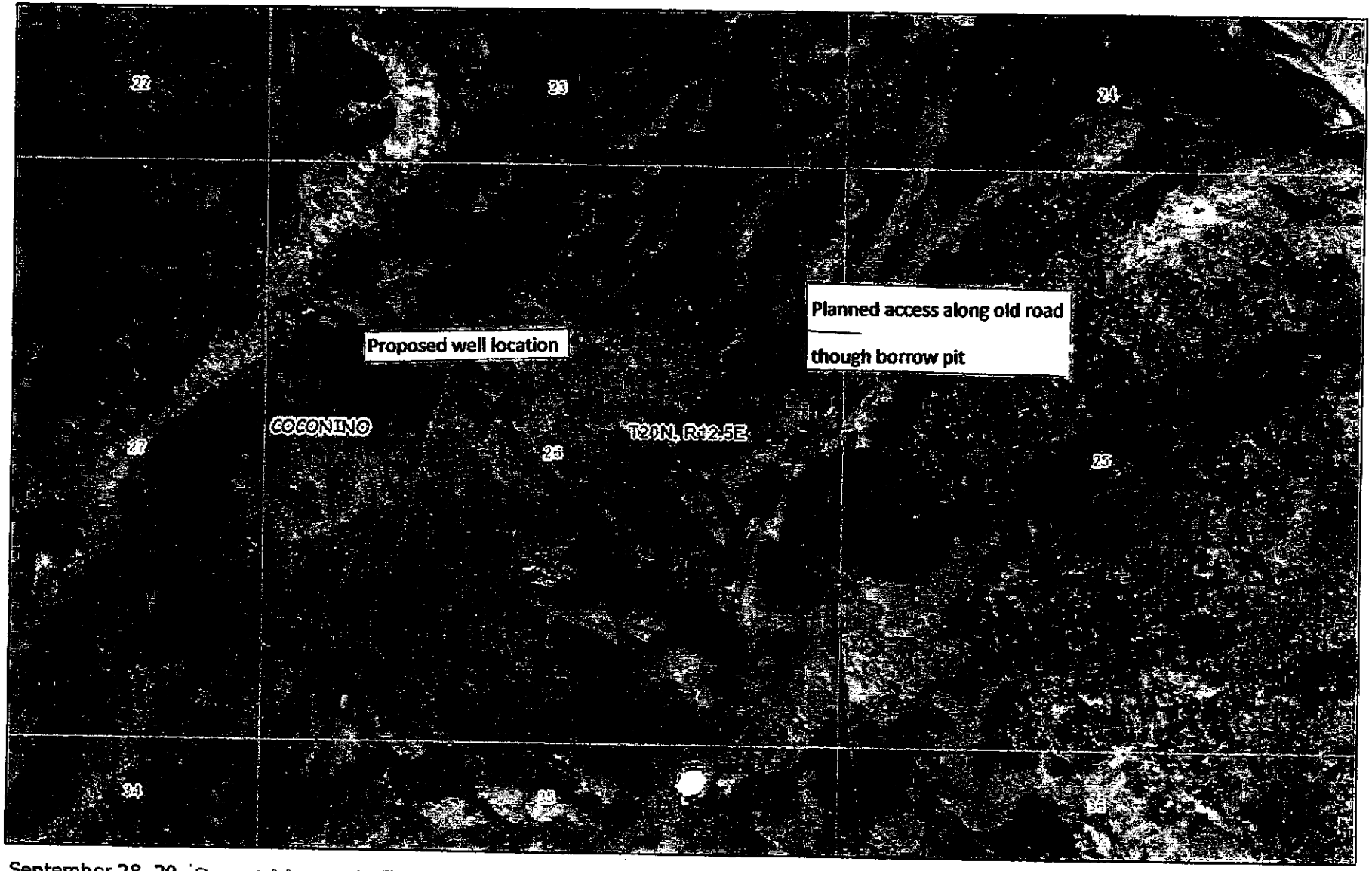
EXTREME MEASURES LAND SURVEYS, INC.
10800 NIGHTHAWK LANE FLAGSTAFF, ARIZONA 86004
928.853.3661 extrememeasures1997@outlook.com

PLAT OF PROPOSED WELL SITE AND LEASE AREA IN THE SW1/4 NE1/4 SECTION 26, T20N, R12.5E, G&SRB&M COCONINO COUNTY, ARIZONA

SHEET 1 OF 1

JOB NO. 20-18

Arizona State Land Department



September 28, 20 | Desert Mountain Energy Corp.

STATE 26-1, Coconino County, Arizona

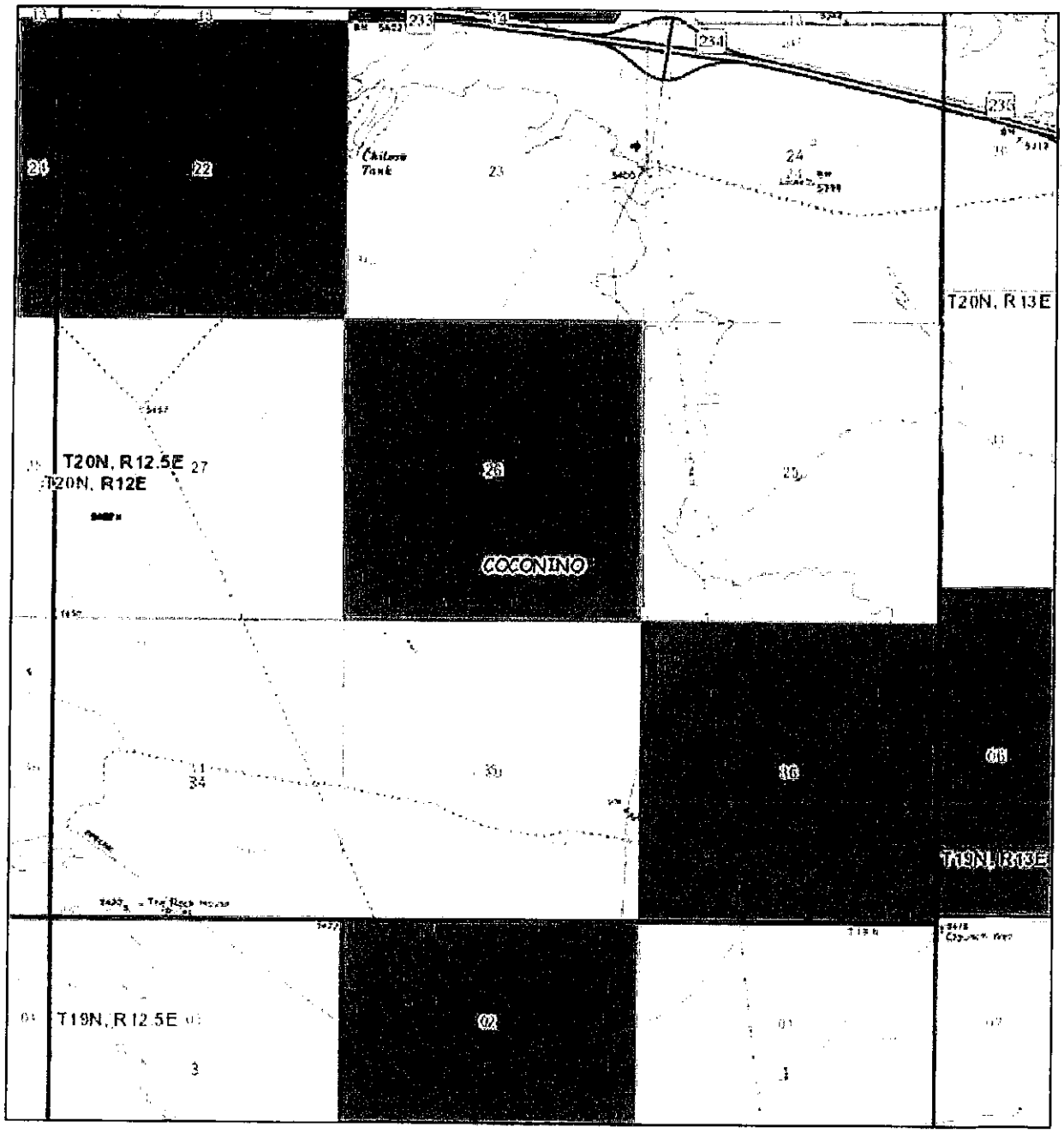
1:18,056

0 0.15 0.3 0.6 mi

0 0.225 0.45 0.9 km

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Arizona State Land Department



November 6, 20

1:36,112

0 0.3 0.6 1.2 mi

0 0.5 1 2 km

Copyright © 2013 National Geographic Society, i-cubed

APPENDIX A

STATE OF ARIZONA LAND DEPARTMENT
1616 W. ADAMS
PHOENIX, AZ 85007

RUN DATE: 21 May 2018
RUN TIME: 9:56 AM
PAGE: 1

KE-LEASE# 013-120004-00-100 APPTYPE: NEW
AMENDMENT#: 0

LAND#	LEGAL DESCRIPTION	AUS	ACREAGE
19.0-N-12.5-E-02-03-030-1000	LOTS 1 THRU 4 S2N2 S2	0.00	640.600
19.0-N-12.5-E-12-03-053-1000	ALL	0.00	640.000
19.0-N-12.5-E-26-03-053-1000	ALL	0.00	640.000
19.0-N-12.5-E-36-03-030-1000	ALL	0.00	640.000
	TOTALS	0.00	2,560.600

IN WITNESS HEREOF, the parties hereto have signed this Lease effective the day and year set forth previously herein.

DESERT MOUTAIN ENERGY CORP
Lessee

R. W. Pehling Director
Authorized Representative

R. W. [signature] 5-22-18
Signature Date

STATE LAND DEPARTMENT
Arizona State Land Commissioner

BY Jennifer [signature] 05.22.18
Date

(SEAL)

Desert Mountain Energy Corp.

6300 W. 23 St. N. Muskogee, OK. 74401

To: Marta Hodan, Director 11/02/20

Arizona Oil & Gas Conservation Commission

C/O Arizona Department of Environmental Quality

1110 W. Washington Street

Phoenix, AZ. 85007

RE: Justification and well planning for well Sec 26 20N 12.5E, Coconino County.

Good Day

Desert Mountain Energy Corp. is seeking to permit and drill a well on the above listed ASLD lease. The company finds both the current and future demands for Helium and the associated pricing to be the most compelling for profitability. The greatly elevated prices provide additional profit margins which ten years ago simply did not exist. As such it not only increases the likelihood for operators to operate successfully on lower volumes, also providing the maximum potential for meaningful royalties being paid to mineral owners and in this case, the Arizona State Land Department. It is our plan to further maximize profits from all wells we drill by processing the helium and selling to end users located in Arizona.

The State 26-1 planned well site, (ASLD Lease#13-120004 ASLD GFOP#041-121486), is situated on the apex of an anticlinal structure which has been previously documented by USGS mapping, numerous geologists and confirmed by our proprietary seismic. This specific anticlinal feature runs from approximately three miles west of location to three miles NE of proposed location. Review of available existing geological data in addition to our physical study of the area and seismic, supports this placement as the location to intersect multiple probable helium bearing zones with the highest porosities and permeabilities. Thereby providing the minimums to eliminate the need to conduct hydraulic fracturing operations. Furthermore, the use of air mist drilling through the prospective zones reduces the damage to the near well bore via intrusion by heavy bentonite clay drilling fluids. The nearest well, (Townsend / Gus Berry State 26-1, Sec 26 19N 13E), approximately 7 miles SE of the intended site did not encounter any H2S. Therefore we do not anticipate encountering any H2S. However, well logs indicate the gas / water contact point was present in all zones. Our location should be approximately 530' structurally higher than the Townsend / Gus Berry well and therefore we would anticipate water free production if gas is present. The Triassic Formation is present at varying locations with the Moenkopi present in outcrops.

Proprietary seismic indicated formation tops are as follows; Permian Kaibab LS 55', Coconino SS 180', Supai 1,250', Ft Apache 1,620' Amos Wash 1,750', with planned TD at 2,000'. The Ft. Apache and Amos Wash are the target formations in this well.

This location is 1,660' from the nearest lease line and therefore does not require a well spacing exemption. Planned access utilizes and old road directly off paved roadway, (paved roadway traverses N/S through section containing drill site,) thence westerly across exposed sand rock then through a small borrow pit to the proposed drill location. This location was selected to use old existing access along with the area containing the least amount of any form of vegetation. As the planned drill location is flat grading is not considered a requirement to drill. Utilization of a smaller air mist drill rig enables us to reduce the drill location to just under one acre. This well will be a vertical single zone completion and large hydraulic fracturing will *NOT* be used. If the well is deemed non-commercial it will be plugged and abandoned in accordance with AZOGCC rules and regulations, nor will any attempt be made to recover any casing.

Well planning calls for two small pits which will be dewatered and backfilled upon completion of operations. 20' of 10" surface conductor is to be set and cemented into place. Followed with drilling an 8.75" hole to approximately 510', setting 500' of 7" 23# casing using approximately 150 sax of cement. Then drill a 6.25" hole to approximately 2,000'. If a decision to set pipe is made, run 1,990', 4.5", 11.6# J-55 casing and cemented to surface with approximately 180 sax of premium lite. A 5000# double ram hydraulic BOP with blind rams will be used by the drilling contractor.

The small footprint for shallow Helium wells also minimizes the impacts to the surface of the state lands, whilst providing a unique opportunity for financial rewards to the taxpayers of the State of Arizona. The area we have targeted has and continues to suffer tremendous negative economic impact with the closing of many facilities which paid meaningful wages. In our meetings with local leaders and legislators, we have been welcomed and encourage to take the chance on this opportunity not only to help them locally with good paying jobs, but to help the children in the education system via the royalties paid to ASLD.

Respectfully submitted,

Robert W. Rohlfing, CEO

Desert Mountain Energy Corp.

Douglas A. Ducey
Governor

State of Arizona
Oil and Gas Conservation Commission
1110 W. Washington Street, Phoenix, AZ 85007
602-771-4501
www.azogcc.az.gov

Commissioners:
Frank Thorwald, Chair
J. Dale Nations, Ph.D., Vice Chair
Stephen R. Cooper
William C. Feyerabend

FORM 1 – ORGANIZATION REPORT

(File two copies: by mail, and electronically)

Principal:

Legal name and business address of the person required to obtain a permit to drill an oil or gas well under Arizona Revised Statutes (A.R.S.) §27-513, as registered with the Arizona Corporation Commission:

Desert Mountain Energy Corp
6300 W. 23 ST. N. Muskogee, OK 74401

If a reorganization, give name and address of previous organization:

State of incorporation: Nevada

Date of permit to do business in the state of Arizona: 01/09/18

Name and mailing address of state agent: Paracorp Inc. 8825 N. 23 Ave. Phoenix, AZ 85021

Authorized to do business in Arizona as a:

- ☒ Domestic or Foreign Corporation A.R.S. §10-1028 Certificate of Good Standing
- ☐ Limited Liability Company A.R.S. §29-614 Certificate of Good Standing
- ☐ Limited Partnership, Limited Liability Partnership, or Limited Liability Limited Partnership certificate or certificate of registration on file at Arizona Secretary of State
- ☐ Individual or Sole Proprietorship doing business under a Certificate of Trade Name registered at Secretary of State pursuant to A.R.S. §44-1460.01

Principal Officers or Partners (if partnership)

Name / Title	Mailing Address
Robert W. Rohlfing CEO/Director	6300 W. 23 ST. N. Muskogee, OK. 74401
Scott Davis CFO/Director	510-580 Hornby St. Vancouver, BC V6C 3B6

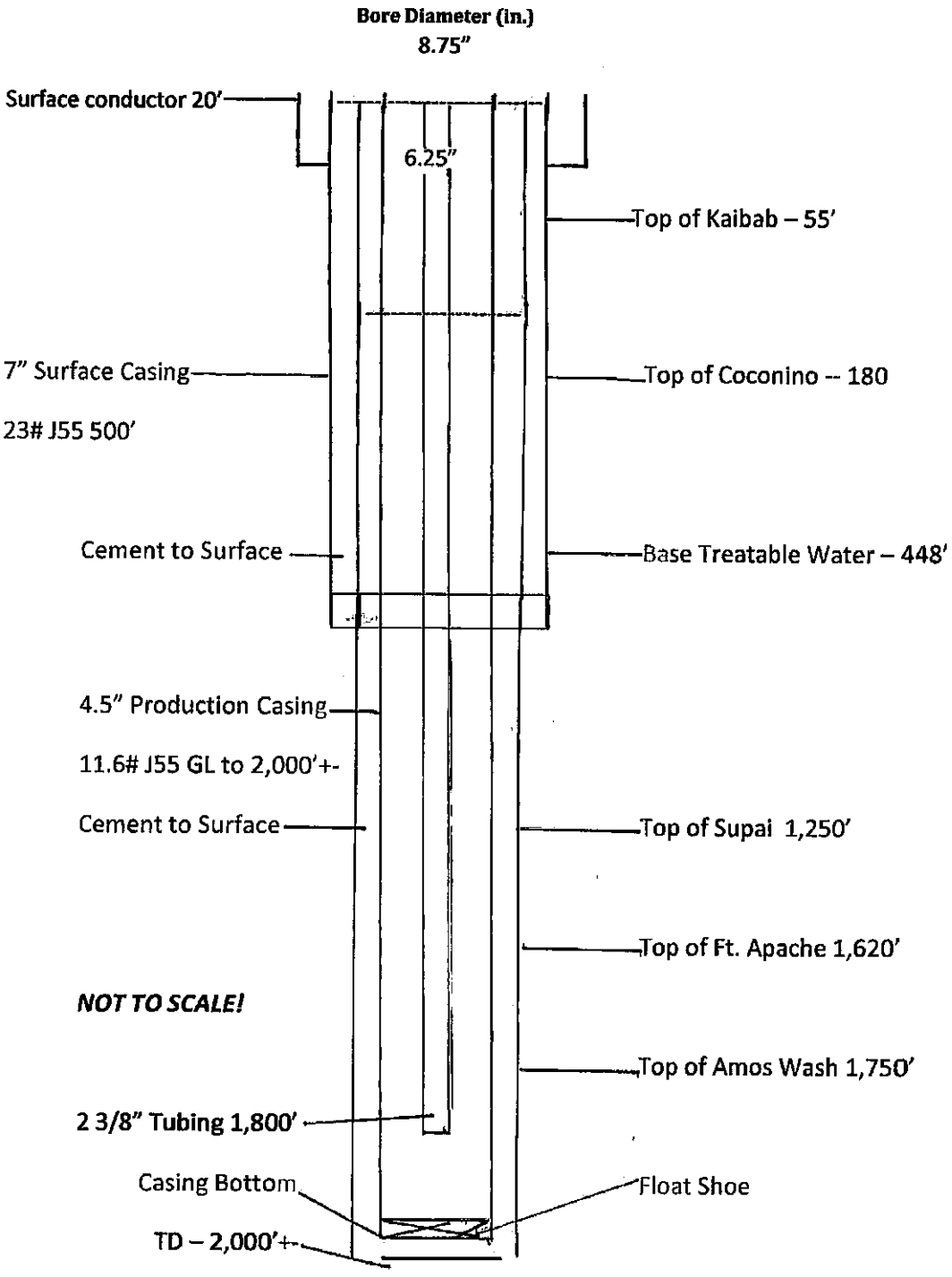
Director's Name	Mailing Address

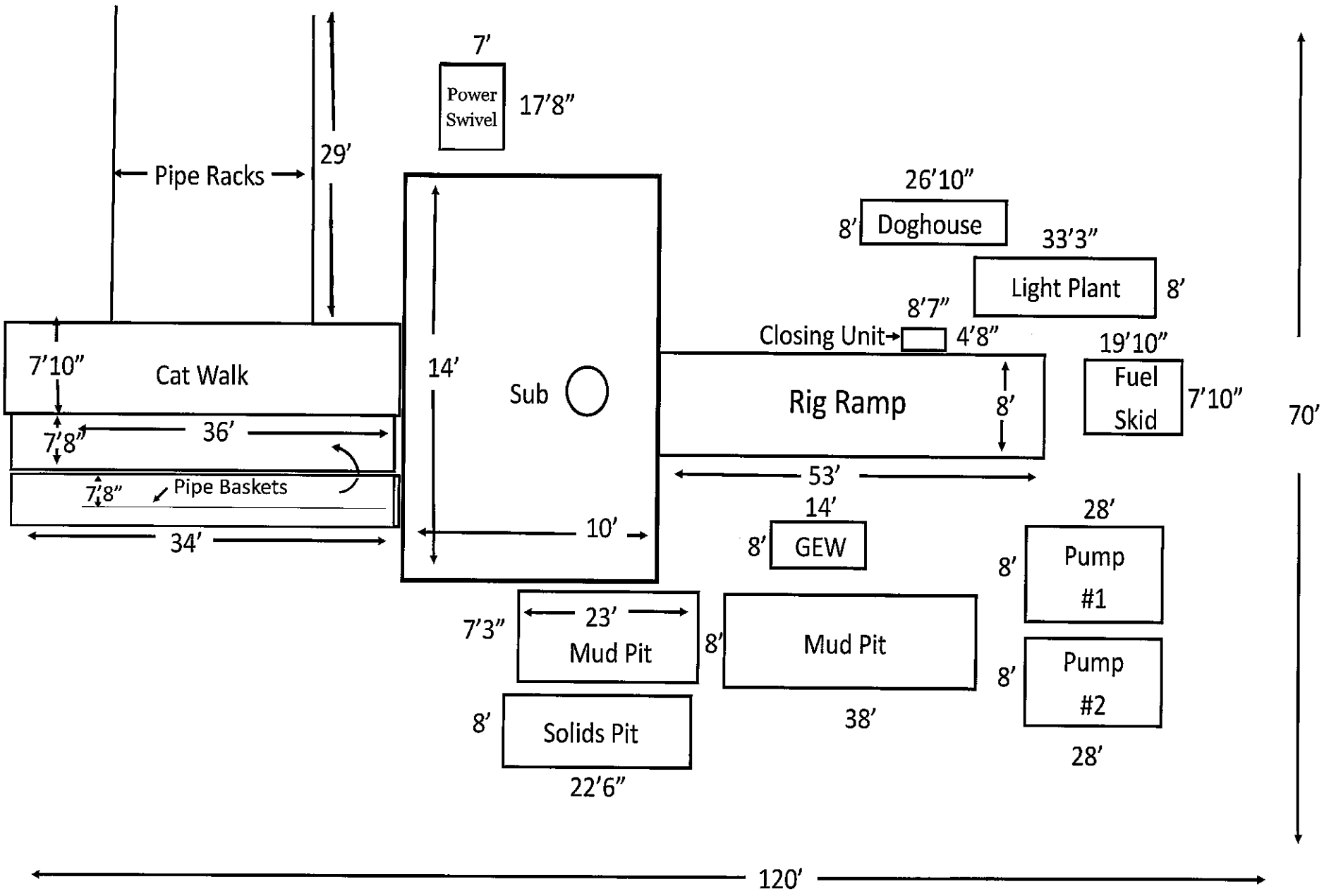
CERTIFICATE I, the undersigned, under the penalty of perjury state that I am the CEO of the Desert Mountain Energy Corp. (company), and that I am authorized by said company to make this report; and that this report was prepared under my supervision and direction and that the facts stated therein are true, correct and complete to the best of my knowledge.

RW Rohlfing CEO
Signature

11-2-20
Date

DESERT MOUNTAIN ENERGY CORP. *STATE 26-1* WELL DESIGN




7'
Power Swivel
17'8"
Pipe Racks
29'
26'10"
8'
Doghouse
33'3"
Light Plant
8'
8'7"
Closing Unit
4'8"
19'10"
Fuel Skid
7'10"
70'
7'10"
Cat Walk
14'
Sub
Rig Ramp
8'
7'8"
36'
7'8"
Pipe Baskets
53'
14'
28'
8'
GEW
8'
Pump #1
34'
10'
7'3"
23'
Mud Pit
8'
Mud Pit
8'
Pump #2
8'
Solids Pit
38'
28'
22'6"
120'

STATE OF ARIZONA

Office of the
CORPORATION COMMISSION

CERTIFICATE OF GOOD STANDING

I, the undersigned Executive Director of the Arizona Corporation Commission, do hereby certify that:

DESERT MOUNTAIN ENERGY CORP.

ACC file number: F22500845

a foreign corporation, was authorized to transact business or conduct affairs in the State of Arizona on 01/09/2018;

That all annual reports owed to date by said corporation have been filed or delivered for filing, and all annual filing fees owed to date have been paid; and

That, according to the records of the Arizona Corporation Commission, said corporation is in good standing in the State of Arizona as of the date this Certificate is issued.

This Certificate relates only to the legal existence of the above named entity as of the date this Certificate is issued, and is not an endorsement, recommendation, or approval of the entity's condition, business activities, affairs, or practices.

IN WITNESS WHEREOF, I have hereunto set my hand, affixed the official seal of the Arizona Corporation Commission, and issued this Certificate on this date: **03/02/2020**

Matthew Neubert, Executive Director

SECURITIES SAFEKEEPING

1700 WEST WASHINGTON ST. - PHOENIX, ARIZONA 85007

DATE: 5-11-2020

STATE AGENCY NO. _____

STATE AGENCY AZ Dept of Environmental Quality

State Treasurer's Use Only

COMPANY Desert Mountain Energy Corp
6300 W. 23rd Street North
Muskogee, OK 74401

DOMESTIC FOREIGN

DEPOSIT

C.D. NO.: Cashier's Check 7684601944 (for financial assurance)

BANK: Wells Fargo Bank, NA.

MAY 12 PM 3:44

MATURITY DATE: 3/23/2021 INTEREST RATE: NA %

AMOUNT $25,000.00

C.D. ASSIGNMENT MUST BE ATTACHED UNLESS C.D. IS PAYABLE TO STATE TREASURER

RELEASE

C.D. NO.:

BANK:

MATURITY DATE: INTEREST RATE: %

AMOUNT $

STATE TREASURER VALIDATION NO._____

RECEIVED THE ABOVE RELEASE	STATE AGENCY AUTHORIZATION
BY _____ Authorized Signature Date	BY _____ Authorized Signature
_____ Bank or Firm	STATE TREASURER AUTHORIZATION BY _____ Authorized Signature
FOR BANK USE ONLY _____ Checked by _____ Verified by	BANK AUTHORIZATION BY _____ Authorized Signature STATE'S DEPOSITORY BANK

Lee A. Storey (011989)
Alexandra M. Arboleda (016673)
Ethan B. Minkin (019022)
Sara V. Ransom (024099)
TSL LAW GROUP, PLC
8096 N. 85th Way, Suite 105
Scottsdale, Arizona 85258
Telephone: (602) 803-8811
lee@tsllawgroup.com
alex@tsllawgroup.com
ethan@tsllawgroup.com
sara@tsllawgroup.com
Attorneys for the City of Flagstaff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

THE CITY OF FLAGSTAFF, Plaintiff, v. DESERT MOUNTAIN ENERGY CORP., Defendant.	No.: **[PROPOSED] PRELIMINARY INJUNCTION**

The Court, having received the *Emergency Application for Temporary Restraining Order And Preliminary Injunction With Notice* ("Application") filed by Plaintiff City of Flagstaff ("Plaintiff"), and having considered all briefing and arguments submitted before the Court hereby issues these finding and Order:

1. DME has publicly represented that it will not conduct mining operations that contaminate public water supplies,

2. DME Well Permit No. 1255 authorizes it to proceed with construction of a well in the C aquifer,

3. The well to be constructed pursuant to DME Well Permit No, 1255 would be built within two miles of Red Gap Ranch, which DME knows to be the site of the City's future municipal water supplies,

4. DME previously agreed that it would cooperate with the City and share information related to its efforts to locate and develop areas for helium or hydrocarbon resources,

5. DME knew of the City's objections to helium or hydrocarbon development near Red Gap Ranch, but did not advise the City of its well permit application, nor did it notify the City directly of its plans to commence construction of the Well,

6. Although DME knew of the City's objections, it did not disclose the City's position within its application for a well permit. Rather, it represented that "local leaders" were supportive of and encouraged DME's project.

7. DME knew that its representations regarding local support of drilling a well for hydrocarbon or helium mining near the City's future municipal water supplies were false or misleading, but made those representations in its well permit application to induce the Arizona Oil and Gas Conservation Commission to issue the permit,

8. Although it previously represented that it does not intend to engage in operations that would contaminate water supplies, DME has not certified that it will only use constituents certified to be safe for drinking water in its operations,

9. DME has not suggested any monitoring plan with regard to its operations,

10. DME has not disclosed any of the constituents it plans to use in its operations,

11. The evidence indicates that DME seeks to preserve the right to introduce harmful constituents, pollutants, or toxic chemicals in the Well,

12. DME has not secured an aquifer protection permit and has not disclosed the drilling fluids that it intends to use to conduct Well operations,

13. When introduced into the C aquifer via the Well, harmful constituents, pollutants, or toxic chemicals may degrade water quality to such an extent that it is not suitable for human consumption,

14. Red Gap Ranch is down gradient of DME's Well site,

15. Waters contaminated by DME's Well will migrate to Red Gap Ranch, and may irreversibly contaminate the waters underlying Red Gap Ranch such that it is no longer suitable for human consumption or other municipal use,

16. The City has invested millions of dollars in developing Red Gap Ranch to serve as the future municipal water supply for its residents,

17. Aside from Red Gap Ranch, there is no feasible, alternative site in the region for the City to develop its future municipal water supplies, and

18. The City has no adequate remedy at law as monetary relief will not suffice to clean the contaminated aquifer or locate a new site for municipal water supplies.

19. The City has demonstrated a likelihood of success on the merits of one or more of its claims in its Complaint, it has demonstrated irreparable injury, and it has shown that serious questions exist regarding DME's existing and planned operations and that the balance of harms favors injunctive relief.

Based upon these findings, the Court hereby enters this order,

GRANTING the Application and enjoining Defendant Desert Mountain Energy Corp ("DME), as set forth herein.

IT IS HEREBY ORDERED that Defendant shall immediately:

a. Halt any construction of the Well until or unless it obtains an aquifer protection permit;

b. Halt any construction of the Well until or unless DME certifies, warrants and represents that it will use only NSF Standard 60 drilling additives in its Well and other mining operations; and

c. Certify, warrant and represent that it will not use, inject or otherwise introduce any "fracking" or other chemicals, constituents or other materials into the Well that may degrade the existing water quality underlying Red Gap Ranch.

IT IS FURTHER ORDERED that Defendant shall comply with State law and its own past representations requiring that DME's construction practices and operations ensure

the safety and integrity of Plaintiff's future municipal drinking water supply at Red Gap Ranch.

DONE IN COURT THIS ____ day of _____, 2020.

_____
SUPERIOR COURT JUDGE

Lee A. Storey (011989)
Alexandra M. Arboleda (016673)
Ethan B. Minkin (019022)
Sara V. Ransom (024099)
TSL LAW GROUP, PLC
8096 N. 85th Way, Suite 105
Scottsdale, Arizona 85258
Telephone: (602) 803-8811
lee@tsllawgroup.com
alex@tsllawgroup.com
ethan@tsllawgroup.com
sara@tsllawgroup.com
Attorneys for the City of Flagstaff

RECEIVED
DEC 11 2020
VALERIE WYANT
Clerk of the Superior Court

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

THE CITY OF FLAGSTAFF, Plaintiff, v. DESERT MOUNTAIN ENERGY CORP., Defendant.	No.: CV2020-00624 **VERIFIED COMPLAINT** **(BREACH OF CONTRACT; NEGLIGENT MISREPRESENTATIONS OR OMISSIONS; FRAUDULENT MISREPRESNTATIONS OR OMISSIONS; DECLARATORY RELIEF; TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION)**

For its Complaint against Defendant Desert Mountain Energy Corp ("DME" or "Defendant"), Plaintiff City of Flagstaff ("City" or "Plaintiff") alleges as follows:

I. PARTIES

1. The City is a municipal corporation of the State of Arizona located within Coconino County, Arizona.

2. DME is a foreign for-profit business domiciled in the State of Nevada and authorized to conduct business in the State of Arizona.

II. JURISDICTION AND VENUE

3. Defendant DME is conducting business within Coconino County, Arizona.

4. Defendant DME has an interest in certain lands within Coconino County, Arizona wherein it intends to conduct business including, but not limited to, well drilling for exploration or operations related to helium and hydrocarbon mining.

5. Jurisdiction is proper before this Court because the lands and conduct giving rise to this Complaint occured in Coconino County, Arizona.

6. Venue is proper in this Court pursuant to A.R.S. § 12-401(12) because it relates to irreparable harm and damage to property owned by the City within Coconino County, Arizona.

III. FACTUAL ALLEGATIONS SUPPORTING CLAIMS

a. The City purchased and has invested millions in Red Gap Ranch to develop potable water supplies for its future population.

7. The City, with more than 75,000 residents, is the largest community in northern Arizona. It also hosts more than 5,000,000 tourists annually.

8. The City has enjoyed economic and population growth for several decades, and anticipates that its population will double within the next fifty years.

9. To accommodate the municipal needs of its continued and anticipated population growth, including providing safe drinking water for residents and visitors, in 2005 the City purchased 8,500 deeded acres of land and several thousand acres of State lands with existing grazing leases along the I-40 corridor.

10. The City's plans to use the land, which is commonly referred to as "Red Gap Ranch," as a future source of municipal water supply has been a frequent subject of attention in the press and in the community.

11. The City's plans for Red Gap Ranch are to drill multiple water supply wells into the Coconino aquifer (the "C aquifer") to withdraw groundwater, which will then be conveyed via pipeline and introduced into the City's existing municipal water infrastructure system.

12. The City has completed certain aspects of its plans for Red Gap Ranch, including completing a Phase I engineering analysis confirming the feasibility of the

pipeline project in 2009, drilling multiple water supply wells in 2011, securing a Designation of Adequate Water Supply from the Arizona Department of Water Resources in 2013, entering into an agreement with the Arizona Department of Transportation to advance the process of approving a water pipeline right of way in 2016, and completing multiple water quality analysis to confirm that the water underlying Red Gap Ranch continues to be suitable for domestic uses.

13. A Phase II engineering analysis is slated for completion within the next year, as are the City's other on-going measures to complete its plans to use Red Gap Ranch for the purpose of supplying municipal water to its population.

14. The City has spent millions of dollars developing Red Gap Ranch to serve as a future municipal water supply source.

15. Hydrogeologic analysis confirms that the area in and around Red Gap Ranch is the only feasible source of water suitable for municipal use in the region available to the City.

16. Maintenance of the quality of the existing waters, including ensuring that the waters are free from harmful or toxic substances that will render it inadequate for human consumption is paramount as the City has no feasible alternatives to supply its future population with water suitable for its municipal needs.

b. Since early 2019, DME has been on notice of the City's objections to mining activities that could threaten the quality or accessibility of its future water supplies, including those underlying Red Gap Ranch.

17. In early 2019, after representatives of Desert Mountain Energy Corp. approached the City for permission to cross Red Gap Ranch for the purpose of exploring whether it could mine for helium on nearby lands owned by the Arizona State Lands Department ("ASLD"), the City and DME engaged in discussions regarding the City's safety concerns pertaining to DME's anticipated business activities.

18. DME knew that Red Gap Ranch was the site of the City's on-going development of its future water supplies.

19. The City signed a Memorandum of Understanding with DME (the "DME MOU") that provided, among other things, that DME and the City would "work together on a cooperative basis to evaluate potential resources and if mutually beneficial, to develop reasonable plans for the strategic development of helium and hydrocarbon resources in the greater Flagstaff region and in Coconino County generally[.]" DME MOU at p. 2, attached hereto as **Exhibit 1**.

20. In furtherance of the cooperative nature of the DME MOU, the parties agreed to "share all available technical and geological data related to helium and hydrocarbon resources in the Flagstaff region and Coconino County generally" and also that "DME will fully consult with Flagstaff concerning each major exploration, drilling, development or production program in the area...." DME MOU at p. 2.

21. The DME MOU noted the parties would only "encourage access" to helium or hydrocarbon resources "which are not in designated national or state parks or are otherwise recognized as highly sensitive from the standpoint of environmental, water recourses, cultural or existing grazing or livestock considerations." DME MOU at p. 2.

22. DME knew, or reasonably should have known, that Red Gap Ranch is a "highly sensitive" area under the DME MOU wherein the City would ***not*** encourage DME's access for mining activities.

23. In addition to the DME MOU, the City and DME entered a License for Access and Seismic Testing on Red Gap Ranch (the "DME License Agreement"). A true and correct copy of the DME License Agreement is attached hereto as **Exhibit 2**.

24. By the DME License Agreement, the parties acknowledged that the lands comprising "Red Gap Ranch" were acquired by the City "for their water rights."

25. Also pursuant to the DME License Agreement, the City authorized DME to cross Red Gap Ranch via designated rights of way to complete its due diligence on neighboring ASLD lands and agreed that it would not charge licensing fees in exchange for DME conducting limited seismic testing on City lands as long as DME bore the costs of such testing and provided the City with the results of that testing.

26. In March 2019, in response to public concerns, then Chief Executive Officer of DME, Mr. Olian Irwin, is quoted by Scott Buffon of the Arizona Daily Sun stating that DME "won't do a well for helium if there's any danger of contaminating the water supply at all," further remarking "It's just not going to happen." A true and correct copy of Mr. Buffon's article is attached hereto as **Exhibit 3.**

27. Following public outcry regarding the potential threats posed by DME's anticipated operations, the City subsequently determined not to proceed with the DME MOU and terminated the DME License Agreement.

c. DME fails to notify the City of its on-going efforts to engage in helium mining activities within two (2) miles of the City's future municipal water supply wells.

28. After it ended the DME MOU and noticed its termination of the DME License Agreement, City did not hear further from DME regarding any plans to proceed with helium or hydrocarbon exploration near Red Gap Ranch.

29. The City's notice of termination of the DME License Agreement did not, by its terms, cause the agreement to end until six months after the date of notice of termination.

30. Upon information and belief, DME accessed Red Gap Ranch and completed seismic testing during the six-month period that the DME License Agreement remained in effect after the date of notice of termination.

31. The City did not charge DME licensing fees.

32. Upon information and belief, to date DME has not shared the results of the Red Gap Ranch seismic testing with the City despite its obligation to do so pursuant to the DME License Agreement.

33. Via publicly available documents, in late November 2020, the City discovered that DME had secured Well Permit No. 1255, which allows it to drill a well labeled "Desert Mountain 26-1 State" (the "Well") for the purpose of mining helium and hydrocarbon.

///

///

34. The Well is located within two miles of Red Gap Ranch. A map depicting the location of the Well site and its proximity to Red Gap Ranch is attached hereto as **Exhibit 4.**

35. Well permit No. 1255 was issued by the Arizona Oil and Gas Conservation Commission ("AOGCC") on November 18, 2020. A true and correct copy of Well Permit No. 1255 is attached hereto as **Exhibit 5.**

36. The City has obtained documents submitted by DME to the AOGCC to secure Well Permit No. 1255 (the "Well Permit Application"). True and correct copies of all documents the City obtained from AOGCC related to DME's Well Permit Application are attached hereto as **Exhibit 6.**

d. DME misrepresents "local support" of its proposed mining operations and omits the City's objections in its application to secure Well Permit No. 1255.

37. In the Well Permit Application, DME represents in the Application that it has met with "local leaders" and "legislators" regarding its project and has been welcomed and encouraged by those representatives.

38. DME does not identify the governments or local leaders that it met with, but it has not met with representatives of the City with respect to the Well despite its knowledge of the City's objections to its operations being in such proximity to its drinking water supplies.

39. DME does not disclose any of the past objections or concerns raised by the City in its Well Permit Application.

40. DME represents government support of its project to AOGCC, despite that it neglected to consult with the government that owns the land adjacent to its Well and has previously voiced multiple concerns regarding any well or mining operations near Red Gap Ranch.

///

e. DME's application to secure Well Permit No. 1255 indicates that it intends to use pollutants, toxic materials or other harmful constituents should it be allowed to proceed with construction and operations.

41. Per documents that the City has been able to obtain to date, DME intends to drill an exploratory well down to the "base treatable water" of the C aquifer.

42. It is unclear how DME derived the depth of "base treatable water" within the C aquifer.

43. Upon information and belief, DME intends to (or at least believes it can) contaminate waters within the C aquifer below the "base treatable water" level it has identified.

44. DME intends to drill to a total depth of 2000 feet and cement the entire length of the casing.

45. DME would then use a perforating tool to punch holes through the well casing in the zones that appear most promising for production of helium gases and hydrocarbon.

46. Although DME represents that the well casing will be sealed through the Kaibab, Coconino, and Supai formations, which are the primary water bearing formations, issues with construction, including inadequate maintenance or use of toxic constituents in the mining process once perforations are completed along the well casing can allow a variety of contaminants to be introduced into the C aquifer (and the other aquifers through which DME's well will traverse) while the well is under construction and during its period of use.

47. Wells of the type described by DME in its Well Permit No. 1255 are frequently in operation for decades.

48. DME plans to drill using the air rotary method, with the addition of drilling fluid additives, which are essentially "misting" agents to assist in lifting cuttings if necessary.

49. The air rotary method disclosed by DME allows it to commence operations quickly if the well strikes a deposit of the helium it wishes to extract, but the method that DME has selected also creates the risk that if it encounters highly fractured zones or large

quantities of water, DME may have to change drilling methods, which would include altering its drilling fluid additives.

50. Misting agents are usually detergent based foaming compounds.

51. Given that the boring will penetrate a drinking water aquifer, the drilling fluids, including the foaming agent should be a National Sanitation Foundation ("NSF") certified product to ensure it is safe for drinking water use.

52. The same requirement should apply if they have to switch drilling fluids due to formation conditions - all drilling fluids should be certified to NSF Standard 60.

53. Nothing in DME's publicly available documents represents or guarantees that DME will only use NSF Standard 60 drilling fluids.

54. DME represents itself to be a concern with experience in drilling oil wells, which frequently use diesel fuels or diesel fuel additives as drilling fluids.

55. Such additives are not safe for human consumption or other municipal uses.

56. Even if it does not use diesel fuel constituents, other drilling fluids, like brine, degrade water quality, potentially rendering it unfit for human consumption.

57. The DME's Well Permit Application has no oversight or monitoring plan.

f. Any pollutants, toxic materials or other harmful constituents introduced by DME threaten to contaminate the City's Red Gap Ranch wells.

58. If DME does not use NSF Standard 60 certified drilling fluids in the Well, it could contaminate the C Aquifer.

59. The C aquifer is the source of the City's municipal water supply wells at Red Gap Ranch.

60. Based upon the stated location of the intended Well, any pollutants or toxic substances introduced into the Well—now or in the future—or released by operations of the well into the C aquifer will be upgradient of Red Gap Ranch.

61. Any pollutants or toxic chemicals or other harmful constituents like brine introduced into the Well will migrate towards the municipal water supply wells located at Red Gap Ranch.

62. As the Well is within two miles of the City's Red Gap Ranch wells, and it up-gradient of the Red Gap Ranch wells, any such contaminants would migrate to the City's future municipal supply wells, and may result in water unfit for human consumption.

63. Should DME's air rotary method result in the need to change drilling additives, it is unclear whether DME would disclose its changed chemical additives.

64. DME has not indicated that it intends to secure an aquifer protection permit from the Arizona Department of Environmental Quality ("ADEQ").

65. DME has not pledged that it will not use harmful chemical additives or brines that could degrade aquifer water quality.

66. DME has not pledged to allow oversight and monitoring by the City.

67. DME's reference in its Well Permit Application to "base treatable water" indicates that DME is making a distinction regarding the lowermost extent of potential drinking water, which implies that DME inaccurately believes it is authorized to pollute water below this depth.

68. Via a press release issued in late November 2020, DME has stated that it intends to begin construction of the Well, which would terminate within the C aquifer, during the month of December 2020.

69. The Well, once completed, provides an avenue for introduction of harmful or toxic chemicals that cannot be readily extracted once introduced into the aquifer, thereby risking irreversible and irreparable harm and injury to the C aquifer, which is the source of multiple municipal water supplies, including the City's.

70. The City is particularly at risk of irreparable harm and injury as its wells at Red Gap Ranch, the site of its future municipal water supplies, are down gradient and within two miles of DME's proposed Well such that any constituents introduced by DME will migrate to the Red Gap Ranch wells.

///

///

///

COUNT ONE

(Breach of Contract)

71. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein

72. The DME License Agreement is a valid and binding contract between the City and DME.

73. DME materially breached the DME License Agreement by completing seismic testing on Red Gap Ranch and failing to share the results of that testing with the City as required by the DME License Agreement.

74. As a result of DME's material breach of the DME License Agreement, the City has been harmed in an amount to be proven at trial, but in no event less than the full amount of licensing fees it waived in exchange for authorizing the testing that DME completed.

75. As this claim arises out of contract, the City is entitled to an award of its reasonable attorneys' fees and costs pursuant to A.R.S. §§ 12-341 and 341.01.

COUNT TWO

(Fraudulent Misrepresentation and/or Omissions)

76. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

77. By application dated November 2, 2020, DME submitted a request to the AOGCC to issue Well Permit No. 1255.

78. By the Well Permit Application, DME represented that:

a. the operations it would be entitled to engage in upon issuance of Well Permit No. 1255 were known to "local leaders" and "legislators" and that those governmental officials were supportive of the project; and

b. that it will not use "large" hydraulic fracturing.

79. Upon information and belief, these representations are false or intentionally calculated to be misleading.

80. The City was not advised of DME's plans to proceed with a well on the ASLD lands neighboring Red Gap Ranch, and does not support such project absent assurances of safety precautions that do not presently exist including, but not limited to, confirmation that DME will only use NSF Standard 60 certified drilling fluids in the Well.

81. Notwithstanding its indication that "large hydraulic fracturing" will not be used, DME does not identify what drilling additives it intends to use, does not warrant and represent that the well drilling fluids it will use will be NSF Standard 60 certified, and does not commit to avoiding all fracking additives at any stage of construction.

82. The "base treatable water" level referenced by DME in its Well Permit Application implies that DME may introduce harmful constituents, pollutants or toxic chemicals below that level within the C aquifer.

83. Upon information and belief, DME knew these representations to be false or, at a minimum, misleading, but included them within the Well Permit Application for the purpose of inducing AOGCC to issue Well Permit No. 1255 and avoiding the need to apply for an aquifer protection permit.

84. Upon information and belief, AOGCC relied upon the false or misleading representations in issuing Well Permit No. 1255.

85. Although it was aware, or reasonably should have been aware, that such information was material to the AOGCC's determination to issue Well Permit No. 1255, DME did not disclose that the City would not support DME's drilling of any well or engaging in mining operations within the vicinity of the anticipated well in light of its proximity to the Red Gap Ranch and the City's future municipal water supply.

86. Upon information and belief, DME omitted this material information for the purpose of inducing AOGCC to issue Well Permit No. 1255.

87. Upon information and belief, AOGCC would not have issued Well Permit No. 1255 had it known of the City's concerns and objections to DME's proposed project or the potential for harmful constituents, toxic chemicals or other pollutants to be introduced into the C aquifer.

88. AOGCC, as an agency of the State, is harmed by DME's false or misleading representations and omissions of material fact within its Well Permit Application, as the mis-information interferes with AOGCC's obligation to the public to properly evaluate the facts and ensure compliance with applicable laws and regulations by an applicant before issuing well permits.

89. A permit that is issued based upon inaccurate or false factual information is invalid.

90. The City is harmed by DME's false or misleading misrepresentations and omissions of material fact within its Well Permit Application, as it has been deprived of the opportunity to lodge objections, investigate and make public comment before its future municipal water supply is potentially exposed to irreversible contamination.

COUNT THREE

(Negligent Misrepresentations and/or Omissions)

91. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

92. By application dated November 2, 2020, DME submitted a request to the AOGCC to issue Well Permit No. 1255.

93. DME had a duty to supply truthful and accurate information in the Well Permit Application, and the information within the Well Permit Application was intended for the guidance of AOGCC.

94. By the Well Permit Application, DME represented that:

a. the operations it would be entitled to engage in upon issuance of Well Permit No. 1255 were known to "local leaders" and "legislators" and that those governmental officials were supportive of the project; and

b. that it will not use "large" hydraulic fracturing.

95. Upon information and belief, these representations are false or misleading and DME did not exercise reasonable care or competence in obtaining or communicating the information in its Well Permit Application.

96. The City was not advised of DME's plans to proceed with a well on the ASLD lands neighboring Red Gap Ranch, and does not support such project absent assurances of safety precautions that do not presently exist including, but not limited to, confirmation that DME will only use NSF Standard 60 certified drilling fluids in the Well.

97. Notwithstanding its indication that "large hydraulic fracturing" will not be used, DME does not identify what drilling additives it intends to use, does not warrant and represent that the well drilling fluids it will use will be NSF Standard 60 certified, and does not commit to avoiding all fracking additives at any stage of construction.

98. The "base treatable water" level referenced by DME in its Well Permit Application implies that DME may introduce harmful constituents, pollutants or toxic chemicals below that level within the C aquifer.

99. Upon information and belief, DME knew these representations to be false or, at a minimum, misleading, but included them within the Well Permit Application for the purpose of inducing AOGCC to issue Well Permit No. 1255 and avoiding the need to apply for an aquifer protection permit.

100. Upon information and belief, AOGCC justifiably relied upon the false or misleading representations in issuing Well Permit No. 1255.

101. Although it was aware, or reasonably should have been aware, that such information was material to the AOGCC's determination to issue Well Permit No. 1255, DME did not disclose that the City would not support DME's drilling of any well or engaging in mining operations within the vicinity of the anticipated well in light of its proximity to the Red Gap Ranch and the City's future municipal water supply.

102. Upon information and belief, DME omitted this material information for the purpose of inducing AOGCC to issue Well Permit No. 1255.

103. Upon information and belief, AOGCC would not have issued Well Permit No. 1255 had it known of the City's concerns and objections to DME's proposed project or the potential for harmful constituents, toxic chemicals or other pollutants to be introduced into the C aquifer.

104. AOGCC, as an agency of the State, is harmed by DME's false or misleading representations and omissions of material fact within its Well Permit Application, as the misinformation interferes with AOGCC's obligation to the public to properly evaluate the facts and ensure compliance with applicable laws and regulations by an applicant before issuing well permits.

105. A permit that is issued based upon inaccurate or false factual information is invalid.

106. The City is harmed by DME's negligent misrepresentations and omissions of material fact within its Well Permit Application, as it has been deprived of the opportunity to lodge objections, investigate and make public comment before its future municipal water supply is potentially exposed to irreversible contamination.

COUNT FOUR

(Declaratory Relief—Violation of Aquifer Protection Permit Requirements, A.R.S. §§ 49-241, *et seq.*)

107. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

108. The Well Permit Application implies that DME intends to engage in well stimulation during the course of exploratory or mining operations related to the Well.

109. The Well will be drilled into the C aquifer, which is a source of drinking water for multiple municipalities, including the City, and is the source of the City's future municipal water supply field at Red Gap Ranch.

110. The ADEQ requires an Aquifer Protection Permit for discharges into an aquifer.

111. DME intends to discharge into an aquifer that serves as a drinking water supply for much of the northern Arizona region's populace.

112. DME's conduct will violate Arizona's statutes by discharging into an aquifer without first obtaining an aquifer protection permit.

///

113. The City asks this Court to issue an order declaring that DME must apply for and secure an aquifer protection permit pursuant to A.R.S. §§ 49-241, *et seq.* before it commences construction of or operates the Well.

COUNT FIVE

(Injunctive Relief)

114. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

115. DME Well Permit No. 1255 authorizes it to proceed with construction of a well in the C aquifer.

116. DME intends to construct the Well during the month of December 2020, or soon thereafter.

117. DME has not secured an aquifer protection permit and has not disclosed the drilling fluids that it intends to use to conduct Well operations.

118. Once constructed, DME apparently intends to introduce harmful constituents, pollutants, or toxic chemicals in the Well.

119. When introduced into the C aquifer via the Well, harmful constituents, pollutants, or toxic chemicals may degrade water quality to such an extent that it is not suitable for human consumption.

120. Red Gap Ranch, the site of the City's future municipal water supply well field, is down gradient of DME's Well site.

121. Waters contaminated by DME's Well will migrate to Red Gap Ranch, and may irreversibly contaminate the waters underlying Red Gap Ranch such that it is no longer suitable for human consumption or other municipal use.

122. The City has invested millions of dollars in developing Red Gap Ranch to serve as the future municipal water supply for its residents, and as a regional water supply, and there is no feasible, alternative site in the region for the City to develop.

123. The City has no adequate remedy at law as monetary relief will not suffice to clean the contaminated aquifer or locate a new site for municipal water supplies.

124. The Court should issue a temporary restraining order and a preliminary injunction in the forms submitted with the contemporaneously-filed Application for Temporary Restraining Order and Preliminary Injunction. Such order should include, but not be limited to, requiring that DME:

a. Halt any construction of the Well until or unless it obtains an aquifer protection permit;

b. Halt any construction of the Well until or unless DME certifies, warrants and represents that it will use only NSF Standard 60 drilling additives in its Well and other mining operations;

c. Certifies, warrants and represents that it will not use, inject or otherwise introduce any "fracking" or other chemicals, constituents or other materials into the Well that may degrade the existing water quality underlying Red Gap Ranch; and

d. Enters into an oversight and monitoring plan with the City and other necessary parties to ensure the foregoing representations for the life of the DME project.

WHEREFORE Plaintiff City of Flagstaff requests that the Court enter judgment against Defendant Desert Mountain Energy Corp as follows:

A. Enter the Temporary Restraining Order submitted contemporaneously herewith;

B. Enter the Preliminary Injunction submitted contemporaneously herewith;

C. For a declaration that Well Permit No. 1255 is invalid and of no effect by virtue of the misrepresentations and material omissions detailed herein;

D. For a declaration that Defendant DME is required to secure an Aquifer Protection Permit before drilling, constructing, or operating any well in the C aquifer for the purpose of exploring or extracting helium or hydrocarbons;

E. For actual and compensatory damages in an amount to be determined at trial;

F. For Plaintiff's reasonable attorneys' fees and costs incurred herein and accruing after judgment, plus interest on such fees and costs at the legal rate per annum from the date of judgment until paid in full;

G. For an award of interest on the judgment at the legal rate until paid in full; and

H. For such other and further relief as the Court.

DATED this 11th day of December 2020.

TSL LAW GROUP, PLC

By: Sara V. Ransom
Lee A. Storey
Sara V. Ransom
Attorneys for City of Flagstaff

VERIFICATION

I, Sterling Solomon, City Attorney for Plaintiff, being first duly sworn upon my oath, depose and state:

1. I am over the age of 18 years and am competent to make this Verification based on my personal knowledge and based on the business records of Plaintiff, of which I am a custodian.

2. I have reviewed the foregoing Verified Complaint, know the contents thereof and exhibits attached thereto, and affirm that, to the best of my knowledge, its contents and exhibits are true and accurate.

DATED this 11th day of December, 2020.

By: Sterling Solomon
STERLING SOLOMON

SUBSCRIBED AND SWORN to before me this 11 day of December, 2020.

By: Stacy Saltzburg
Notary Public

My Commission Expires: 01/24/2022

STACY SALTZBURG
Notary Public - State of Arizona
COCONINO COUNTY
My Commission Expires
January 24, 2022

Exhibit 1

MOU-2019-146-AG2

DESERT MOUNTAIN ENERGY

January 22, 2019

MEMORANDUM OF UNDERSTANDING

MUTUAL COOPERATION AND STRATEGIC DEVELOPMENT OF HELIUM AND HYDROCARBON RESOURCES IN THE GREATER FLAGSTAFF REGION AND IN COCONINO COUNTY, ARIZONA

WHEREAS, the CITY OF FLAGSTAFF ("Flagstaff") is the largest city in Northern Arizona and serves as the regional, cultural and county seat for Coconino County, and comprises over 64 square miles at the base of the San Francisco Peaks;

WHEREAS, Flagstaff is a governmental, educational, economic, cultural and Community center for Northern Arizona and Coconino County;

WHEREAS, Flagstaff desires to encourage appropriate economic development in order to create cash flow for Flagstaff and local communities, with a view toward furthering local education, job creation, increasing local and regional infrastructure and generally increasing the well-being of the people;

WHEREAS, Flagstaff desires to maintain and preserve the beautiful Northern Arizona landscape and environment as a long-term legacy, whilst at the same time encouraging reasonable, appropriate economic development that is mindful of preserving the environment and not impinging significantly on the rights and customs of local indigenous communities; and

WHEREAS, DESERT MOUNTAIN ENERGY CORP. ("DME"), a public energy company with offices in Phoenix, AZ that is focused on development of helium and hydrocarbon resources in Arizona, via an outlook using renewable resources where economically feasible, has an experienced and highly qualified technical team of professionals and senior management who are familiar with exploration, drilling, production and distribution of helium, oil & gas resources; and

WHEREAS, DME has identified potential targets for exploration and development of helium and hydrocarbon resources in the greater Flagstaff region and Coconino County, and is requesting the support of Flagstaff in carrying out reasonable exploration and development activities which do not significantly compromise the environment or impinge the material rights of the indigenous communities;

NOW THEREFORE, THE PARTIES DO HEREBY AGREE:

That Flagstaff and DME shall work together on a cooperative basis to evaluate potential resources and if mutually beneficial, to develop reasonable plans for the strategic development of helium and hydrocarbon resources in the greater Flagstaff region and in Coconino County generally;

That the parties shall share all available technical and geological data related to helium and hydrocarbon resources in the Flagstaff region and in Coconino County generally;

That DME will fully consult with Flagstaff concerning each major exploration, drilling, development and or production program in the area with a view toward limiting environmental impact whilst allowing for successful extraction of valuable resources in order to generate cash flow for Flagstaff and the local communities, to encourage job creation and enhancement of local infrastructure; and to generally improve the well-being of the people;

That the parties will work together on a cooperative basis to encourage access to areas identified as highly prospective for helium and hydrocarbon resources in Coconino County which are not in designated national or state parks or are otherwise recognized as highly sensitive from the standpoint of environmental, water resources, cultural, or existing grazing or livestock considerations.

The Term of this Memorandum of Understanding shall be One year from the date hereof to and including January 10, 2020, unless terminated by either party on ten days' prior written notice and without further liability or obligation to the other party. It is contemplated that the parties may enter into one or more written agreements from time to time to further the objectives of this Memorandum of Understanding.

IN WITNESS WEREOF, the parties do set their hand to this Memorandum of Understanding as of the date above written:

DESERT MOUNTAIN ENERGY CORP.

By_____
Irwin A. Olian, CEO & Director

THE CITY OF FLAGSTAFF

By Barbara Goodrich
BARBARA GOODRICH
CITY MANAGER

City of Flagstaff
Memorandum of Understanding
Desert Mountain Energy Corp.

ATTEST:

Stacy Saltzburg
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibit 2

LIC-2019-146-AG1

CITY OF FLAGSTAFF
LICENSE FOR ACCESS AND SEISMIC TESTING
ON RED GAP RANCH

This License Agreement ("License") is entered into this 23 day of January, 2019 by and between the City of Flagstaff, a municipal property corporation ("City") and Desert Energy Corp., a Nevada for-profit corporation doing business as Desert Mountain Energy Corp. ("Licensee").

RECITALS

A. City owns tracts of vacant land located east of the City of Flagstaff, and known as Red Gap Ranch. The lands were acquired for their water rights and are subject to grazing leases. The City lands are interspersed with State Land Department parcels ("state lands") in a checkerboard pattern.

B. Desert Mountain Energy Corp. has obtained approximately 19 non-competitive oil and gas leases of state lands from the State Land Department to conduct seismic testing, drilling, and production of helium gas on state lands.

C. City desires to grant Desert Mountain Energy Corp. a license across City lands so that Desert Mountain Energy Corp. is able to access State lands and conduct seismic testing.

NOW, THEREFORE, in consideration for the conditions of this License, the parties agree as follows:

1. **Term.** The License will commence on January 23, 2019and continue for a period of one (1) year, unless sooner revoked or terminated pursuant to this License. The License may be renewed upon written approval of the City Manager and Licensee.

2. **License for Ingress and Egress, and Seismic Testing.** City hereby grants Licensee a non-exclusive license for ingress and egress, including the right to drive small equipment, four-wheelers, vibroseis rubber track vehicle and small trucks (collectively "Equipment"), across City lands identified as:

Township and Range section numbers: T20N R12E Sections 3, 11, 13; and T20N R13E Sections 18, 19, 21, 22, 27, 29, and 33 also identified respectively as Coconino County Assessor Parcel Nos. 40607002C (690.24 acres), 40607002B (754.24 acres), 40608001K (2,479.74 acres), collectively ("City Lands")

but only within the existing roads ("Existing Roads") and within the transect lines ("New Paths") identified in the documents attached hereto as Exhibit A. The New Paths and the crossings at state/city owned corners are fifteen feet (15') wide. The crossings at the corners run at 45° degree angle and are often referred to as butterfly easements. Licensee shall use the same access routes in and out of City Lands where possible, so as to minimize disturbance to the land.

City hereby further grants License a non-exclusive license to conduct seismic testing on City Lands using Equipment operated on the Existing Roads and New Paths. The seismic testing

activities involve operating the Equipment and identifying the geologic structures at a depth of approximately 3,850 to 1,400 feet below surface by means of vibration. No explosives will be used.

3. Fees. In consideration of the grant, Licensee shall pay City:

a. A one-time administration fee of $1,500.00;

b. A License fee for the initial term (one year) is waived in exchange for a copy of the report compiling seismic testing information on City Lands. Licensee will provide City with an electronic copy of both the underlying data and the report at no expense.

c. A Security Deposit of $5,000 which may be drawn upon by City in the event Licensee does not promptly complete restoration work under this License, to pay for City costs in doing such restoration work. This deposit will not accrue interest to Licensee but will be refunded to Licensee upon conclusion of the License if not otherwise applied to restoration work. If the Security Deposit is drawn down, Licensee shall restore it to the original amount.

4. Adjustments to License Fee. Fees and deposits may be adjusted upon renewal of the License.

5. Reserved.

6. City Representative. The City of Flagstaff Water Services Director will serve as the City's representative and will have authority to approve Licensee's activities on City Lands. Any City approval shall not have the effect of waiving Licensee's obligation to comply with this License and other applicable laws and regulations. Contact information: Brad Hill, (928) 213-2400.

7. Request to Use Other Areas. Licensee shall submit a request to the City Representative at least 10 days prior to commencing any proposed activities on City Lands other than in the Access Ways and Butterfly Easements, except in case of an emergency and in such event, notice will be provided to City as soon as practicable (within 48 hours).

8. Responsibility for Employees, Contractors, and Subcontractors. Licensee shall ensure that all its employees, contractors and subcontractors ("Agents") comply with the terms and conditions of this License, and Licensee will be responsible for any violation of the License by an Agent. Prior to commencing any activities on City Lands, Licensee shall:

a. Provide a copy of this License to each of its Agents who will be engaged in the maintenance; and

b. Require compliance with this License as a condition of Licensee's contract with any contractor who will be engaged in the maintenance, and require each such contractor to include compliance with this License as a condition of its subcontracts.

9. Access Across Adjacent Properties. Licensee must obtain separate approval from adjacent property owners as necessary to access City Lands.

10. Approvals. Licensee shall acquire any necessary permits or approvals from the federal government, City of Flagstaff, Coconino County, Arizona Parks Department, Arizona Department of Transportation, Arizona State Museum and State Historic Preservation Office and/or the County Highway Department prior to grading or disturbing any City Lands.

11. Archaeological and Historic Preservation. City is not aware of any archaeological resources along Existing Roads, and has not conducted an assessment of all City Lands. If Licensee detects or finds any archaeological resources or historical artifacts on City Lands, all work shall cease, and Licensee shall notify the City Representative with the location, observations, and photographs. City Representative shall notify the Arizona State Museum and all work must comply with the Arizona Antiquities Act.

12. Flora and Native Plants. Prior to driving on New Paths, Licensee shall submit a request to the City of the amount of flora, if any, proposed to be cut, removed, or destroyed by use of the Equipment and shall pay the City such sum of money as the City may determine to be the full value of the flora to be so cut, removed or destroyed.

If the removal of plants protected under the Arizona Native Plant Law is necessary to enjoy the privilege of this License, the Licensee hereunder must previously acquire the written permission of the Arizona State Land Department and the Arizona Department of Agriculture to remove those plants.

13. Grazing. City has grazing leases across City Lands: Lease Agreement dated February 20, 2007 with Manterola Sheep Company, Inc., an Arizona corporation ("Grazing Lease"), a copy of which has been provided to Licensee.

a. Licensee or its Agents shall notify the grazing lessee(s) at least 10 days prior to entering City Lands.

b. If Licensee activities on City Lands occur during periods of livestock grazing, Licensee will take the necessary measures to insure livestock protection and containment. This may require temporary fencing.

c. Any damage to rangeland improvements by the Licensee or its Agents (i.e., fencing, gates, pipelines, earthen structures, etc.) will be replaced and/or reconstructed with new material to grazing lessee's satisfaction and at Licensee's expense.

d. Licensee shall provide City with documentation of the grazing lessee's consent prior to making any alterations to existing improvements.

e. Licensee shall not engage in any activity that will substantially interfere with or otherwise cause a breach of the Grazing Lease.

14. Materials. Licensee shall not remove or allow removal of any materials (including but not limited to dirt and rocks) from City lands without the prior written consent of the City.

15. Public Use. Licensee shall not exclude from use of U.S. Forest Service, State of Arizona, City of Flagstaff its lessees or licensees, or the general public the right of ingress and egress over

City lands. City may approve temporary fencing to protect work areas.

16. Soil. Licensee shall conduct all maintenance activities in a manner that will minimize disturbance to all land values including, but not limited to, vegetation, drainage channels, and streambanks. Work methods shall be designed to prevent degradation of soil conditions in areas where such degradation would result in detrimental erosion or subsidence. Licensee shall take such other soil and resource conservation and protection measures on the land under grant or permit as determined necessary by the City.

17. Trees. Licensee shall not cut nor allow to be cut or removed any timber or standing trees on City lands, without the prior written consent of the City.

18. Restoration following Activities. Within thirty (30) days of completion of any activities on City Lands, Licensee shall submit to City a statement of work completed and thereafter shall restore any land or improvements it has disturbed including, but not limited to, restoration of the surface, revegetation, and fencing as determined necessary by the City. Licensee shall reseed any disturbed surface area with native seed sourced from the Colorado Plateau. In the event Licensee does not promptly complete restoration work, City reserves the right to do such restoration work and Licensee shall pay for the City's costs. City will apply the Security Deposit towards City's costs and invoice Licensee for any remaining balance.

19. Compliance with Laws. Licensee shall adhere to all applicable laws, rules, regulations, ordinances and building codes related to use of the City Lands.

20. Indemnification. Licensee shall indemnify, defend and hold harmless the City, its council, boards and commissions, officers, employees from all losses, claims, suits, payments and judgments, demands, expenses, attorney's fees or actions of any kind resulting from personal injury to any person, including employees, subcontractors or agents, guests or invitees of Licensee or damages to any property arising or alleged to have arisen out of the negligent performance of the License, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. This indemnification provision shall survive termination or expiration of the License.

21. Environmental Indemnification. Licensee shall protect, defend, indemnify and hold harmless the City from and against all liabilities, costs, charges and expenses, including attorneys' fees and court costs arising out of or related to the presence of or existence of any substance regulated under any applicable federal, state or local environmental laws, regulations, ordinances or amendments thereto because of: (a) any substance that came to be located on the City Lands due to Licensee's use or occupancy of the lands by the Licensee before or after the issuance of the License; or (b) any release, threatened release or escape of any substance in, on, under or from said City Lands that is caused, in whole or in part, by any conduct, actions or negligence of the Licensee, regardless of when such substance came to be located on the City Lands.

For the purposes of this License, the term "regulated substances" shall include substances defined as "regulated substances", "hazardous waste", hazardous substances", "hazardous materials", "toxic substances" or "pesticides" in the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Meterials Transportation Act, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the relevant local and state environmental laws, and the regulations, rules and

ordinances adopted and publications promulgated pursuant to the local, state and federal laws. This indemnification shall include, without limitation, claims or damages arising out of any violations of applicable environmental laws, regulations, ordinances or subdivisions thereof, regardless of any real or alleged strict liability on the part of City. This environmental indemnity shall survive the expiration or termination of this License and/or any transfer of all or any portion of the City Lands and shall be governed by the laws of the State of Arizona.

In the event any such action or claim is brought or asserted against the City, the Licensee shall have the right, subject to the right of the City to make all final decisions with respect to City's liability for claims or damages, (i) to participate with City in the conduct of any further required cleanup, removal or remedial actions and/or negotiation and defense of any claim indemnifiable under this environmental indemnity provision, having reasonable regard to the continuing conduct of the operation/business located on the City Lands and (ii) to participate with the City in negotiating and finalizing any agreement or settlement with respect to any such claim or cleanup.

22. **Termination by Licensee.** Licensee may terminate this License upon at least thirty (30) days written notice to City for convenience. In such event Licensee shall provide City with a copy of any seismic testing on City Lands completed as of the termination date.

23. **Revocation by City.** City may revoke this License in the event of any of the following:

a. Licensee has violated a term or condition of this License, City has provided written notice and reasonable opportunity to cure, and Licensee has failed to cure the same; or

b. Licensee has engaged in activities that will have the effect of causing City to violate its Grazing Leases as determined in the discretion of City after consultation with the Lessee; or

c. The City Manager shall have the right to revoke this License upon at least six (6) months' advance written notice to Licensee for convenience.

The City of Flagstaff shall be forever wholly absolved from any liability for damages which might result to the Licensee upon cancellation or revocation.

24. **Restoration upon Conclusion of License.** Within thirty (30) days after cancellation, revocation, expiration or termination of the License, Licensee shall, as far as is reasonably possible, restore and/or rehabilitate the land to its natural condition to the satisfaction of the City. Licensee shall reseed any disturbed surface area with native seed sourced from the Colorado Plateau. Licensee may, with written permission of City, allow abandonment of improvements in place. If improvements are not removed and/or restoration is not completed within thirty (30) days or other reasonable time allowed by City, City shall do such work and charge the actual costs of such work against the Security Deposit and invoice Licensee for any balance of the costs incurred.

25. **Reserved.**

26. **Fire Treatment Use.** City reserves the right to engage in or allow fire treatment (including but not limited to, cutting of timber, clearing, prescribed burns, and fire-fighting) in the City Lands and such Fire Treatment Use shall have priority rights over any use permitted pursuant to this License.

27. **Other Non-Fire Treatment Uses.** City reserves the right to execute licenses or grants within the City Lands for other non-fire treatment uses, so long as the same do not interfere with Licensee's proper use of the Access Ways and Butterfly Easements.

28. **Laws.** City reserves the right to amend this License to conform with current law, including any amendments or repeals of existing laws as may hereafter be made, and no provisions of this License shall create any vested right in conflict with the same.

29. **Governing Law.** This License shall be construed in accordance with laws of Arizona. The courts of Arizona shall have exclusive jurisdiction and Coconino County shall be the venue.

30. **Nondiscrimination.** The parties agree to be bound by applicable State and Federal rules governing Equal Employment Opportunity, Non-discrimination and Disabilities, including Executive Order No. 99-4.

31. **Conflict of Interest.** This contract is subject to cancellation pursuant to A.R.S. § 38-511.

32. **Assignment.** Licensee may assign this License with prior written consent of City, and upon assignee's assumption of all rights and obligations of the License.

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

If to Licensee:	With a copy to:
Robert W. Rohlfing, Director Desert Mountain Energy Corp. 1153 56th Street Delta, B.C. V4L 2P8 Canada	Arizona Statutory Agent per Arizona Corporation Commission records
If to City:	With a copy to:
City Flagstaff Water Services Director City of Flagstaff 211 W. Aspen Avenue Flagstaff, AZ 86001	City Real Estate Manager City of Flagstaff 211 W. Aspen Avenue Flagstaff, Arizona 86001

Or such other person designated by the party in writing.

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

CITY OF FLAGSTAFF

City Manager

LICENSEE

Title:

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Attachments:

Exhibit A – Documents showing Access Ways and New Paths

Exhibit 3

Council meeting to shed light on Red Gap Ranch helium mining

- Scott Buffon

- Feb 12, 2019 Updated Mar 19, 2019

- 0

SALE! Subscribe for $1/mo!

Red Gap Ranch with the San Francisco Peaks in the distance.
Emery Cowan

- Facebook
- Twitter
- Email
- Print
- Save

Scott Buffon

The Flagstaff City Council hopes to clarify the city's stance on an agreement they entered into allowing Desert Mountain Energy to access city property for helium and hydrocarbon that could be present beneath the surface.

The land in question, Red Gap Ranch, was purchased by the city with taxpayer money for a different resource also found beneath the surface — potential drinking water. City voters **approved** a $15 million bond for the purchase to extend the city's water resources, with city officials only spending $6.9 million for the land and water access in 2005.

The city is holding a council meeting on Tuesday about a Desert Mountain Energy press release that city officials say "overstates" the city's commitment to their agreement that included exploration and production, according to the **online council agenda**.

Alicyn Gitlin, conservation coordinator at the Sierra Club, is concerned about the city's lack of transparency and communication on the mining and exploration prospect, which she believes could risk damaging the city's water.

"It's a very big violation of the public trust by not including public input and notification prior to making a decision like this that could affect our future water supply," Gitlin said.

Red Gap Ranch is located east of Flagstaff, south of the Navajo Nation and adjacent to the I-40 highway and has not yet been developed for city use.

Jessica Drum, spokesperson for the City of Flagstaff, encouraged people to attend the council meeting for further information.

The Desert Mountain Energy **press release** and focus for the concern states: "The parties agree to work together to limit the environmental impact of the work and production programs whilst allowing for the successful extraction of valuable resources."

Olian Irwin, CEO for Desert Mountain Energy, said he stands by the information in the press release as accurate, but said there is always a possibility of misinterpretation.

Irwin also alleged that the company had no intention to build a well on the city's land or damage the city's water supply, despite the press release stating it could allow for hydrocarbon resource development. Hydrocarbons can include multiple different compounds but often occur in petroleum and natural gas.

"We won't do a well for helium if there's any danger of contaminating the water supply at all," Irwin said. "It's just not going to happen."

A city council **report** from mid-January explains that the city will only allow seismic testing and mining if both Desert Mountain Energy and the city agreed to pursue the project.

"The memorandum of understanding: expresses the parties' desire to explore possibilities for helium exploration and mining if mutually beneficial and to cooperatively work together," the memo to the city council explained.

The agreement details the use of seismic testing to explore the presence for helium. Taylor McKinnon, public lands campaigner with the Center for Biological Diversity, said he is also concerned with how little public input has been allowed on the project, which he feels might endanger the Red Gap Ranch property.

"It's bad public policy," McKinnon said. "Secondly, a question arises, how does facilitating hydrocarbon exploration and development fit with the city's new **climate action plan**?"

Desert Mountain Energy describes itself as a producer of helium, oil and gas on their website. Irwin alleges they included hydrocarbon in the agreement, because other gases and minerals can be found while exploring for helium.

"There's no intent, this is not about looking for oil wells," Irwin said. "Maybe that will be clarified with an amendment to the agreement."

City officials also recommend revising the agreement to clarify their perspective, according to the council agenda item.

"Any decisions or forward path by the city would be fully vetted with the council and public to achieve a complete understanding of the process to do any extraction, the environmental impacts, water quality impacts, and other factors that would be related to any decision in moving forward should any helium resource be discovered," the city agenda said.

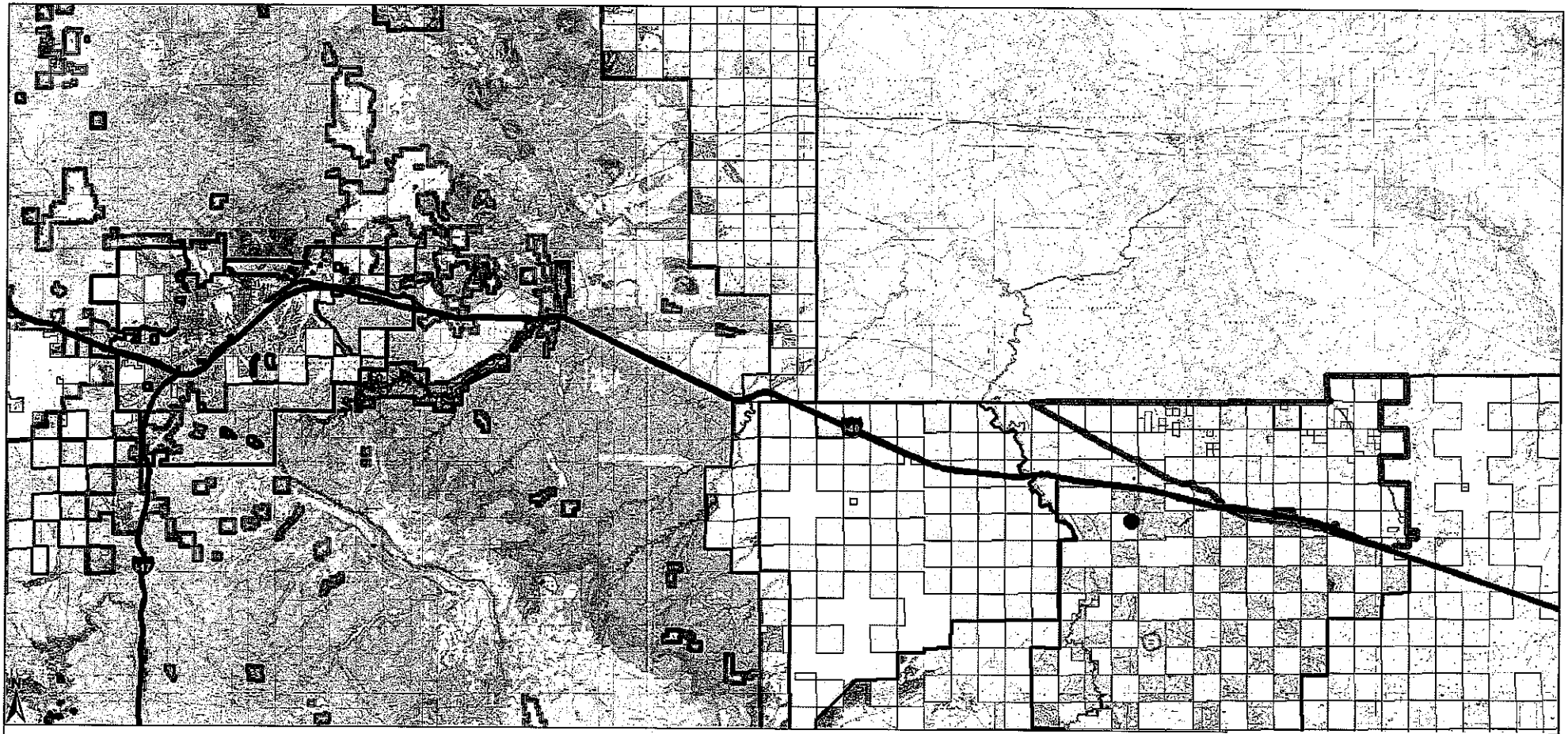
Helium is a nonrenewable resource and is used in items like computer hard drives and MRI machines as coolant.

Scott Buffon can be reached at **sbuffon@azdailysun.com**, on Twitter @scottbuffon or by phone at (928) 556-2250.

0 comments

Exhibit 4

Location of Desert Mountain Energy Drilling Permit Relative to Red Gap Ranch



- DME Permit for Helium and Hydrocarbon Well
- Red Gap Ranch Property & Boundary
- Hopi Hart Ranch Property & Boundary
- Bar-T-Bar Ranch Property & Boundary
- Navajo Reservation
- United States Forest Service
- Private Land
- State Trust Land
- City of Flagstaff

FLAGSTAFF WATER SERVICES

Map created on 08 December 2020

Exhibit 5

APPLICATION FOR PERMIT TO DRILL OR RE-ENTER

APPLICATION TO DRILL ✓ RE-ENTER OLD WELL INJECTION WELL

OIL X GAS X CO2 HELIUM WELL OTHER Helium

AIR QUALITY DIVISION

2020 NOV -3 PM 12:15

NAME OF COMPANY OR OPERATOR

Desert Mountain Energy Corp

Address	City	State	Phone Number
6300 W. 23 St. N.	Muskogee	OK74401	918-752-7020

Drilling Contractor: To be Determined

Address:

DESCRIPTION OF WELL AND LEASE

Federal, State or Indian Lease Number, or if fee lease, name of lessor	Well number	Elevation (ground)
13-120004	26-1	5451.8

Nearest distance from proposed location to property or lease line:	Distance from proposed location to nearsel drilling, completed or applied-for well on the same lease:
1,660' feet	Not Applicable feet

Number of acres in lease	Number of wells on lease, including this well, completed in or drilling to this reservoir:
640	1

If lease purchased with one or more wells drilled, from whom purchased. Name: NA Address:

Well location (give footage from section lines)	Section - Township - Range or Block and Survey	Dedication per A.A.C. R12-7-104(A)(3)
1660 ft FEL 2,335' FNL	S26 T20N R12.5E G&SRB&M	All of Sec

Field and reservoir (if wildcat, so state)	County
Wildcat	Coconino County, AZ

Distance in miles and direction from nearest town or post office: 18 Miles East to Winslow, AZ 1.2 Miles North to Meteor Crater Interchange on I40

Proposed depth:	Rotary or cable tools	Approximate date work will start
2,000'	Air/Mist	11/12/20

Bond status Amount $25,000	Organization Report On file Or attached X	Filing Fee of $25.00 Attached Yes

Remarks

RECEIVED NOV 09 2020 ADEQ

CERTIFICATE: I, the undersigned, under the penalty of perjury, state that I am the: CEO of the Desert Mountain Energy Corp (company), and that I am authorized by said company to make this report; and that this report was prepared under my supervision and direction and that the facts stated therein are true, correct and complete to the best of my knowledge.

Mail completed form to:
Oil and Gas Program Administrator
Arizona Oil & Gas Conservation Commission
c/o Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

e-mail completed form to: azogcc@azdeq.gov

Signature

11-2-20
Date

Permit / LTF No.: 1255/ LTF#86784

Approval Date: November 18th, 2020

Approved By:

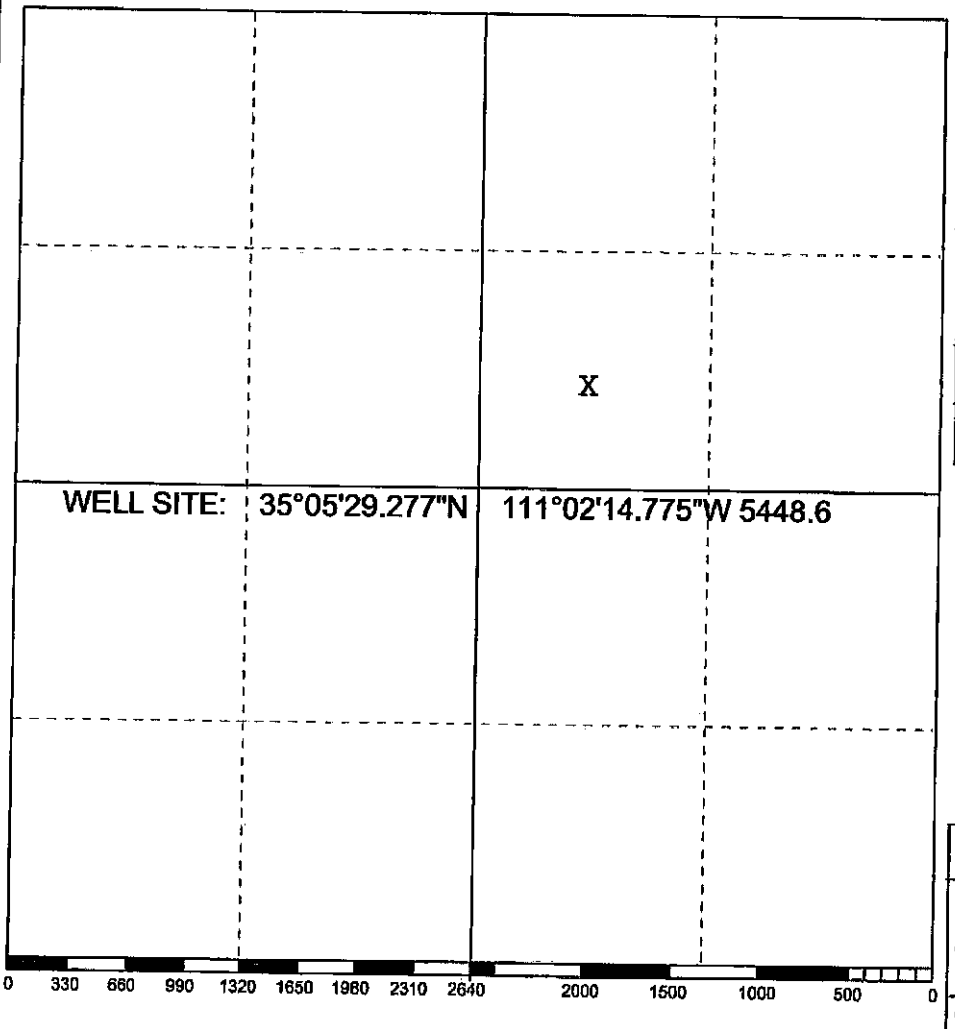
NOTICE: Before sending in this form be sure that you have given all information requested. Much unnecessary correspondence will thus be avoided.

STATE OF ARIZONA
OIL & GAS CONSERVATION COMMISSION
Application to Drill or Re-enter
File two copies: one by mail, one electronically
Form No. 3

(Complete Reverse Side) 03/2018

1. Operator shall outline on the plat the acreage dedicated to the well in compliance with A.A.C. R12-7-107.
2. A registered surveyor shall show on the plat the location of the well and certify this information in the space provided.
3. ALL DISTANCES SHOWN ON THE PLAT MUST BE FROM THE OUTER BOUNDARIES OF THE SECTION.
4. Is the operator the only owner in the dedicated acreage outlined on the plat below ? YES X NO _____
5. If the answer to question four is no, have the interests of all owners been consolidated by communitization agreement or otherwise? YES _____ NO _____ If answer is yes, give type of consolidation _____
6. If the answer to question four is no, list all the owners and their respective interests below:

Owner	Land Description
Desert Mountain Energy Corp	In the SW1/4 NE1/4 S26 T20N R12.5E
State 26-1	



CERTIFICATION

I hereby certify that the information above is true and complete to the best of my knowledge and belief.

Name: R W Rohlfing CEO

Position: CEO , President

Company: Desert MountainEnergy

Date: 11-2-20

I hereby certify that the well location shown on the plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my knowledge and belief.

Date Surveyed: 8/21/2020

Registered Land Surveyor: Alisa J. Templeton

Certificate No. AZ RLS 26406

PROPOSED CASING PROGRAM

Size of Casing	Weight	Grade & Type	Top	Bottom	Cementing Depths	Sacks Cement	Type
7"	23#	J-55	Sur	500'	500'-Surface	150	reg
4.5"	11.6#		Sur	1,990'	1,900'-Surf	180	Prem

ARIZONA OIL and GAS CONSERVATION COMMISSION

State of Arizona
Oil and Gas Conservation Commission
1110 W. Washington Street, Phoenix, AZ 85007
602-771-4501
www.azogcc.az.gov
Marta Hodan, Oil and Gas Administrator

Commissioners:
Frank Thorwald, Chair
J. Dale Nations, Ph.D., Vice Chair
Stephen R. Cooper
William C. Feyerabend

CERTIFICATE for PERMIT to DRILL an OIL, GAS, INJECTION or GEOTHERMAL WELL

PERMIT / LTF NUMBER 1255 / LTF #86784

Has been issued to **Desert Mountain Energy Corp.**

to drill a well known as **Desert Mountain 26-1 State**

located **1660 FEL 2335 FNL**

in Section 26 Township 20N Range 12.5E , Coconino County, Arizona

The entirety of Sec 26, T20N, R12.5E (640 acres) of said Section, Township and Range is dedicated to this well.

Said well shall be drilled substantially as described in the Application and as approved by the OGCC's letter dated November 19, 2020. Desert Mountain Energy Corp. is subject to terms and conditions of the permit to drill and all applicable Arizona Revised Statutes (A.R.S.) Title 27, Chap. 4, Art. 1 and 4, and the Arizona Administrative Code (A.A.C.) R12-7-104, R12-7-106 to 107 and R12-7-175 to 176.

Total Depth: **2,000 feet**

Issued: **November 18, 2020**

API No.: **02-005-20036**

Expires*: **May 17, 2021**

*The permit to drill expires if operations are not commenced within 180 days from date of this certificate (*see* A.A.C R12-7-104(D))

Marta Hodan, Oil & Gas Program Administrator
ogcc@azdeq.gov

OPERATOR SHALL DISPLAY THIS CERTIFICATE IN A CONSPICUOUS PLACE ON-SITE

Exhibit 6

APPLICATION FOR PERMIT TO DRILL OR RE-ENTER

APPLICATION TO DRILL ✓ RE-ENTER OLD WELL INJECTION WELL

OIL X GAS X CO2 HELIUM WELL OTHER Helium

AIR QUALITY DIVISION

2020 NOV -3 PM 12:45

NAME OF COMPANY OR OPERATOR

Desert Mountain Energy Corp

Address	City	State	Phone Number
6300 W. 23 St. N.	Muskogee	OK74401	918-752-7020

Drilling Contractor: To be Determined

Address:

DESCRIPTION OF WELL AND LEASE

Federal, State or Indian Lease Number, or if fee lease, name of lessor	Well number	Elevation (ground)
13-120004	26-1	5451.8

Nearest distance from proposed location to property or lease line:	Distance from proposed location to nearest drilling, completed or applied-for well on the same lease:
1,660' feet	Not Applicable feet

Number of acres in lease	Number of wells on lease, including this well, completed in or drilling to this reservoir:
640	1

If lease purchased with one or more wells drilled, from whom purchased. Name: NA Address:

Well location (give footage from section lines)	Section - Township - Range or Block and Survey	Dedication per A.A.C. R12-7-104(A)(3)
1660 ft FEL 2,335' FNL	S26 T20N R12.5E G&SRB&M	All of Sec

Field and reservoir (if wildcat, so state)	County
Wildcat	Coconino County, AZ

Distance in miles and direction from nearest town or post office
18 Miles East to Winslow, AZ 1.2 Miles North to Meteor Crater Interchange on I40

Proposed depth:	Rotary or cable tools	Approximate date work will start
2,000'	Air/Mist	11/12/20

Bond status Amount $25,000	Organization Report On file / Or attached X	Filing Fee of $25.00 Attached Yes

Remarks

RECEIVED NOV 09 2020 ADEQ

CERTIFICATE: I, the undersigned, under the penalty of perjury, state that I am the: CEO of the Desert Mountain Energy Corp (company), and that I am authorized by said company to make this report; and that this report was prepared under my supervision and direction and that the facts stated therein are true, correct and complete to the best of my knowledge.

Mail completed form to:
Oil and Gas Program Administrator
Arizona Oil & Gas Conservation Commission
c/o Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

Signature

11-2-20
Date

e-mail completed form to: azogcc@azdeq.gov

Permit / LTF No.: 1255/ LTF #86784

Approval Date: November 18th, 2020

Approved By:

NOTICE: Before sending in this form be sure that you have given all information requested. Much unnecessary correspondence will thus be avoided.

STATE OF ARIZONA
OIL & GAS CONSERVATION COMMISSION
Application to Drill or Re-enter

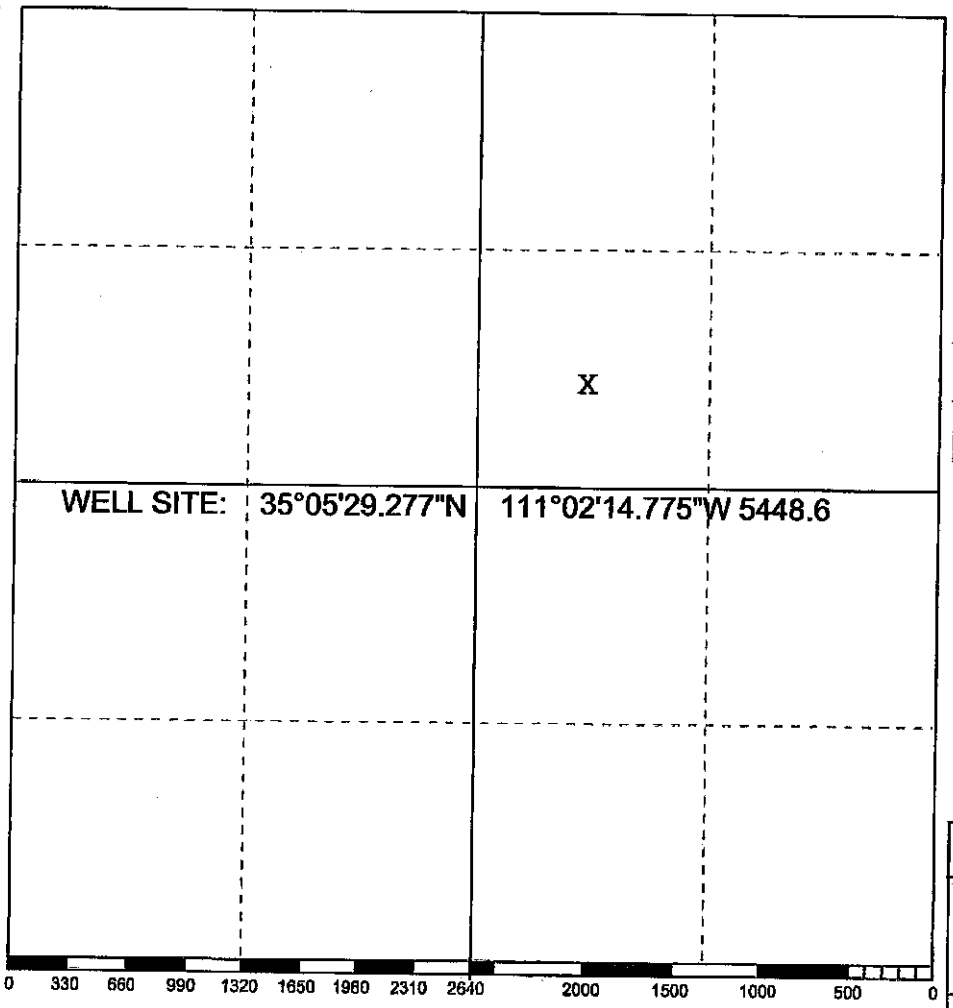
File two copies: one by mail, one electronically

Form No. 3

(Complete Reverse Side) 03/2018

1. Operator shall outline on the plat the acreage dedicated to the well in compliance with A.A.C. R12-7-107.
2. A registered surveyor shall show on the plat the location of the well and certify this information in the space provided.
3. ALL DISTANCES SHOWN ON THE PLAT MUST BE FROM THE OUTER BOUNDARIES OF THE SECTION.
4. Is the operator the only owner in the dedicated acreage outlined on the plat below? YES X NO ____
5. If the answer to question four is no, have the interests of all owners been consolidated by communitization agreement or otherwise? YES ____ NO ____ If answer is yes, give type of consolidation ____
6. If the answer to question four is no, list all the owners and their respective interests below:

Owner	Land Description
Desert Mountain Energy Corp	In the SW1/4 NE1/4 S26 T20N R12.5E
State 26-1	



CERTIFICATION

I hereby certify that the information above is true and complete to the best of my knowledge and belief.

Name: R W Rohlfing CEO

Position: CEO , President

Company: Desert MountainEnergy

Date: 11-2-20

I hereby certify that the well location shown on the plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my knowledge and belief.

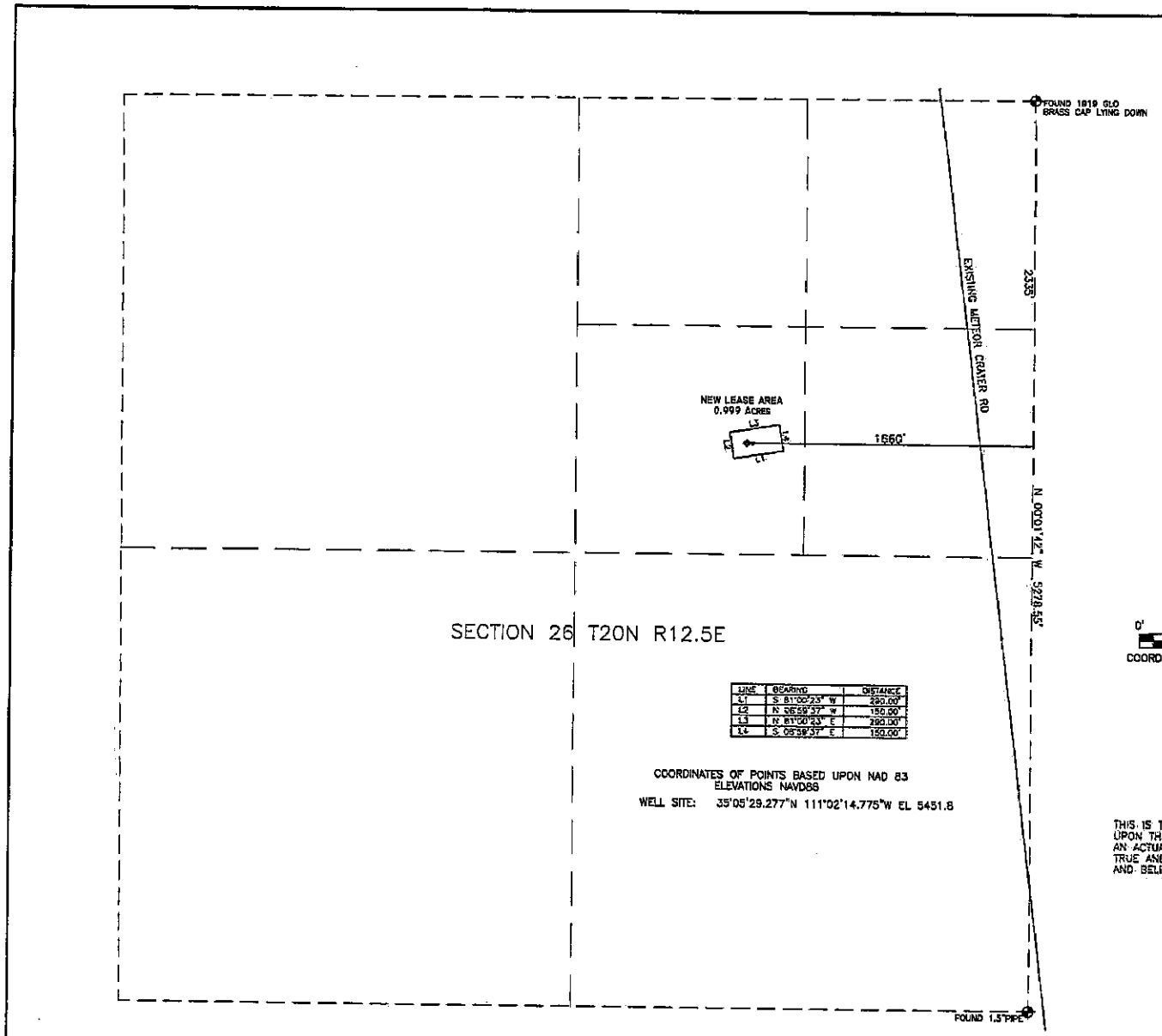
Date Surveyed: 8/21/2020

Registered Land Surveyor: Alisa J. Templeton

Certificate No.: AZ RLS 26406

PROPOSED CASING PROGRAM

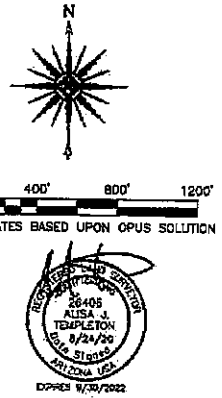
Size of Casing	Weight	Grade & Type	Top	Bottom	Cementing Depths	Sacks Cement	Type
7"	23#	J-55	Sur	500'	500'-Surface	150	reg
4.5"	11.6#		Sur	1,990'	1,900'-Surf	180	Prem



LINE	BEARING	DISTANCE
L1	S 81°00'23" W	290.00'
L2	N 08°59'37" W	150.00'
L3	N 81°00'23" E	290.00'
L4	S 08°59'37" E	150.00'

COORDINATES OF POINTS BASED UPON NAD 83
ELEVATIONS NAVD88

WELL SITE: 35°05'29.277"N 111°02'14.775"W EL 5451.8



COORDINATES BASED UPON OPUS SOLUTION

THIS IS TO CERTIFY THAT THE WELL LOCATION SHOWN UPON THIS PLAT WAS PLOTTED FROM FIELD NOTES OF AN ACTUAL SURVEY MADE BY ME AND THE SAME IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

PLAT OF PROPOSED WELL SITE AND LEASE AREA IN THE SW1/4 NE1/4 SECTION 26, T20N, R12.5E, G&SRB&M COCONINO COUNTY, ARIZONA

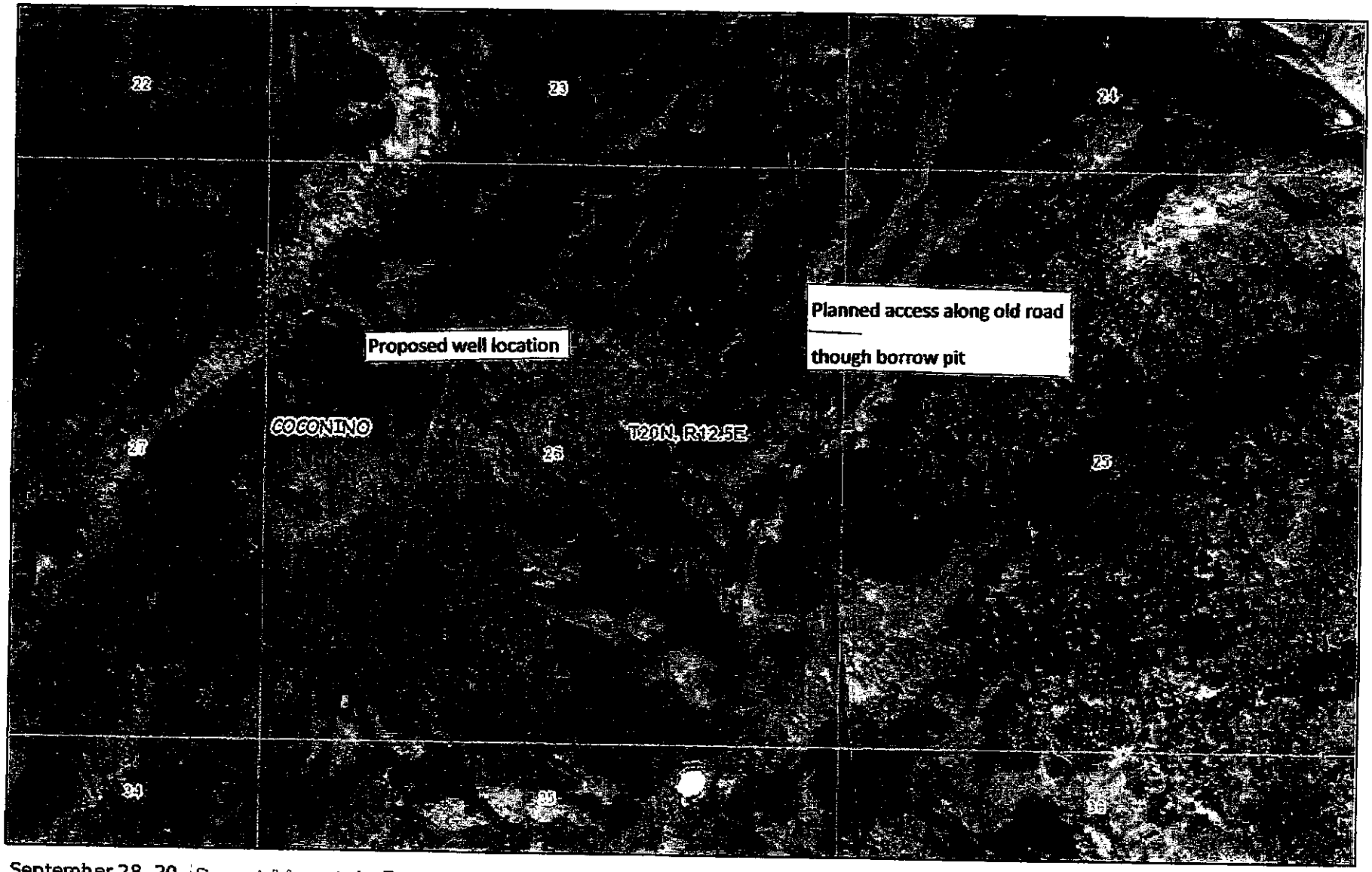
EXTREME MEASURES LAND SURVEYS, INC.
10800 NIGHTHAWK LANE FLAGSTAFF, ARIZONA 86004
928.853.3661 extrememeasures1997@outlook.com

SCALE: 1"=400' (FOLDED ON 18x24)
SURVEYOR: ALISA TEMPLETON
DRAWN: ALISA TEMPLETON
CLIENT: DESERT MOUNTAIN ENERGY CORP
DATE: 24 AUGUST 2020

SHEET
1 of 1

JOB NO.
20-18

Arizona State Land Department



September 28, 20 | Desert Mountain Energy Corp.

STATE 26-1, Coconino County, Arizona

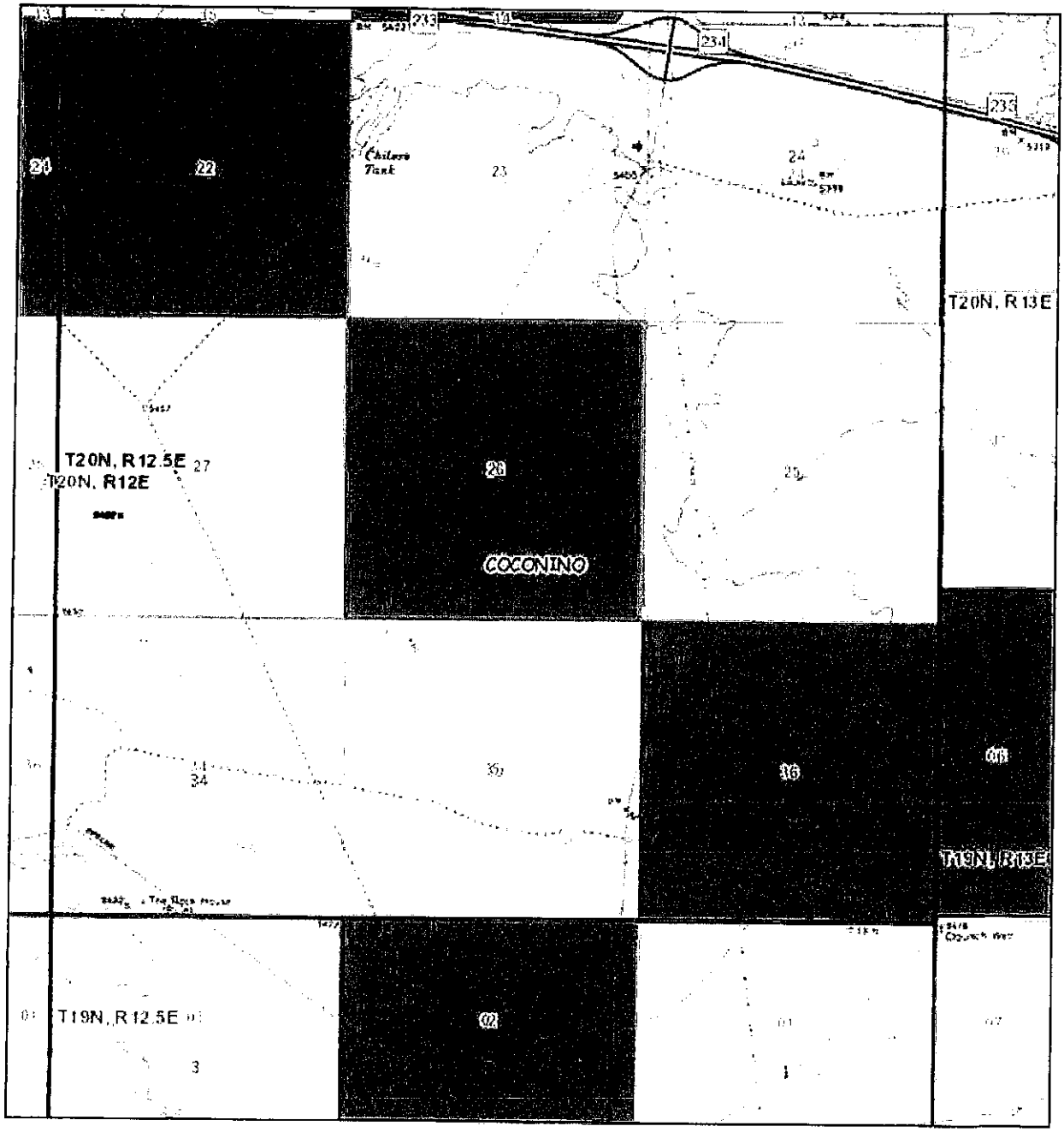
1:18,056

0 0.15 0.3 0.6 mi

0 0.225 0.45 0.9 km

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Arizona State Land Department



November 6, 20

1:36,112

0 0.3 0.6 1.2 mi

0 0.5 1 2 km

Copyright:© 2013 National Geographic Society, i-cubed

APPENDIX A

STATE OF ARIZONA LAND DEPARTMENT
1616 W. ADAMS
PHOENIX, AZ 85007

RUN DATE: 21 May 2018
RUN TIME: 9:56 AM
PAGE: 1

KE-LEASE# 013-120004-00-100 APPTYPE: NEW
AMENDMENT#: 0

LAND#	LEGAL DESCRIPTION	AUS	ACREAGE
19.0-N-12.5-E-02-03-030-1000	LOTS 1 THRU 4 S2N2 S2	0.00	640.600
19.0-N-12.5-E-12-03-053-1000	ALL	0.00	640.000
19.0-N-12.5-E-26-03-053-1000	ALL	0.00	640.000
19.0-N-12.5-E-36-03-030-1000	ALL	0.00	640.000
	TOTALS	0.00	2,560.600

IN WITNESS HEREOF, the parties hereto have signed this Lease effective the day and year set forth previously herein.

DESERT MOUTAIN ENERGY CORP
Lessee

R. W. Pohlig Director
Authorized Representative

R. W. [signature] 5-22-18
Signature Date

STATE LAND DEPARTMENT
Arizona State Land Commissioner

BY [signature] 05.22.18
Date

(SEAL)

Desert Mountain Energy Corp.

6300 W. 23 St. N. Muskogee, OK. 74401

To: Marta Hodan, Director 11/02/20

Arizona Oil & Gas Conservation Commission

C/O Arizona Department of Environmental Quality

1110 W. Washington Street

Phoenix, AZ. 85007

RE: Justification and well planning for well Sec 26 20N 12.5E, Coconino County.

Good Day

Desert Mountain Energy Corp. is seeking to permit and drill a well on the above listed ASLD lease. The company finds both the current and future demands for Helium and the associated pricing to be the most compelling for profitability. The greatly elevated prices provide additional profit margins which ten years ago simply did not exist. As such it not only increases the likelihood for operators to operate successfully on lower volumes, also providing the maximum potential for meaningful royalties being paid to mineral owners and in this case, the Arizona State Land Department. It is our plan to further maximize profits from all wells we drill by processing the helium and selling to end users located in Arizona.

The State 26-1 planned well site, (ASLD Lease#13-120004 ASLD GFOP#041-121486), is situated on the apex of an anticlinal structure which has been previously documented by USGS mapping, numerous geologists and confirmed by our proprietary seismic. This specific anticlinal feature runs from approximately three miles west of location to three miles NE of proposed location. Review of available existing geological data in addition to our physical study of the area and seismic, supports this placement as the location to intersect multiple probable helium bearing zones with the highest porosities and permeabilities. Thereby providing the minimums to eliminate the need to conduct hydraulic fracturing operations. Furthermore, the use of air mist drilling through the prospective zones reduces the damage to the near well bore via intrusion by heavy bentonite clay drilling fluids. The nearest well, (Townsend / Gus Berry State 26-1, Sec 26 19N 13E), approximately 7 miles SE of the intended site did not encounter any H2S. Therefore we do not anticipate encountering any H2S. However, well logs indicate the gas / water contact point was present in all zones. Our location should be approximately 530' structurally higher than the Townsend / Gus Berry well and therefore we would anticipate water free production if gas is present. The Triassic Formation is present at varying locations with the Moenkopi present in outcrops.

Proprietary seismic indicated formation tops are as follows; Permian Kaibab LS 55', Coconino SS 180', Supai 1,250', Ft Apache 1,620' Amos Wash 1,750', with planned TD at 2,000'. The Ft. Apache and Amos Wash are the target formations in this well.

This location is 1,660' from the nearest lease line and therefore does not require a well spacing exemption. Planned access utilizes and old road directly off paved roadway, (paved roadway traverses N/S through section containing drill site,) thence westerly across exposed sand rock then through a small borrow pit to the proposed drill location. This location was selected to use old existing access along with the area containing the least amount of any form of vegetation. As the planned drill location is flat grading is not considered a requirement to drill. Utilization of a smaller air mist drill rig enables us to reduce the drill location to just under one acre. This well will be a vertical single zone completion and large hydraulic fracturing will *NOT* be used. If the well is deemed non-commercial it will be plugged and abandoned in accordance with AZOGCC rules and regulations, nor will any attempt be made to recover any casing.

Well planning calls for two small pits which will be dewatered and backfilled upon completion of operations. 20' of 10" surface conductor is to be set and cemented into place. Followed with drilling an 8.75" hole to approximately 510', setting 500' of 7" 23# casing using approximately 150 sax of cement. Then drill a 6.25" hole to approximately 2,000'. If a decision to set pipe is made, run 1,990', 4.5", 11.6# J-55 casing and cemented to surface with approximately 180 sax of premium lite. A 5000# double ram hydraulic BOP with blind rams will be used by the drilling contractor.

The small footprint for shallow Helium wells also minimizes the impacts to the surface of the state lands, whilst providing a unique opportunity for financial rewards to the taxpayers of the State of Arizona. The area we have targeted has and continues to suffer tremendous negative economic impact with the closing of many facilities which paid meaningful wages. In our meetings with local leaders and legislators, we have been welcomed and encourage to take the chance on this opportunity not only to help them locally with good paying jobs, but to help the children in the education system via the royalties paid to ASLD.

Respectfully submitted,

Robert W. Rohlfing, CEO

Desert Mountain Energy Corp.

Douglas A. Ducey
Governor

State of Arizona
Oil and Gas Conservation Commission
1110 W. Washington Street, Phoenix, AZ 85007
602-771-4501
www.azogcc.az.gov

Commissioners:
Frank Thorwald, Chair
J. Dale Nations, Ph.D., Vice Chair
Stephen R. Cooper
William C. Feyerabend

FORM 1 – ORGANIZATION REPORT

(File two copies: by mail, and electronically)

Principal:

Legal name and business address of the person required to obtain a permit to drill an oil or gas well under Arizona Revised Statutes (A.R.S.) §27-513, as registered with the Arizona Corporation Commission:

Desert Mountain Energy Corp
6300 W. 23 ST. N. Muskogee, OK 74401

If a reorganization, give name and address of previous organization:

State of incorporation: Nevada

Date of permit to do business in the state of Arizona: 01/09/18

Name and mailing address of state agent: Paracorp Inc. 8825 N. 23 Ave. Phoenix, AZ 85021

Authorized to do business in Arizona as a:

- ☒ Domestic or Foreign Corporation A.R.S. §10-1028 Certificate of Good Standing
- ☐ Limited Liability Company A.R.S. §29-614 Certificate of Good Standing
- ☐ Limited Partnership, Limited Liability Partnership, or Limited Liability Limited Partnership certificate or certificate of registration on file at Arizona Secretary of State
- ☐ Individual or Sole Proprietorship doing business under a Certificate of Trade Name registered at Secretary of State pursuant to A.R.S. §44-1460.01

Principal Officers or Partners (if partnership)

Name / Title	Mailing Address
Robert W. Rohlfing CEO/Director	6300 W. 23 ST. N. Muskogee, OK. 74401
Scott Davis CFO/Director	510-580 Hornby ST. Vancouver, BC V6C 3B6

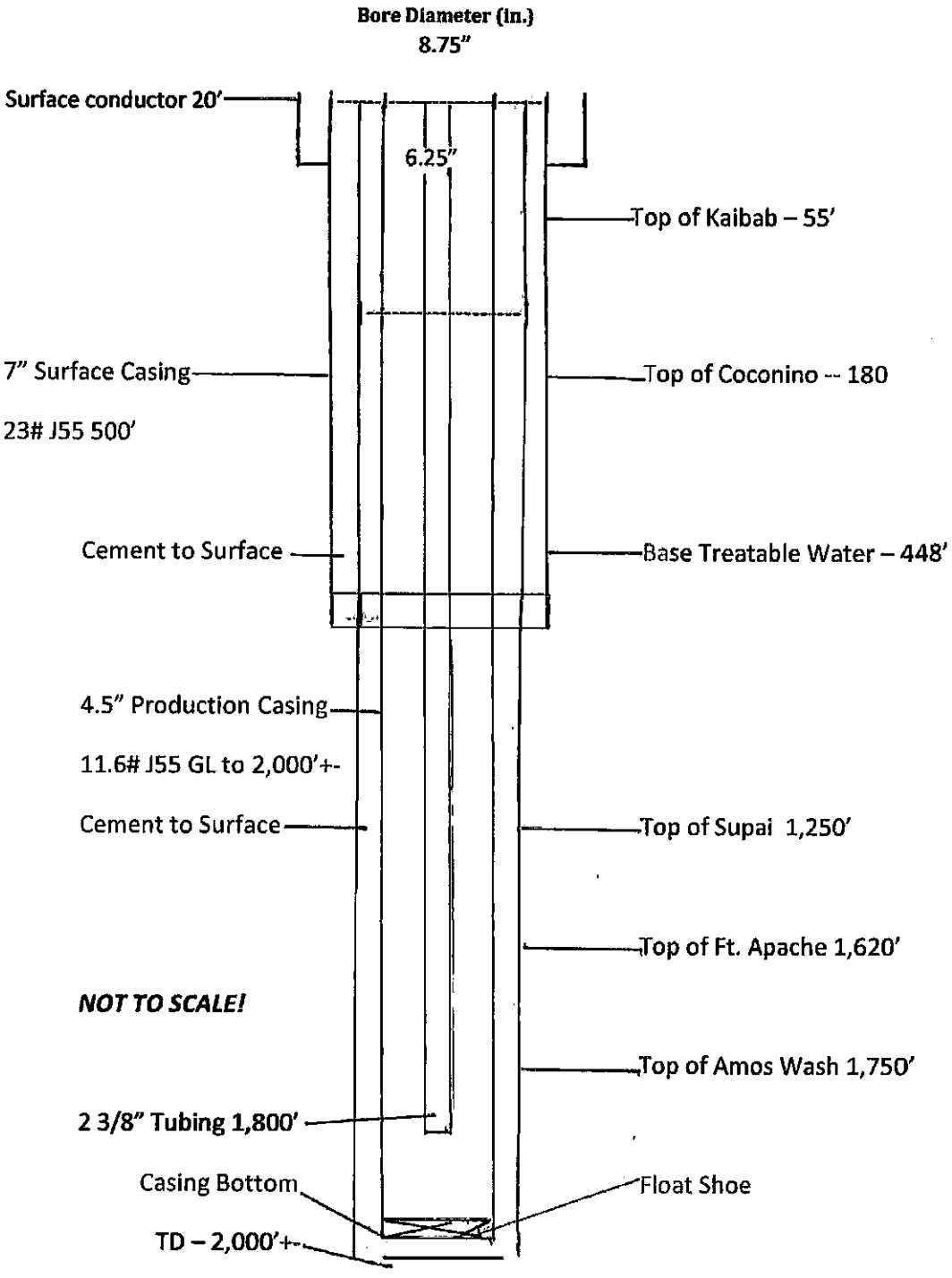
Director's Name	Mailing Address

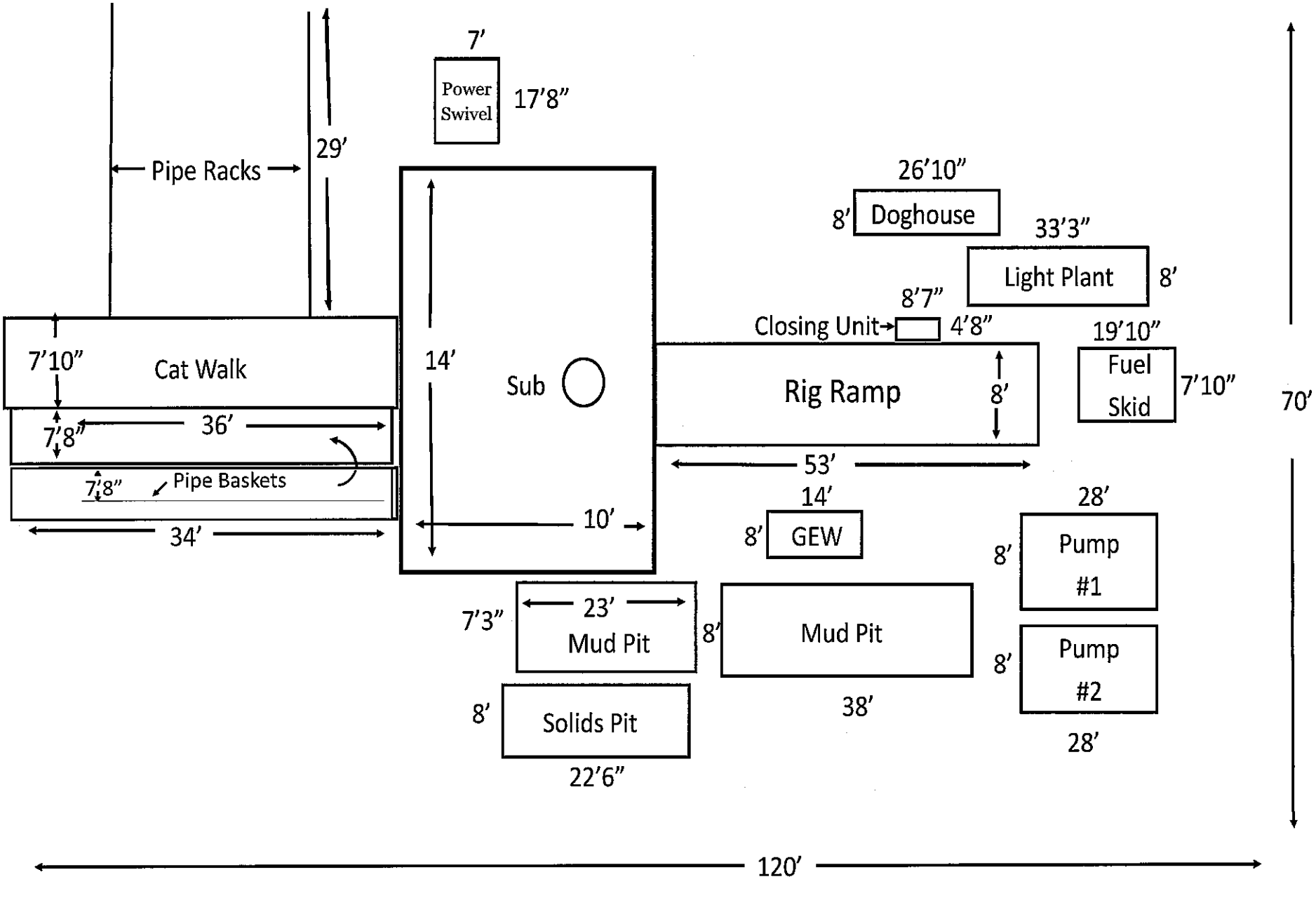
CERTIFICATE I, the undersigned, under the penalty of perjury state that I am the CEO of the Desert Mountain Energy Corp. (company), and that I am authorized by said company to make this report; and that this report was prepared under my supervision and direction and that the facts stated therein are true, correct and complete to the best of my knowledge.

RW Rohlfing CEO
Signature

11-2-20
Date

DESERT MOUNTAIN ENERGY CORP. *STATE 26-1* WELL DESIGN




7'
Power Swivel
17'8"
29'
Pipe Racks
26'10"
8'
Doghouse
33'3"
Light Plant
8'
8'7"
Closing Unit
4'8"
19'10"
Fuel Skid
7'10"
70'
7'10"
Cat Walk
14'
Sub
Rig Ramp
8'
7'8"
36'
53'
7'8"
Pipe Baskets
14'
28'
8'
GEW
8'
Pump #1
34'
10'
7'3"
23'
Mud Pit
8'
Mud Pit
8'
Pump #2
38'
8'
Solids Pit
28'
22'6"
120'

STATE OF ARIZONA

Office of the
CORPORATION COMMISSION

CERTIFICATE OF GOOD STANDING

I, the undersigned Executive Director of the Arizona Corporation Commission, do hereby certify that:

DESERT MOUNTAIN ENERGY CORP.

ACC file number: F22500845

a foreign corporation, was authorized to transact business or conduct affairs in the State of Arizona on 01/09/2018;

That all annual reports owed to date by said corporation have been filed or delivered for filing, and all annual filing fees owed to date have been paid; and

That, according to the records of the Arizona Corporation Commission, said corporation is in good standing in the State of Arizona as of the date this Certificate is issued.

This Certificate relates only to the legal existence of the above named entity as of the date this Certificate is issued, and is not an endorsement, recommendation, or approval of the entity's condition, business activities, affairs, or practices.

IN WITNESS WHEREOF, I have hereunto set my hand, affixed the official seal of the Arizona Corporation Commission, and issued this Certificate on this date: **03/02/2020**

Matthew Neubert, Executive Director

SECURITIES SAFEKEEPING
1700 WEST WASHINGTON ST. - PHOENIX, ARIZONA 85007

DATE: 5-11-2020

STATE AGENCY NO. _____

STATE AGENCY AZ Dept of Environmental Quality

State Treasurer's Use Only

COMPANY Desert Mountain Energy Corp
6300 W. 23rd Street North
Muskogee, OK 74401

DOMESTIC FOREIGN

DEPOSIT

C.D. NO.: Cashier's Check 7684601944 (for financial assurance)

BANK: Wells Fargo Bank, NA.

MAY 12 PM 3:44

MATURITY DATE: 3/23/2021 INTEREST RATE: NA %

AMOUNT $25,000.00

C.D. ASSIGNMENT MUST BE ATTACHED UNLESS C.D. IS PAYABLE TO STATE TREASURER

RELEASE

C.D. NO.:

BANK:

MATURITY DATE: INTEREST RATE: %

AMOUNT $

STATE TREASURER VALIDATION NO. _____

RECEIVED THE ABOVE RELEASE	STATE AGENCY AUTHORIZATION
BY _____ Authorized Signature Date	BY _____ Authorized Signature
_____ Bank or Firm	STATE TREASURER AUTHORIZATION
	BY _____ Authorized Signature
FOR BANK USE ONLY	BANK AUTHORIZATION
_____ Checked by _____ Verified by	BY _____ Authorized Signature
	STATE'S DEPOSITORY BANK

Lee A. Storey (011989)
Alexandra M. Arboleda (016673)
Ethan B. Minkin (019022)
Sara V. Ransom (024099)
TSL LAW GROUP, PLC
8096 N. 85th Way, Suite 105
Scottsdale, Arizona 85258
Telephone: (602) 803-8811
lee@tsllawgroup.com
alex@tsllawgroup.com
ethan@tsllawgroup.com
sara@tsllawgroup.com
Attorneys for the City of Flagstaff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

THE CITY OF FLAGSTAFF,

Plaintiff,

v.

DESERT MOUNTAIN ENERGY CORP.,

Defendant.

No.: CV2020-00624

TEMPRORARY RESTRAINING ORDER AND ORDER SETTING HEARING ON PRELIMINARY INJUNCTION

The Court, having received the *Emergency Application for Temporary Restraining Order And Preliminary Injunction With Notice* ("Application") filed by Plaintiff City of Flagstaff ("Plaintiff"), and having considered all briefing and arguments submitted before the Court hereby issues this Order:

GRANTING the City's request for a Temporary Restraining Order as to Defendant Desert Mountain Energy Corp ("DME), as set forth herein based upon the following findings:

1. DME has publicly represented that it will not conduct mining operations that contaminate public water supplies,

2. DME Well Permit No. 1255 authorizes it to proceed with construction of a well in the C aquifer,

3. The well to be constructed pursuant to DME Well Permit No, 1255 would be built within two miles of Red Gap Ranch, which DME knows to be the site of the City's future municipal water supplies,

4. DME previously agreed that it would cooperate with the City and share information related to its efforts to locate and develop areas for helium or hydrocarbon resources,

5. DME knew of the City's objections to helium or hydrocarbon development near Red Gap Ranch, but did not advise the City of its well permit application, nor did it notify the City directly of its plans to commence construction of the Well,

6. Although DME knew of the City's objections, it did not disclose the City's position within its application for a well permit. Rather, it represented that "local leaders" were supportive of and encouraged DME's project.

7. DME knew that its representations regarding local support of drilling a well for hydrocarbon or helium mining near the City's future municipal water supplies were false or misleading, but made those representations in its well permit application to induce the Arizona Oil and Gas Conservation Commission to issue the permit,

8. Although it previously represented that it does not intend to engage in operations that would contaminate water supplies, DME has not certified that it will only use constituents certified to be safe for drinking water in its operations,

9. DME has not suggested any monitoring plan with regard to its operations,

10. DME has not disclosed any of the constituents it plans to use in its operations,

11. The evidence indicates that DME seeks to preserve the right to introduce harmful constituents, pollutants, or toxic chemicals in the Well,

12. DME has not secured an aquifer protection permit and has not disclosed the drilling fluids that it intends to use to conduct Well operations,

13. When introduced into the C aquifer via the Well, harmful constituents, pollutants, or toxic chemicals may degrade water quality to such an extent that it is not suitable for human consumption,

14. Red Gap Ranch is down gradient of DME's Well site,

15. Waters contaminated by DME's Well will migrate to Red Gap Ranch, and may irreversibly contaminate the waters underlying Red Gap Ranch such that it is no longer suitable for human consumption or other municipal use,

16. The City has invested millions of dollars in developing Red Gap Ranch to serve as the future municipal water supply for its residents,

17. Aside from Red Gap Ranch, there is no feasible, alternative site in the region for the City to develop its future municipal water supplies, and

18. The City has no adequate remedy at law as monetary relief will not suffice to clean the contaminated aquifer or locate a new site for municipal water supplies.

19. The City has demonstrated a likelihood of success on the merits of one or more of its claims in its Complaint, it has demonstrated irreparable injury, and it has shown that serious questions exist regarding DME's existing and planned operations and that the balance of harms favors injunctive relief.

Based upon these findings,

IT IS HEREBY ORDERED that, with respect to Well Permit No. 1255, Defendant shall immediately:

a. Halt any construction of the Well and other mining activities or operations until or unless it obtains an aquifer protection permit;

b. Halt any construction of the Well and other mining activities or operations until or unless DME certifies, warrants and represents that it will use only NSF Standard 60 drilling additives in its Well and other mining operations;

c. Certify, warrant and represent that it will not use, inject or otherwise introduce any "fracking" or other chemicals, constituents or other materials into the Well that may degrade the existing water quality underlying Red Gap Ranch; and

d. Enters into an oversight and monitoring plan with the City and other necessary parties to ensure the foregoing representations for the life of the project.

IT IS FURTHER ORDERED that Defendant shall comply with State law and its own past representations requiring that DME's construction practices and operations ensure the safety and integrity of Plaintiff's future municipal drinking water supply at Red Gap Ranch.

IT IS FURTHER ORDERED that this Order shall expire on December 17, 2020, unless extended by further order of this Court or by stipulation of the Parties.

IT IS FURTHER ORDERED that a hearing to consider issuance of a Preliminary Injunction is scheduled for December 16, 2020 before this Court.

DATED: December 11, 2020.

JUDGE OF THE SUPERIOR COURT

FILED
Valerie Wyant
CLERK, SUPERIOR COURT
01/04/2021 3:28PM
BY: JDUTTON
DEPUTY

Lee A. Storey (011989)
Alexandra M. Arboleda (016673)
Ethan B. Minkin (019022)
Sara V. Ransom (024099)
TSL LAW GROUP, PLC
8096 N. 85th Way, Suite 105
Scottsdale, Arizona 85258
Telephone: (602) 803-8811
lee@tsllawgroup.com
alex@tsllawgroup.com
ethan@tsllawgroup.com
sara@tsllawgroup.com
Attorneys for the City of Flagstaff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

THE CITY OF FLAGSTAFF, Plaintiff, v. DESERT MOUNTAIN ENERGY CORP., Defendant.	No.: CV2020-00624 **VERIFIED COMPLAINT (FIRST AMENDED)** **(BREACH OF CONTRACT; PUBLIC NUISANCE; PRIVATE NUISANCE; TRESPASS; NEGLIGENCE; STRICT LIABILITY/NEGLIGENCE PER SE; DECLARATORY RELIEF; TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION)**

By this Amended Complaint filed as of right pursuant to Arizona Rules of Civil Procedure, Rule 15(a)(1)(B), Plaintiff City of Flagstaff ("City" or "Plaintiff") hereby alleges the following against Defendant Desert Mountain Energy Corp ("DME" or "Defendant DME"):

I. INTRODUCTION

1. This is an action brought by the City of Flagstaff to protect its future drinking water supply from the actions of DME, a thinly capitalized foreign corporation that has declined to seek apparently applicable environmental permits or to explain why such permits are not necessary. DME's conduct and proposed conduct threatens to cause significant, enduring harm to the City's future drinking water supply, located below the City owned Red Gap Ranch. That supply is in the Coconino Aquifer (the "C-Aquifer"), which

provides water not only to the City, but to multiple communities and hundreds of thousands of people throughout the region. The C-Aquifer is located downgradient of at least one well that DME proposes to utilizes for oil, gas, and helium exploration, while steadfastly refusing to disclose the chemicals it proposes to inject into the subsurface or to seek permit approval from the Arizona Department of Environmental Quality "ADEQ").

2. DME has publicly indicated that it wants to turn Northern Arizona into the world's largest helium producer, which it proposes to do via exploration and productions wells to be located on private, federal, and Arizona State lands. DME contends it can do so without impacting the region's precious groundwater. Yet DME has taken no visible steps to obtain from ADEQ the permit (known as an Aquifer Protection Permit) that would ensure its injection of chemicals into the subsurface does not contaminate the portion of the C-Aquifer designated for future drinking water uses.

3. DME's steadfast refusal to seek state permits or explain why they are not necessary is all the more striking because the United States Bureau of Land Management ("BLM") recently halted DME's operations on nearby federal land. In September 2018, BLM entered into two leases with DME allowing DME to engage in oil, gas, and helium exploration work on federal land, likewise situated above the C-Aquifer on which the City relies. The Center for Biological Diversity and Sierra Club sued, contending that changes in well stimulation, acidizing, and fracking practices required that the environmental impacts of DME's proposed operations be given further scrutiny under the National Environmental Policy Act ("NEPA"). *First Amended Complaint, Doc. 25, Center for Biological Diversity v. United States*, No. 3:19-cv-08204 (D. Ariz.) (Oct. 1, 2019). BLM subsequently stipulated that additional NEPA analysis was required. Stipulation of Dismissal without Prejudice, Doc. 41 (Feb. 19, 2020).

4. The scrutiny of the federal government has pushed DME to state land; NEPA applies to federal actors but not state ones. Unfortunately, the well at issue in this litigation, like the others halted by BLM, is drilled within the C-Aquifer. Even worse, the well is directly upgradient of the City's Red Gap Ranch water supply development property. Over

the past 15 years, the City has invested at least $11,000,000 in the Red Gap Ranch, knowing that additional access to the C-Aquifer would be required to meet the City's future needs. In truth, at any price, Red Gap Ranch is unique and irreplaceable.

5. Among other things, Aquifer Protection Permits ("APP") require permit holders to post financial assurance capable of addressing any environmental damages caused by their operations. DME's circumvention of the ADEQ permitting process leaves its negligible bond to the State of $25,000 as the only readily accessible DME assets.

6. DME's most recent unaudited, condensed consolidated interim financial statements through June 2020 ("2020 Financial Statement") acknowledged that the company has "incurred operating losses since inception, does not have positive operating cash flow, minimal income from investments, and there can be no assurances that sufficient funding, including adequate financing, will be available to explore its mineral properties and to cover general and administrative expenses necessary for the maintenance of a public company." DME also reported an accumulated deficit of $20,424,754. A true and correct copy of the 2020 Financial Statement is attached hereto as **Exhibit 1**.

7. DME's 2020 Financial Statement indicates that it would not be able to pay damages to the City or fund any remediation that may be required should it contaminate or degrade C-Aquifer water quality.

8. An APP is required to prevent the irreparable injuries posed by the helium and hydrocarbon mining activities DME has engaged in, and plans to continue to engage in, within two (2) miles of Red Gap Ranch.

II. PARTIES

9. The City is a municipal corporation of the State of Arizona located within Coconino County, Arizona.

10. DME is a foreign for-profit business domiciled in the State of Nevada and authorized to conduct business in the State of Arizona.

III. JURISDICTION AND VENUE

11. Defendant DME is conducting business within Coconino County, Arizona.

12. Defendant DME has an interest in certain lands within Coconino County, Arizona wherein it intends to conduct business including, but not limited to, well drilling for exploration or operations related to helium and hydrocarbon mining.

13. Jurisdiction is proper before this Court because the lands and conduct giving rise to this action occurred or may be found in Coconino County, Arizona.

14. Venue is proper in this Court pursuant to A.R.S. § 12-401(12) because it relates to irreparable harm and damage to property owned by the City within Coconino County, Arizona.

IV. FACTUAL ALLEGATIONS SUPPORTING CLAIMS

a. The City purchased and has invested millions in Red Gap Ranch to develop potable water supplies for its future population.

15. The City, with more than 75,000 residents, is the largest community in northern Arizona. It also hosts more than 5,000,000 tourists annually.

16. The City has enjoyed economic and population growth for several decades, and anticipates that its population will double within the next fifty years.

17. To accommodate the municipal needs of its continued and anticipated population growth, including providing safe drinking water for residents and visitors, in 2005 the City purchased 8,500 deeded acres of land and several thousand acres of State lands with existing grazing leases along the I-40 corridor.

18. The City's plans to use the land, which is commonly referred to as "Red Gap Ranch," as a future source of municipal water supply has been a frequent subject of attention in the press and in the community.

19. The City's plans for Red Gap Ranch are to drill multiple water supply wells into the C-Aquifer to withdraw groundwater, which will then be conveyed via pipeline and introduced into the City's existing municipal water infrastructure system.

20. The City has completed certain aspects of its plans for Red Gap Ranch, including completing a Phase I engineering analysis confirming the feasibility of the pipeline project in 2009, drilling multiple water supply wells in 2011, securing a

Designation of Adequate Water Supply from the Arizona Department of Water Resources in 2013, entering into an agreement with the Arizona Department of Transportation to advance the process of approving a water pipeline right of way in 2016, and completing multiple water quality analysis to confirm that the water underlying Red Gap Ranch continues to be suitable for domestic uses.

21. A Phase II engineering analysis is slated for completion within the next year, as are the City's other on-going measures to complete its plans to use Red Gap Ranch for the purpose of supplying municipal water to its population.

22. The City has spent millions of dollars developing Red Gap Ranch to serve as a future municipal water supply source.

23. The City continues to be committed to completing development of Red Gap Ranch to serve as a future municipal water supply source.

24. Hydrogeologic analysis confirms that the area in and around Red Gap Ranch is the only feasible source of water suitable for municipal use in the region available to the City.

25. Maintenance of the quality of the existing waters, including ensuring that the waters are free from harmful or toxic substances that will render it inadequate for human consumption is paramount as the City has no feasible alternatives to supply its future population with water suitable for its municipal needs.

b. The dangers of helium and hydrocarbon mining.

26. DME is in the business of mining for helium and hydrocarbons.

27. DME has secured access to thousands of acres of land throughout Northern Arizona, including lands near the Grand Canyon as well as near Red Gap Ranch.

28. DME representatives publicly indicated a desire to significantly exploit any helium and hydrocarbon reserves in Northern Arizona. DME's former Chief Executive Officer commented that the "Holbrook Basin has the potential to be one of the world's leading sources of helium …[.]" *See* Helium producer leases land, environmentalists worry

- Elemental (elementalreports.com) (last accessed December 31, 2020), attached as **Exhibit 2**.

29. DME's mining operations include what is commonly referred to as acidizing or "fracking."

30. Even if DME's mining operations do not amount to "fracking," the constituents that it may introduce during the course of its efforts to extract helium and hydrocarbons may include chemicals and other compounds that are potentially harmful to human health or otherwise degrade water quality.

31. Leases like those secured by DME for the purposes of mining in Northern Arizona have already raised concerns of Arizona U.S. Representative Tom O'Halleran, and resulted in lawsuits regarding water contamination and harms to endangered species. *See* "Lawsuit claims leases threaten Northern Arizona groundwater," July 15, 2019, myheraldreview.com (last accessed December 31, 2020), attached as **Exhibit 3;** July 15, 2019 Press Release, Lawsuit Challenges Fracking Leases Threatening Northern Arizona Groundwater - Center for Biological Diversity (last accessed December 31, 2020), attached as **Exhibit 4;** Helium producer leases land, environmentalists worry - Elemental (elementalreports.com) Exhibit 2.

c. Since early 2019, DME has been on notice of the City's objections to mining activities that could threaten the quality or accessibility of its future water supplies, including those underlying Red Gap Ranch.

32. In early 2019, after representatives of DME approached the City for permission to cross Red Gap Ranch for the purpose of exploring whether it could engage in seismic testing to mine for helium on nearby lands owned by the Arizona State Lands Department ("ASLD"), the City and DME engaged in discussions regarding the City's safety concerns pertaining to DME's anticipated business activities.

33. DME knew that Red Gap Ranch was the site of the City's on-going development of its future water supplies.

34. The City signed a Memorandum of Understanding with DME (the "DME MOU") that provided, among other things, that DME and the City would "work together on a cooperative basis to evaluate potential resources and if mutually beneficial, to develop reasonable plans for the strategic development of helium and hydrocarbon resources in the greater Flagstaff region and in Coconino County generally[.]" DME MOU at p. 2, attached hereto as **Exhibit 5**.

35. In furtherance of the cooperative nature of the DME MOU, the parties agreed to "share all available technical and geological data related to helium and hydrocarbon resources in the Flagstaff region and Coconino County generally" and also that "DME will fully consult with Flagstaff concerning each major exploration, drilling, development or production program in the area…." DME MOU at p. 2.

36. The DME MOU noted the parties would only "encourage access" to helium or hydrocarbon resources "which are not in designated national or state parks or are otherwise recognized as highly sensitive from the standpoint of environmental, water recourses, cultural or existing grazing or livestock considerations." DME MOU at p. 2.

37. DME knew, or reasonably should have known, that Red Gap Ranch is a "highly sensitive" area under the DME MOU wherein the City would ***not*** encourage DME's access for mining activities.

38. In addition to the DME MOU, the City and DME entered a License for Access and Seismic Testing on Red Gap Ranch (the "DME License Agreement"). A true and correct copy of the DME License Agreement is attached hereto as **Exhibit 6**.

39. By the DME License Agreement, the parties acknowledged that the lands comprising "Red Gap Ranch" were acquired by the City "for their water rights."

40. Also pursuant to the DME License Agreement, the City authorized DME to cross Red Gap Ranch via designated rights of way to complete its due diligence on neighboring ASLD lands and agreed that it would not charge licensing fees in exchange for DME conducting limited seismic testing on City lands as long as DME bore the costs of such testing and provided the City with the results of that testing.

41. In March 2019, in response to public concerns, then Chief Executive Officer of DME, Mr. Olian Irwin, is quoted by Scott Buffon of the Arizona Daily Sun stating that DME "won't do a well for helium if there's any danger of contaminating the water supply at all," further remarking "It's just not going to happen." A true and correct copy of Mr. Buffon's article is attached hereto as **Exhibit 7.**

42. Following public outcry regarding the potential threats posed by DME's anticipated operations, in March 2019 the City determined not to proceed with the DME MOU and terminated the DME License Agreement.

d. DME turns to state trust lands near Red Gap Ranch after its efforts to conduct operations on federal land in Northern Arizona come under scrutiny.

43. After DME leased tens of thousands of acres of land in the Holbrook Basin in Northern Arizona for the purpose of engaging in helium and hydrocarbon mining, environmental groups sued the Bureau of Land Management ("BLM"), asserting that BLM did not undertake an adequate analysis of the potential impacts of DME's operations before authorizing the leases with DME (the "DME Lease Litigation").

44. In the DME Lease Litigation, Plaintiffs alleged, among other things, that the leases extended by BLM to DME and other mining interests cause water quality and quantity degradation, "especially where oil and gas extraction relies on newer technologies like hydraulic fracking and acidizing— both of which are likely to be used for development of these parcels. These technologies require staggering quantities of water, which may further deplete the C-Aquifer, dewater adjacent water wells, or reduce flows in nearby surface waters. These production techniques also generate pollutants and wastewater which can contaminate water supplies through surface spills or migration of injection liquids into groundwater." *See* October 1, 2019 First Amended Complaint, *Center for Biological Diversity, et al. v. Bureau of Land Management, et al.*, United States District Court for the District of Arizona, No. CV-19-08204-PCT-MTL at paragraph 113.

///

///

45. Upon information and belief, the DME Lease Litigation was recently resolved by stipulation, with BLM agreeing that it needed to update its NEPA analysis before issuing the leases.

46. Upon information and belief, because the lands that are the subject of the DME Lease Litigation are under further environmental scrutiny, DME turned its focus to the Arizona state trust lands near the City's water supply wells.

e. DME fails to notify the City of its on-going efforts to engage in helium mining activities within two (2) miles of its future municipal water supply wells.

47. After it ended the DME MOU and noticed its termination of the DME License Agreement, City did not hear further from DME regarding any plans to proceed with helium exploration near Red Gap Ranch.

48. The City's notice of termination of the DME License Agreement did not, by its terms, cause the agreement to end until six months after the date of notice of termination.

49. Upon information and belief, after the City noticed termination of the DME License Agreement, but before it expired by its terms, DME entered Red Gap Ranch and completed seismic testing.

50. DME did not notify the City that it was completing seismic testing at Red Gap Ranch. The City did not charge DME licensing fees.

51. Until the City filed this lawsuit, DME did not share the results of the Red Gap Ranch seismic testing with the City despite its obligation to do so pursuant to the DME License Agreement.

52. Upon information and belief, DME did not notify the City of its entry into and completion of seismic testing at Red Gap Ranch because DME knew that the City would then inquire as to and monitor DME's plans to undertake mining operations near Red Gap Ranch.

53. Upon information and belief, before this litigation was filed, DME did not share the results of seismic testing at Red Gap Ranch with the City despite DME's obligation to do so under the DME License Agreement because DME knew that the City

would then inquire as to and monitor DME's plans to undertake mining operations near Red Gap Ranch.

54. Via publicly available documents, in late November 2020, the City discovered that DME had secured Well Permit No. 1255, which allows it to drill a well labeled "Desert Mountain 26-1 State" (the "Well") for the purpose of mining helium and hydrocarbon.

55. The Well is located within two miles of Red Gap Ranch. A map depicting the location of the Well site and its proximity to Red Gap Ranch is attached hereto as **Exhibit 8.**

56. Well permit No. 1255 was issued by the Arizona Oil and Gas Conservation Commission ("AOGCC") on November 18, 2020. A true and correct copy of Well Permit No. 1255 is attached hereto as **Exhibit 9.**

57. The City has obtained DME documents submitted by DME to the AOGCC to secure Well Permit No. 1255 (the "Well Permit Application"). True and correct copies of all documents the City obtained from AOGCC related to DME's Well Permit Application are attached hereto as **Exhibit 10.**

f. DME misrepresents "local support" of its proposed mining operations and omits its 2020 Financial Statement, the DME Lease Litigation, and the City's objections in its application to secure Well Permit No. 1255.

58. In the Well Permit Application, DME represents in the Application that it has met with "local leaders" and "legislators" regarding its project and has been "welcomed" and encouraged by those representatives.

59. DME does not identify the governments or local leaders that it met with, but it has not met with representatives of the City with respect to the Well despite its knowledge of the City's objections to its operations being in such proximity to its drinking water supplies.

60. DME does not disclose any of the past objections or concerns raised by the City in its Well Permit Application.

61. DME represents government support of its project to AOGCC, despite that it neglected to consult with the government that owns the land adjacent to its Well Permit and has previously voiced multiple concerns regarding any well or mining operations near Red Gap Ranch.

62. Upon information and belief, DME made representations regarding support for its operations in the Application and omitted reference to the City's objections to its intended operations near Red Gap Ranch in the hopes that the City would not become aware of DME's Application

63. In the Well Permit Application, DME omits reference to its 2020 Financial Statement and the DME Lease Agreement.

64. Upon information and belief, DME omitted reference to its financial statement and the DME Lease Litigation because the financials reveal that DME is not financially capable of remediating any harms its operations may cause to the C-Aquifer, and the DME Lease Litigation indicates that DME engages in acidizing, fracking and other "discharge" activities in its operations.

g. DME ignores the City's objections and requests for disclosure of its construction and operation precautions, and drills the Well.

65. Upon discovery of Well Permit No. 1255, the City wrote to DME to express its objection to construction of any Well without assurances that the construction and subsequent operations will utilize practices and materials that would not contaminate the C-Aquifer underlying Red Gap Ranch.

66. The City requested that DME contact it to discuss its planned construction and operations.

67. The City disclosed that if it did not hear from DME, it would proceed with litigation, including a request for an order to prohibit or halt any drilling.

68. A true and correct copy of the City's correspondence to DME is attached hereto as **Exhibit 11.**

69. The City encountered difficulties serving the letter upon DME's statutory agent.

70. Specifically, DME's statutory agent at first inaccurately claimed that it was ***not*** DME's statutory agent, and refused to accept the correspondence from the City until the City's runner showed the agent a print-out identifying it on the Arizona Corporation Commission website.

71. DME received the City's December 7, 2020 correspondence no later than December 8, 2020.

72. DME did not contact the City to discuss or alleviate the concerns expressed in the City's correspondence. Instead, on December 8 DME allegedly "completed drilling" of the Well, and on December 9, 2020, DME completed "initial remediation." *See* December 14, 2020 Press Release issued by DME, attached as **Exhibit 12.**

h. DME's application to secure Well Permit No. 1255 indicates that it has and will use pollutants, toxic materials or other harmful constituents should it be allowed to proceed with construction and operations.

73. Per documents that the City has been able to obtain to date, DME intends to drill an exploratory well down to the "base treatable water" of the C-Aquifer.

74. It is unclear how DME derived the depth of "base treatable water" within the C-Aquifer.

75. Upon information and belief, DME intends to (or at least believes it can) contaminate waters within the C-Aquifer below the "base treatable water" level it has identified.

76. DME reportedly intends to drill to a total depth of 2000 feet and cement the entire length of the casing.

77. DME would then use a perforating tool to punch holes through the well casing in the zones that appear most promising for production of helium gases and hydrocarbon.

78. Although DME represents that the well casing will be sealed through the Kaibab, Coconino, and Supai formations, which are the primary water bearing formations, issues with construction, including inadequate maintenance or use of toxic constituents in

the mining process once perforations are completed along the well casing can allow a variety of contaminants to be introduced into the C-Aquifer (and the other aquifers through which DME's Well traverses) while the Well is under construction and during its period of use.

79. Wells of the type described by DME in its Well Permit No. 1255 are frequently in operation for decades.

80. DME reportedly drilled the Well using the air rotary method, with the addition of drilling fluid additives, which are essentially "misting" agents to assist in lifting cuttings if necessary.

81. The air rotary method disclosed by DME allows it to commence operations quickly if the Well strikes a deposit of the helium it wishes to extract, but the method that DME has selected also creates the risk that if it encounters highly fractured zones or large quantities of water, DME may have to change drilling methods, which would include altering its drilling fluid additives.

82. Misting agents are usually detergent based foaming compounds.

83. Given that the boring will penetrate a drinking water aquifer, the drilling fluids, including the foaming agent should be a National Sanitation Foundation ("NSF") certified product to ensure it is safe for drinking water use.

84. The same requirement should apply if they have to switch drilling fluids due to formation conditions - all drilling fluids should be certified to NSF Standard 60.

85. Nothing in DME's publicly available documents represents or guarantees that DME will only use NSF Standard 60 drilling fluids.

86. DME represents itself to be a concern with experience in drilling oil wells, which frequently use diesel fuels or diesel fuel additives as drilling fluids.

87. Such additives are not safe for human consumption or other municipal uses.

88. Even if it does not use diesel fuel constituents, other drilling fluids like brine degrade water quality, rendering it unfit for human consumption.

89. The DME's Well Permit Application has no oversight or monitoring plan.

i. Any pollutants, toxic materials or other harmful constituents introduced by DME threaten to contaminate the City's Red Gap Ranch wells.

90. If DME does not use NSF Standard 60 certified drilling fluids in the Well, it could contaminate the C-Aquifer.

91. The C-Aquifer is the source of the City's municipal water supply wells at Red Gap Ranch.

92. Based upon the location of the Well, any pollutants or toxic substances introduced into the Well—now or in the future—or released by operations of the well into the C-Aquifer will be upgradient of Red Gap Ranch.

93. Any pollutants or toxic chemicals or other harmful constituents like brine introduced into the Well will migrate towards the municipal water supply wells located at Red Gap Ranch.

94. As the Well is within two miles of the City's Red Gap Ranch wells, and is up-gradient of the Red Gap Ranch wells, any such contaminants would migrate to the City's future municipal supply wells, and may result in water unfit for human consumption.

95. Despite its request, the City has not received documentation from DME confirming that it has, and will continue to, use NSF Standard 60 certified drilling fluids and otherwise adhere to best practices with respect to its operations to guard against contamination of the C-Aquifer groundwater that will migrate to Red Gap Ranch.

96. Should DME's air rotary method result in the need to change drilling additives, it is unclear whether DME would disclose its changed chemical additives.

97. DME has not indicated that it intends to secure an Aquifer Protection Permit from ADEQ.

98. Despite request, DME has not pledged that it will ***not*** use harmful chemical additives or brines that could degrade aquifer water quality.

99. DME has not pledged to allow oversight and monitoring by the City.

100. DME's reference in its Well Permit Application to "base treatable water" indicates that DME is making a distinction regarding the lowermost extent of potential drinking water, which implies that DME inaccurately believes it is authorized to pollute water below this depth.

101. In December 2020, despite known objections of the City, DME purportedly completed construction of the Well, which terminates within the C-Aquifer.

102. The Well provides an avenue for introduction of harmful or toxic chemicals that cannot (or at least cannot easily) be extracted once introduced, thereby risking irreversible and irreparable harm and injury to the C-Aquifer, which is the source of multiple municipal water supplies, including the City's. The City is particularly at risk of irreparable harm and injury as its wells at Red Gap Ranch, the site of its future municipal water supplies, are down gradient and within two miles of DME's proposed Well such that any constituents introduced by DME will migrate to the Red Gap Ranch wells.

103. The City is not the only government irreparably injured by contamination of groundwaters that has or will occur by virtue of DME's well construction and mining operations.

104. In 2011, the City and the Navajo Nation entered a stipulated agreement concerning development of the City's future municipal water supply at Red Gap Ranch (the "Navajo Stipulation"). A true and correct copy of the Navajo Stipulation is attached as **Exhibit 13.**

105. Red Gap Ranch is bordered by the Navajo Reservation to the north, and the Hopi Tribe's Hart Ranch to the west.

106. The C-Aquifer flows from the DME Well north through Red Gap Ranch before reaching the Navajo Reservation.

107. Among other things, the Navajo Stipulation provides the Navajo Nation with access to certain municipal water supplies developed by the City at Red Gap Ranch.

108. The Navajo Stipulation provides for pumping protection zones where the City may withdraw groundwater without objection by the Navajo Nation.

109. The Navajo Stipulation would prohibit the City from relocating its existing wells closer to the Navajo Reservation and thus further away from the harmful effects of the DME Well.

110. Water quality impacts caused by operation of the DME Well will not only irreparably harm the City's future municipal water supply, but also those that are committed to the Navajo Nation in the Navajo Stipulation.

COUNT ONE

(Breach of Contract)

111. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein

112. The DME License Agreement is a valid and binding contract between the City and DME.

113. DME materially breached the DME License Agreement by completing seismic testing on Red Gap Ranch and failing to share the results of that testing with the City as required by the DME License Agreement.

114. As a result of DME's material breach of the DME License Agreement, the City has been harmed in an amount to be proven at trial, but in no event less than the full amount of licensing fees it waived in exchange for authorizing the testing that DME completed.

115. As this claim arises out of contract, the City is entitled to an award of its reasonable attorneys' fees and costs pursuant to A.R.S. §§ 12-341 and 341.01.

COUNT TWO

(Public Nuisance)

116. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

117. The City's municipal wells at Red Gap Ranch tap into the C-Aquifer, and are intended to serve as the future source of municipal waters for the City.

118. The general public has a right to potable municipal water.

119. DME's reference in its Well Permit Application to "base treatable water" indicates that DME intends to pollute C-Aquifer water below that "base treatable water" depth.

120. DME's assertion that it will not engage in "large hydraulic fracturing" indicates that it will engage in hydraulic fracturing at a smaller scale.

121. Upon information and belief, DME will engage in acidizing, which involves the injection of acids and other chemicals down the well, which may remain in the C-Aquifer.

122. Based upon the location of the Well, any pollutants or toxic substances introduced into the Well—now or in the future—or released by DME's operations of the Well into the C-Aquifer will be upgradient of Red Gap Ranch.

123. As the Well is within two miles of the City's Red Gap Ranch wells, and is up-gradient of the Red Gap Ranch wells, any such contaminants would migrate to the City's future municipal supply wells, and may result in water unfit for human consumption.

124. DME's refusal to apply for an Aquifer Protection Permit, its refusal to disclose its drilling additives, and its decision to proceed with drilling the Well over known objections of the City and the proximity of its Well to Red Gap Ranch, demonstrate that has, and will continue to, engage in an unreasonable interference with the rights of the citizens of Northern Arizona to safe, potable municipal water supplies.

125. DME's activities and planned operations cause an unreasonable and substantial interference with the City's use of Red Gap Ranch as a future municipal water supply by degrading C-Aquifer waters or rendering those waters unfit for human consumption.

126. DME's 2020 Financial Statement indicates that it is unable to pay for any aquifer remediation that its activities may require.

127. The City is entitled to injunctive relief to prevent irreparable injury to water quality of the C-Aquifer.

COUNT THREE

(Private Nuisance)

128. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

129. The City's municipal wells at Red Gap Ranch tap into the C-Aquifer.

130. DME's reference in its Well Permit Application to "base treatable water" indicates that DME intends to pollute C-Aquifer water below that "base treatable water" depth.

131. DME's assertion that it will not engage in "large hydraulic fracturing" indicates that it will engage in hydraulic fracturing at a smaller scale.

132. Upon information and belief, DME will engage in acidizing, which involves the injection of acids and other chemicals down the well, which may remain in the C-Aquifer.

133. Based upon the location of the Well, any pollutants or toxic substances introduced into the Well—now or in the future—or released by DME's operations of the Well into the C-Aquifer will be upgradient of Red Gap Ranch.

134. DME's conduct drilling the Well, and other anticipated conduct and operations of DME have, and continue to, threaten to contamination the C-Aquifer in close proximity to Red Gap Ranch, thus invading the City's interest in the private use and enjoyment of property that it owns and has openly developed as a municipal water supply source.

135. DME's refusal to apply for an Aquifer Protection Permit, its refusal to disclose its drilling additives, and its decision to proceed with drilling the Well over known objections of the City and the proximity of its Well to Red Gap Ranch, demonstrate that DME's conduct is both intentional and unreasonable, negligent, or at a minimum, undertaken in reckless disregard for the harms caused and continuously threatened.

///

///

136. Alternatively, or additionally, DME's construction of the Well and its on-going mining operations and maintenance constitute abnormally dangerous conditions or activities.

137. As the Well is within two miles of the City's Red Gap Ranch wells, and is up-gradient of the Red Gap Ranch wells, any such contaminants would migrate to the City's future municipal supply wells, and may result in water unfit for human consumption.

138. DME's activities and planned operations cause and unreasonable and substantial interference with the City's use of Red Gap Ranch as a future municipal water supply by degrading C-Aquifer waters or rendering them unfit for human consumption.

139. Should DME be allowed to continue operations that may contaminate C-Aquifer groundwater, the City will suffer injury in the form of loss of the millions of dollars it has invested developing Red Gap Ranch as a municipal drinking water supply.

140. DME's 2020 Financial Statement demonstrates that it cannot pay to remediate water contamination or compensate the City for injuries to Red Gap Ranch.

141. The City is entitled to injunctive relief to prevent the irreparable harms to water quality and the Red Gap Ranch property and municipal wells.

COUNT FOUR

(Trespass)

142. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

143. The City owns Red Gap Ranch and has constructed wells that may capture and apply waters to a reasonable use; to wit, serving at the future municipal water supply for City residents.

144. DME has indicated by conduct and otherwise, that it has and intends to introduce contaminants or constituents into the Well that may degrade C-Aquifer water quality or render it unfit for municipal uses.

145. The Well is within two miles of the City's Red Gap Ranch wells, and is up-gradient of the Red Gap Ranch wells.

146. Contaminants introduced into the Well have, or will, migrate to the City's future municipal supply wells, and may result in water unfit for intended uses.

147. DME's activities and planned operations have, or at they continue will, result in a tangible invasion of the City's property.

148. DME is aware that its activities and planned activities will result in groundwaters flowing under and thus intruding into Red Gap Ranch, including within hydrologically connected fractured zones or cones of depression of the wells at Red Gap Ranch that withdraw such migrating groundwaters.

149. Should DME be allowed to continue operations that may contaminate C-Aquifer groundwater, the City will suffer injury in the form of loss of the millions of dollars it has invested developing Red Gap Ranch as a future municipal drinking water supply.

150. DME's 2020 Financial Statement demonstrates that it cannot pay to remediate water contamination or compensate the City for injuries to Red Gap Ranch.

151. The City is entitled to injunctive relief to prevent the irreparable harms to water quality and the Red Gap Ranch property and municipal wells.

152. Alternatively, or additionally, the City is entitled to an award of damages in an amount to be determined at trial but in no event less than the millions in tax payer dollars the City has spent developing Red Gap Ranch over the past 15 years or the diminution of property value resulting from DME's trespass.

COUNT FIVE

(Negligence)

153. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

154. DME engages in well construction and related mining operations for profit.

155. DME's well construction and related mining operations involve use and potential introduction of potentially hazardous chemicals, constituents or other materials into underground aquifers.

156. DME owes a duty to the public to engage in its operations in a manner that does not pose or result in harms to the public health, welfare and safety by contaminating or degrading aquifer water quality.

157. DME's well construction and related mining operations impose harms upon society by threatening to or actually contaminating or degrading municipal water supplies of the City, thereby breaching its duty of care to the City.

158. The City has invested millions in developing Red Gap Ranch wells as a future municipal water supply source.

159. DME's 2020 Financial Statement demonstrates that it cannot pay to remediate water contamination or compensate the City for injuries to Red Gap Ranch.

160. The City is entitled to injunctive relief to prevent the irreparable harms to water quality and the Red Gap Ranch property and municipal wells.

161. Alternatively, or additionally, the City is entitled to an award of damages in an amount to be determined at trial but in no event less than the millions in tax payer dollars the City has spent developing Red Gap Ranch over the past 15 years or the diminution of property value resulting from DME's breach of its duty to conduct operations in a manner that prevents degradation or contamination of the City's future municipal water supplies.

COUNT SIX

(Strict Liability/Negligence per se)

162. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

163. DME's well construction and related mining operations constitute an abnormally dangerous activity.

164. DME engages in well construction and related mining operations for profit.

165. DME's well construction and related mining operations impose harms upon society by, specifically, threatening to or actually contaminating or degrading municipal water supplies of the City.

166. DME's well construction and related mining operations create a likelihood of degradation or contamination of drinking water supplies of the C-Aquifer to such a degree that it would be extremely expensive to remediate, or potentially irreversibly degraded or contaminated.

167. The City has invested millions in developing Red Gap Ranch wells as a future municipal water supply source.

168. DME's 2020 Financial Statement demonstrates that it cannot pay to remediate water contamination or compensate the City for injuries to Red Gap Ranch.

169. The City is entitled to injunctive relief to prevent the irreparable harms to water quality and the Red Gap Ranch property and municipal wells.

170. Alternatively, or additionally, the City is entitled to an award of damages in an amount to be determined at trial but in no event less than the millions in tax payer dollars the City has spent developing Red Gap Ranch over the past 15 years or the diminution of property value resulting from DME's abnormally dangerous activities.

COUNT SEVEN

(Declaratory Relief—Well Permit No. 1255 is invalid)

171. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

172. By application dated November 2, 2020, DME submitted a request to the AOGCC to issue Well Permit No. 1255.

173. By the Well Permit Application, DME represented that:

a. the operations it would be entitled to engage in upon issuance of Well Permit No. 1255 were known to "local leaders" and "legislators" and that those governmental officials were supportive of the project; and

b. that it will not use "large" hydraulic fracturing.

174. In maintaining that it was not required to secure an APP, DME did not disclose the DME Lease Litigation or its resolution in the Well Permit Application.

175. Upon information and belief, these representations are inaccurate, false or intentionally calculated to be misleading, and were made to the AOGCC with the intent that AOGCC rely upon the statements in issuing Well Permit No. 1255.

176. Upon information and belief, DME will deny that the statements it made were inaccurate, false or intentionally misleading, and will further deny that such statements, even if inaccurate, false or intentionally misleading, invalidate Well Permit No. 1255.

177. There exists a dispute as to whether DME's statements in the Application, if inaccurate, false, or intentionally misleading, invalidate Well Permit No. 1255.

178. Under Arizona law, a permit issued under mistake of fact due to incorrect information in the application, subsequent revocation of the permit is appropriate. *See., e.g., Rivera v. City of Phoenix*, 186 Ariz. 600, 602-03 (App. 1996).

179. The City asks that the Court to declare that Well Permit No. 1255 was secured via submission of incorrect, false or misleading information, and direct the AOGCC to revoke Well Permit No. 1255.

COUNT EIGHT

(Declaratory Relief—Application of Aquifer Protection Permit Requirements, A.R.S. §§ 49-241, *et seq*.)

180. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

181. The Well Permit Application implies that DME intends to engage in well stimulation during the course of exploratory or mining operations related to the Well.

182. The Well will be drilled into the C-Aquifer, which is a source of drinking water for multiple municipalities, including the City, and is the source of the City's future municipal water supply field at Red Gap Ranch.

183. The ADEQ requires an Aquifer Protection Permit for discharges into an aquifer.

184. DME intends to discharge into an aquifer that serves as a drinking water supply for much of the northern Arizona region's populace.

185. DME denies that it is obligated to secure an Aquifer Protection Permit.

186. DME's admissions demonstrate that it is required to secure an Aquifer Protection Permit before proceeding with any further construction or operations of the Well.

187. If DME continues to engage in well construction or operations involving discharge into the Well, it will do so in violation of Arizona's statutes by discharging into an aquifer without first obtaining an Aquifer Protection Permit.

188. The City asks this Court to issue an order declaring that DME is a discharger and must apply for and secure an Aquifer Protection Permit pursuant to A.R.S. §§ 49-241, *et seq*. before it commences further construction of or operates the Well.

COUNT NINE

(Fraudulent Misrepresentation and/or Omissions)

189. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

190. In March 2019, in response to public concerns, then Chief Executive Officer of DME, Mr. Olian Irwin, publicly stated that DME "won't do a well for helium if there's any danger of contaminating the water supply at all," further remarking "It's just not going to happen." *See* Exhibit 7.

191. DME was obligated to disclose seismic testing data it completed on Red Gap Ranch to the City.

192. DME failed to disclose the seismic data to the City.

193. Upon information and belief, DME failed to disclose the seismic data to the City because it did not want the City to be aware of its on-going efforts to develop a helium and hydrocarbon mining operation in close proximity to the City's future municipal groundwater supplies.

194. By application dated November 2, 2020, DME submitted a request to the AOGCC to issue Well Permit No. 1255.

195. The City was not advised of DME's plans to proceed with a well on state lands neighboring Red Gap Ranch, and does not support such project absent assurances of safety precautions that do not presently exist including, but not limited to, confirmation that DME will only use NSF Standard 60 certified drilling fluids in the Well.

196. Although it knew of the City's concerns and objections to DME's planned operations, DME did not notify the City of the Well Permit Application.

197. By the Well Permit Application, DME represented that:

a. the operations it would be entitled to engage in upon issuance of Well Permit No. 1255 were known to "local leaders" and "legislators" and that those governmental officials were supportive of the project; and

b. that it will not use "large" hydraulic fracturing.

198. Upon information and belief, these representations are false or intentionally calculated to be misleading.

199. Notwithstanding its indication that "large hydraulic fracturing" will not be used, DME does not identify what drilling additives it intends to use, does not warrant and represent that the well drilling fluids it will use will be NSF Standard 60 certified, and does not commit to avoiding all fracking additives at any stage of construction.

200. The "base treatable water" level referenced by DME in its Well Permit Application implies that DME may introduce harmful constituents, pollutants or toxic chemicals below that level within the C-Aquifer.

201. Upon information and belief, DME knew these representations that it would not be engaging in fracturing to be false or, at a minimum, misleading, but included them within the Well Permit Application for the purpose of inducing AOGCC to issue Well Permit No. 1255 and avoiding the need to apply for an Aquifer Protection Permit.

202. Upon information and belief, AOGCC relied upon the false or misleading representations in issuing Well Permit No. 1255.

203. Although it was aware, or reasonably should have been aware, that such information was material to the AOGCC's determination to issue Well Permit No. 1255,

DME did not disclose that the City would not support DME's drilling of any well or engaging in mining operations within the vicinity of the anticipated well in light of its proximity to the Red Gap Ranch and the City's future municipal water supply.

204. DME omitted reference to or disclosure of the DME Lease Litigation in its Well Permit Application.

205. DME omitted its 2020 Financial Statement, which shows that it is not financially capable of funding remediation efforts that may be required by its operations.

206. Upon information and belief, DME omitted this material information for the purpose of inducing AOGCC to issue Well Permit No. 1255.

207. Upon information and belief, AOGCC would not have issued Well Permit No. 1255 had it known of the DME Lease Litigation, the 2020 Financial Statement, City's concerns and objections to DME's proposed project or the potential for harmful constituents, toxic chemicals or other pollutants to be introduced into the C-Aquifer.

208. AOGCC, as an agency of the State, is harmed by DME's false or misleading representations and omissions of material fact within its Well Permit Application, as the mis-information interferes with AOGCC's obligation to the public to properly evaluate the facts and ensure compliance with applicable laws and regulations by an applicant before issuing well permits.

209. A permit that is issued based upon inaccurate or false factual information is invalid and should be revoked.

210. DME actively concealed or omitted its seismic testing data from the City and its Well Permit Application because it knew of the City's objections and intent to investigate any helium and hydrocarbon mining operation in close proximity to the City's future municipal groundwater supplies.

211. Upon information and belief, DME concealed or omitted the seismic testing data and its Well Permit Application from the City because it knew, or reasonably should know, that omitting the information would prevent the City from investigating and filing a lawsuit to halt DME's planned Well and mining operations where, as has occurred here,

DME refused to disclose information regarding its Well construction practices, drilling additives or other operations that may introduce harmful constituents, substances or toxins into the C-Aquifer and Red Gap Ranch.

212. The City is harmed by DME's false or misleading misrepresentations and omissions of material fact with respect to the DME License Agreement, DME's failure to disclose its Well Permit Application, DME's failure to disclose the DME Lease Litigation, and by DME's statements in news media outlets, as it has been deprived of the opportunity to lodge objections, investigate, make public comment or initiate these proceedings to halt DME's conduct before its future municipal water supplies were exposed to potentially irreversible contamination or degradation.

213. DME's 2020 Financial Statement demonstrates that it cannot pay to remediate water contamination or compensate the City for injuries to Red Gap Ranch.

214. The City is entitled to injunctive relief to prevent the irreparable harms to water quality and the Red Gap Ranch property and municipal wells.

215. Alternatively, or additionally, the City is entitled to an award of damages in an amount to be determined at trial but in no event less than the millions in tax payer dollars the City has spent developing Red Gap Ranch over the past 15 years or the diminution of property value resulting from DME's fraudulent misrepresentations and omissions.

COUNT TEN

(Negligent Misrepresentations and/or Omissions)

216. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

217. In March 2019, in response to public concerns, then Chief Executive Officer of DME, Mr. Olian Irwin, publicly stated that DME "won't do a well for helium if there's any danger of contaminating the water supply at all," further remarking "It's just not going to happen." *See* Exhibit 7.

218. DME was obligated to disclose seismic testing data it completed on Red Gap Ranch to the City.

219. DME failed to disclose the data to the City before December 2020.

220. Upon information and belief, DME failed to disclose the seismic data to the City because it did not want the City to be aware of its on-going efforts to develop a helium and hydrocarbon mining operation in close proximity to the City's future municipal groundwater supplies.

221. By application dated November 2, 2020, DME submitted a request to the AOGCC to issue Well Permit No. 1255.

222. The City was not advised of DME's plans to proceed with a well on the ASLD lands neighboring Red Gap Ranch, and does not support such project absent assurances of safety precautions that do not presently exist including, but not limited to, confirmation that DME will only use NSF Standard 60 certified drilling fluids in the Well.

223. Although it knew of the City's concerns and objections to DME's planned operations, DME did not notify the City of the Well Permit Application.

224. DME had a duty to supply truthful and accurate information in the Well Permit Application, and the information within the Well Permit Application was intended for the guidance of AOGCC.

225. By the Well Permit Application, DME represented that:

a. the operations it would be entitled to engage in upon issuance of Well Permit No. 1255 were known to "local leaders" and "legislators" and that those governmental officials were supportive of the project; and

b. that it will not use "large" hydraulic fracturing.

226. Upon information and belief, these representations are false or misleading and DME did not exercise reasonable care or competence in obtaining or communicating the information in its Well Permit Application.

227. Notwithstanding its indication that "large hydraulic fracturing" will not be used, DME does not identify what drilling additives it intends to use, does not warrant and represent that the well drilling fluids it will use will be NSF Standard 60 certified, and does not commit to avoiding all fracking additives at any stage of construction.

228. The "base treatable water" level referenced by DME in its Well Permit Application implies that DME may introduce harmful constituents, pollutants or toxic chemicals below that level within the C-Aquifer.

229. Upon information and belief, DME knew these representations regarding avoiding hydraulic fracturing to be false or, at a minimum, misleading, but included them within the Well Permit Application for the purpose of inducing AOGCC to issue Well Permit No. 1255 and avoiding the need to apply for an aquifer protection permit.

230. Upon information and belief, AOGCC justifiably relied upon the false or misleading representations in issuing Well Permit No. 1255.

231. Although it was aware, or reasonably should have been aware, that such information was material to the AOGCC's determination to issue Well Permit No. 1255, DME did not disclose that the City would not support DME's drilling of any well or engaging in mining operations within the vicinity of the anticipated well in light of its proximity to the Red Gap Ranch and the City's future municipal water supply.

232. DME omitted reference to or disclosure of the DME Lease Litigation in its Well Permit Application.

233. DME omitted its 2020 Financial Statement, which shows that it is not financially capable of funding remediation efforts that may be required by its operations.

234. Upon information and belief, DME omitted this material information for the purpose of inducing AOGCC to issue Well Permit No. 1255.

235. Upon information and belief, AOGCC would not have issued Well Permit No. 1255 had it known of the DME Lease Litigation, the 2020 Financial Statement, the City's concerns and objections to DME's proposed project or the potential for harmful constituents, toxic chemicals or other pollutants to be introduced into the C-Aquifer.

236. AOGCC, as an agency of the State, is harmed by DME's false or misleading representations and omissions of material fact within its Well Permit Application, as the misinformation interferes with AOGCC's obligation to the public to properly evaluate the

facts and ensure compliance with applicable laws and regulations by an applicant before issuing well permits.

237. A permit that is issued based upon inaccurate or false factual information is invalid and should be revoked.

238. DME actively concealed or omitted its seismic testing data from the City and its Well Permit Application because it knew of the City's objections and intent to investigate any helium and hydrocarbon mining operation in close proximity to the City's future municipal groundwater supplies.

239. Upon information and belief, DME concealed or omitted the seismic testing data and its Well Permit Application from the City because it knew, or reasonably should know, that omitting the information would prevent the City from investigating and filing a lawsuit to halt DME's planned Well and mining operations where, as has occurred here, DME refused to disclose information regarding its Well construction practices, drilling additives or other operations that may introduce harmful constituents, substances or toxins into the C-Aquifer and Red Gap Ranch.

240. The City is harmed by DME's false or misleading misrepresentations and omissions of material fact with respect to the DME License Agreement, DME's failure to disclose its Well Permit Application, and by DME's statements in news media outlets, as it has been deprived of the opportunity to lodge objections, investigate, make public comment or initiate these proceedings to halt DME's conduct before its future municipal water supplies are exposed to potentially irreversible contamination or degradation.

241. DME's 2020 Financial Statement demonstrates that it cannot pay to remediate water contamination or compensate the City for injuries to Red Gap Ranch.

242. The City is entitled to injunctive relief to prevent the irreparable harms to water quality and the Red Gap Ranch property and municipal wells.

243. Alternatively, or additionally, the City is entitled to an award of damages in an amount to be determined at trial but in no event less than the millions in tax payer dollars

the City has spent developing Red Gap Ranch over the past 15 years or the diminution of property value resulting from DME's negligent misrepresentations and omissions.

COUNT ELEVEN

(Injunctive Relief)

244. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

245. DME Well Permit No. 1255 authorizes it to proceed with construction of a well in the C-Aquifer.

246. DME has commenced construction, and intends to continue to construct, the Well.

247. DME has not secured an Aquifer Protection Permit and has not disclosed the drilling fluids that it intends to use to conduct Well operations.

248. DME intends to introduce harmful constituents, pollutants, or toxic chemicals in the Well.

249. When introduced into the C-Aquifer via the Well, harmful constituents, pollutants, or toxic chemicals may degrade or contaminate water quality to such an extent that it is not suitable for human consumption.

250. Red Gap Ranch, the site of the City's future municipal water supply well field, is down gradient of DME's Well site.

251. Waters contaminated by DME's Well will migrate to Red Gap Ranch, and may irreversibly contaminate the waters underlying Red Gap Ranch such that it is no longer suitable for human consumption or other municipal use.

252. The City has invested millions of dollars in developing Red Gap Ranch to serve as the future municipal water supply for its residents, and as a regional water supply, and there is no feasible, alternative site in the region for the City to develop.

253. The City has no adequate remedy at law as monetary relief will not suffice to clean the contaminated aquifer or locate a new site for municipal water supplies.

254. The Court should issue a preliminary injunction in the form submitted with the Application for Temporary Restraining Order and Preliminary Injunction. Such order should include, but not be limited to, the following:

a. Haltany construction of the Well or other mining operations related to the Well until or unless it obtains an Aquifer Protection Permit;

b. Halt any construction of the Well or other mining operations related to the Well until or unless DME certifies, warrants and represents, and discloses documentation confirming that it has and will use only NSF Standard 60 drilling additives in its Well and other mining operations;

c. Certifies, warrants and represents and discloses documentation confirming that it has and will not use, inject or otherwise introduce any "fracking" or other chemicals, constituents or other materials into the Well that may degrade the existing water quality underlying Red Gap Ranch; and

d. Enters into an oversight and monitoring plan with the City and other necessary parties to ensure the foregoing representations for the life of the project.

WHEREFORE Plaintiff City of Flagstaff requests that the Court enter judgment against Defendant Desert Mountain Energy Corp as follows:

A. Enter the Preliminary Injunction submitted contemporaneously herewith, which should be converted to a permanent injunction upon presentation of further proof at trial;

B. For a declaration that Well Permit No. 1255 is invalid and of no effect by virtue of the misrepresentations and material omissions detailed herein;

C. For a declaration that Defendant DME is required to secure an Aquifer Protection Permit before drilling, constructing, or operating any well in the C-Aquifer for the purpose of exploring or extracting helium or hydrocarbons;

D. For actual and compensatory damages in an amount to be determined at trial;

E. For Plaintiff's reasonable attorneys' fees and costs incurred herein and accruing after judgment, plus interest on such fees and costs at the legal rate per annum from the date of judgment until paid in full;

F. For an award of interest on the judgment at the legal rate until paid in full; and

G. For such other and further relief as the Court.

DATED this 4th day of January, 2021.

TSL LAW GROUP, PLC

By: Lee A Storey
Lee A. Storey
Alex M. Arboleda
Ethan B. Minkin
Sara V. Ransom
Attorneys for City of Flagstaff

VERIFICATION

I, Sterling Solomon, City Attorney for Plaintiff, being first duly sworn upon my oath, depose and state:

1. I am over the age of 18 years and am competent to make this Verification based on my personal knowledge and based on the business records of Plaintiff, of which I am a custodian.

2. I have reviewed the foregoing Verified Amended Complaint, know the contents thereof and exhibits attached thereto, and affirm that, to the best of my knowledge, its contents and exhibits are true and accurate.

DATED this 4th day of January, 2021.

By: _____
STERLING SOLOMON

SUBSCRIBED AND SWORN to before me this 4th day of January, 2021.

By: _____
Notary Public

My Commission Expires: 11.27.21

TANYA M. FERREIRA
Notary Public – Arizona
Maricopa County
My Comm. Expires Nov 27, 2021

FILED
Valerie Wyant
CLERK, SUPERIOR COURT
02/08/2021 7:44PM
BY: JDUTTON
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

THE CITY OF FLAGSTAFF, Plaintiff, v. DESERT MOUNTAIN ENERGY CORP., Defendant.	Case No.: CV 2020-00624 **PRELIMINARY INJUNCTION** **[Amended to conform to evidence at January 8, 2021 preliminary injunction hearing]**

The Court, having received the *Emergency Application for Temporary Restraining Order And Preliminary Injunction With Notice* ("Application") filed by Plaintiff City of Flagstaff ("Plaintiff"), and having considered all briefing and arguments submitted before the Court, and having held a full day hearing with evidence presented by witnesses for the Plaintiff and Defendant on January 8, 2021, hereby finds that the City has carried its burden and that a preliminary injunction shall issue.

Based upon the proposed findings of fact and conclusions of law entered contemporaneously with this Order, which are hereby incorporated herein in full, the Court hereby enters this order **GRANTING** the Application and enjoining Defendant Desert Mountain Energy Corp ("DME), as set forth herein.

IT IS HEREBY ORDERED that during the pendency of these proceedings, Defendant DME shall:

a. Cease and desist any Well construction or operations at the Well or at the site of Well Permit 1255 until or unless it obtains all necessary permits, including an Aquifer Protection Permit;

b. Refrain from using Well 1255 for injection of fracking chemicals or for disposal of brine or other wastewater.

c. Certify, warrant and represent, by binding resolution of its Board of Directors or other representative authority, that it will use only NSF Standard 60 drilling additives in the Well and other mining operations at the site of the Well;

d. Certify, warrant and represent, by binding resolution of its Board of Directors or other representative authority, that it will not use, inject or otherwise introduce any chemicals, constituents or other materials into the Well and other mining operations at the site of the Well that may impair groundwater around and beneath the Well and thereby threaten to degrade the existing water quality underlying Red Gap Ranch;

e. Provide a bond of no less than $5,000,000 to address remediation that could be necessitated by its operations; and

f. On a quarterly basis, authorize the City to enter onto the DME Well field to collect seismic or other geophysical data and obtain samples of water, soils, take pictures or video, or collect other data to ensure that DME's operations are not causing materials to enter or otherwise mobilize within the C Aquifer that may degrade or contaminate the City's municipal water supplies at Red Gap Ranch. Such testing or data collection will be undertaken at the City's expense, and the City must provide at least twenty-four (24) hours' notice in advance of seeking access to the lands containing DME's Well at the site of Well Permit 1255.

DATED: February 8, 2021

eS Nel.9X8g

SUPERIOR COURT JUDGE

Lee A. Storey (011989)
lee@tsllawgroup.com
alex@tsllawgroup.com
ethan@tsllawgroup.com
sara@tsllawgroup.com

Sesaly Stamps, Esq.
Sstamps@DMYL.com
LSMITH@SMYL.com

IN THE

COURT OF APPEALS

STATE OF ARIZONA
DIVISION ONE

DIVISION ONE
FILED: 2/10/21
AMY M. WOOD,
CLERK
BY: RB

DESERT MOUNTAIN ENERGY CORP,	)	Court of Appeals
	)	Division One
Petitioner,	)	No. 1 CA-SA 21-0019
	)	
v.	)	Coconino County
	)	Superior Court
THE HONORABLE CATHLEEN BROWN NICHOLS, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of COCONINO,	)	No. CV2020-00624
Respondent Judge,	)	
THE CITY OF FLAGSTAFF,	)	
Real Party in Interest.	)	

ORDER DECLINING SPECIAL ACTION JURISDICTION

The Court, Presiding Judge Jennifer M. Perkins, Judge Randall M. Howe, and Judge Maria Elena Cruz participating, has reviewed Petitioner's petition for special action and appendix filed February 8, 2021. After consideration,

IT IS ORDERED that the Court of Appeals, in the exercise of its discretion, declines to accept special action jurisdiction.

IT IS FURTHER ORDERED this court's previous order setting dates and directing filing and service is vacated.

/s/
JENNIFER M. PERKINS, Presiding Judge

A copy of the foregoing
was sent to:

Lisa Anne Smith
Sesaly O Stamps
Lee A Storey
Sara V Ransom
Christopher D Thomas
P Derek Petersen
Hon Cathleen Brown Nichols

10. D.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Saltzburg, City Clerk
Date:	01/12/2023
Meeting Date:	01/17/2023

TITLE:

Ratification of a previous City Council's instruction to City Attorney to initiate litigation against the Arizona Department of Administration et. al.

STAFF RECOMMENDED ACTION:

Ratify a previous City Council's instruction to the City Attorney to initiate litigation against the Arizona Department of Administration et. al. based on information provided in executive session.

Executive Summary:

The Flagstaff City Council proposes to ratify a previous City Council's instruction/action given by a previous City Council to the City Attorney. The City Attorney was instructed in executive session held on May 25, 2021, to file a complaint and motion for preliminary injunction against the State Department of Administration (and others) seeking to declare the minimum wage assessment by the State of Arizona in the amount of $1,110,992 unconstitutional under the Voter Protection Act, among other claims.

A detailed written description of the instruction/action to be ratified, and deliberations, consultations and decisions by the City Council that preceded and related to the instruction/action that was taken, is attached hereto and posted at City Hall. The complaint and motion are also attached.

Financial Impact:

Funds for litigation are budgeted annually by the City Council and were also budgeted in previous years.

Policy Impact:

Protect the Flagstaff minimum wage ordinance.

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

Previous Council Decision on This:

See executive summary above.

Attachments:

Written Description of Instruction/Action to be Ratified
Motion for Preliminary Injunction
Verified Complaint

Detailed written description of the instruction/action to be ratified, and deliberations, consultations and decisions by the City Council that preceded and related to the instruction/action that was taken:

The Flagstaff City Council proposes to ratify a previous City Council's instructions/action given by a previous City Council to the City Attorney. The City Attorney was instructed in executive session held on May 25, 2021, to file a complaint and motion for preliminary injunction against the State Department of Administration (and others) seeking to declare the minimum wage assessment by the State of Arizona in the amount of $1,110,992 unconstitutional under the Voter Protection Act, among other claims. The City Council decided to provide the instruction to initiate litigation based on the information discussed and advice given in the May 25, 2021 executive session.

Clerk of the Superior Court
*** Electronically Filed ***
D. Hill, Deputy
7/15/2021 2:15:09 PM
Filing ID 13128298

Roopali H. Desai (024295)
D. Andrew Gaona (028414)
Kristen Yost (034052)
COPPERSMITH BROCKELMAN PLC
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
T: (602) 381-5478
rdesai@cblawyers.com
agaona@cblawyers.com
kyost@cblawyers.com
Attorneys for Plaintiff City of Flagstaff

ARIZONA SUPERIOR COURT

MARICOPA COUNTY

CITY OF FLAGSTAFF, a political subdivision of the State of Arizona, Plaintiff, v. THE ARIZONA DEPARTMENT OF ADMINISTRATION, an agency of the State of Arizona; ANDY TOBIN, in his official capacity as the Director of the Arizona Department of Administration; KIMBERLY YEE, in her official capacity as the State Treasurer of Arizona; and STATE OF ARIZONA, a body politic. Defendants.	No. **CV2021-011210** **MOTION FOR PRELIMINARY INJUNCTION**

Introduction

Arizona has a strong public policy favoring the initiative. Since statehood, "the people themselves deliberately and intentionally announced that," by adopting the Arizona Constitution, "they meant to exercise their supreme sovereign power directly to a far greater extent than had been done in the past, and that the legislative authority, acting in a representative capacity only, was in all respects intended to be subordinate to direct action by the people." *Whitman v. Moore*,

59 Ariz. 211, 218 (1942), *overruled on other grounds by Renck v. Superior Court*, 66 Ariz. 320, 327 (1947). To protect this fundamental right – and after decades of the Arizona Legislature meddling with and undermining measures approved at the ballot box – Arizonans adopted the Voter Protection Act ("VPA") as a constitutional amendment to limit the Legislature's power to amend, supersede, or repeal voter-approved laws. Ariz. Const. art. 4, pt. 1, § 1(6)(B)-(C), (14).

Despite this clear limit on its power, the Legislature passed HB 2756 to interfere with the voter's intent in passing Proposition 202 (now codified as A.R.S. § 23-362 *et seq.*) in 2006. Through Prop 202, Arizona's voters raised the statewide minimum wage and granted counties, cities, and towns the power to adopt a local minimum wage, subject to only one condition: the local minimum wage cannot be lower than the State's minimum wage. Based on this, the City of Flagstaff ("City") adopted a local minimum wage that exceeds the State's minimum wage. [*See* Compl. Ex. 1 (Flagstaff City Code 15-01-001-0003)]. In response – and after two prior attempts to amend or supersede Prop 202 – the Legislature passed HB 2756, which creates a new condition the Legislature may impose on a city that adopts a higher minimum wage: the city must pay a penalty for any costs to the State "attributable to" the city's higher minimum wage. The Legislature's attempt to add a condition the voters saw fit to exclude is an amendment of Prop 202. And because HB 2756 passed with only a simple majority vote, it violates the VPA and the Court should enjoin it.

Factual Background

I. Arizona Voters Pass Prop 202 and the City Adopts a Higher Minimum Wage.

In 2006, the People of Arizona passed Prop 202, known as the "Raise the Minimum Wage for Working Arizonans Act." As its name suggests, Prop 202's purpose was to "increase[e]" the minimum wage to ensure that "[a]ll working Arizonans [are] paid a minimum wage that is sufficient to give them a fighting chance to provide for their families," Prop 202 § 1, "to assure 'the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers,'" and to make appropriate "cost of living adjustment[s]." Prop 202

Publicity Pamphlet, Arguments of the Arizona Minimum Wage Coalition.[1]

In line with this purpose, Prop 202 also granted a "county, city, or town" the power to "regulate minimum wages and benefits within its geographic boundaries," as long as the county, city, or town does not adopt a local minimum wage lower than the State's minimum wage. A.R.S. § 23-364(I). Section I also reaffirms that Prop 202 must "be liberally construed in favor of its purposes" and does not "limit the authority of the legislature or any other body to adopt any law or policy that requires payment of higher or supplemental wages or benefits[.]" *Id.* (Emphasis added). In its brief analysis of Prop 202, the Legislative Council flagged this key provision, noting that "[t]he Legislature, a county, a city or a town may enact a law providing for a higher minimum wage than established by this proposition." [Compl. Ex. 2 (emphasis added)].

As authorized by A.R.S. § 23-364(I), voters approved the passage of Proposition 414 in 2016 (now codified as Flagstaff City Code 15-01-001-0003), which adopted a local minimum wage that exceeds the State's minimum wage. [*See* Compl. Ex. 1]. In response, the Legislature passed HB 2756, which (as detailed below) penalizes cities for exercising the right granted to them by the People to adopt a higher local minimum wage.

II. The Legislature Repeatedly Tries to Gut A.R.S. § 23-364(I).

This isn't the first time the Legislature has tried to undercut the voter's grant of power to cities and towns under A.R.S. § 23-364(I).

First, in 2013 the Legislature passed – and the Governor signed – HB 2280, which provided that "[t]he regulation of employee benefits, including compensation, paid and unpaid leave and other absences, meal breaks[,] and rest periods . . . is not subject to further regulation by a city, town or other political subdivision of this state." The Flagstaff Living Wage Coalition challenged the constitutionality of HB 2280 under the VPA. *See Flagstaff Living Wage Coal. v.*

[1] *See* 2006 General Election Information, Prop 202, https://apps.azsos.gov/election/2006/Info/PubPamphlet/english/Prop202.htm (last visited July 14, 2021). [Compl. Ex. 2].

Arizona, Maricopa County Superior Court, Case No. CV2015-004240. The Attorney General did not defend HB 2280's constitutionality, and instead agreed to a stipulated judgment that invalidated the law. *See Flagstaff coalition claims victory in living wage battle with state*, Ariz. Daily Sun (June 30, 2015) https://azdailysun.com/news/local/flagstaff-coalition-claims-victory-in-living-wage-battle-with-state/article_d5a96e66-c544-57fc-8305-021d91de51e1.html.

Undeterred, the Legislature tried again in 2016. That year, the Legislature passed – and the Governor signed – HB 2579, which stated that "[t]he regulation of employee benefits, including nonwage compensation, paid and unpaid leave and other absences, meal breaks[,] and rest periods . . . is not subject to further regulation by a city, town or other political subdivision of this state." A.R.S. § 23-204(A). State legislators, city council members, and a workers' union challenged the constitutionality of the law because it amended A.R.S. § 23-364(I) in violation of the VPA. *See UFCW Local 99, et al. v. Arizona*, Maricopa County Superior Court, Case No. CV2016-092409. The Superior Court invalidated the law, and the Court of Appeals affirmed, holding that HB 2579 violated the VPA because it amended or repealed Prop 202's provision "grant[ing] counties, cities, and towns" the right to "further increase wages *and benefits*[.]" *Meyer v. State*, 246 Ariz. 188, 194 ¶ 17 (App. 2019) (emphasis in original).

III. The Legislature Tries Again Through HB 2756.

HB 2756 is the Legislature's third shot at amending A.R.S. § 23-364(I).[2] In 2019, the Legislature passed – and the Governor signed – that legislation, which purports to allow the Legislature to allocate, and if allocated, requires ADOA to assess and collect "an amount to reimburse this state for the cost to this state in the next fiscal year attributable to the county's, city's or town's establishment of a minimum wage . . . that . . . exceeds the [State's] minimum wage[.]" A.R.S. § 35-121.01(A). Until this legislative session (as detailed below), the Legislature had never allocated any amounts under A.R.S. § 35-121.01(A).

[2] The challenged provisions, A.R.S. §§ 35-121.01 and 35-113 (as amended), are referred to collectively herein as "HB 2756".

If the Legislature allocates an amount under A.R.S. § 35-121.01(A), Section B provides that ADOA "shall assess" that amount by July 31, and the amount is "payable immediately on assessment." A.R.S. § 35-121.01(B). If the county, city or town does not pay the assessment by December 31, ADOA "shall notify the state treasurer, who shall subtract the amount owed by the county, city or town from any payments required to be made by the state treasurer to that county, city or town pursuant to section 42-5029, subsection D, plus interest[.]" *Id.* And if the amount the Treasurer withholds is less than the unpaid assessment, the Treasurer "shall withhold from any other monies payable to that county, city or town from whatever state funding source is available an amount necessary to fulfill the requirement." *Id.*

HB 2756 also amended A.R.S. § 35-113 to add a requirement that state "budget units" include in their annual budget estimates that they submit to the Governor's office of strategic planning and budgeting "a detailed estimate of the cost to the budget unit in the next fiscal year attributable to a county's, city's or town's establishment of a minimum wage if that minimum wage exceeds the minimum wage established by this state pursuant to section 23-363."

When the House Appropriations Committee debated HB 2756, Representative Randall Friese correctly recognized that the law implicated the VPA. May 22, 2019 H. Approp. Comm. Mtg., https://www.azleg.gov/videoplayer/?eventID=2019051332 ("Is this a [VPA] issue? I mean [Prop 202] was voter-initiated."). Yet the Legislature charged ahead.

IV. The Legislature Allocates a $1.1 Million Assessment Against the City.

After HB 2756 passed, the Joint Legislative Budget Committee ("JLBC") sent a memorandum to various state agencies requesting that they include in their FY2021 budget estimates any costs to the State attributable to the City's minimum wage. [*See* Compl. Ex. 3] Several State agencies and other entities submitted FY2021 budget estimates with an amount of alleged costs attributable to the City's minimum wage. Based on these estimates, the Legislature introduced a budget bill directing ADOA to "assess and collect the amount of $1,110,992 from the City of Flagstaff in fiscal year 2021-2022 to reimburse this state for costs to this state

attributable to the establishment of a minimum wage that exceeds the minimum wage established by this state[.]" SB 1827, 55th Leg., 1st Reg. Sess. § 12 (Ariz. 2021).

At a Senate Appropriations Committee meeting on May 26, legislators again correctly questioned the constitutionality of this assessment under the VPA. Senator Martin Quezada noted that the assessment is a "financial penalty against City of Flagstaff for exercising express authority to raise its minimum wage" as granted to it by the People. *See* May 26, 2021 Sen. Approp. Comm. Mtg., https://www.azleg.gov/videoplayer/?eventID=2021051062 (last visited July 14, 2021). On June 24, 2021, the Legislature passed SB 1827, and the Governor signed it on June 30. [Compl. Ex. 5]

Argument

A party seeking a preliminary injunction must establish that (1) there is a strong likelihood of success at trial on the merits, (2) the possibility of irreparable harm that is not remedied by monetary damages, (3) the balance of hardships tips in its favor, and (4) public policy favors the injunction. *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). Courts consider the likelihood of success on the merits and the possibility of irreparable harm on a sliding scale, and they will grant an injunction when the balance of hardships tips sharply in the movant's favor with less likelihood of success, and vice versa. *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 411 ¶ 10 (2006). Under either formulation of the rule, the City is entitled to a preliminary an injunction. The City has a strong likelihood of the success on its claims, and the consequences of an unconstitutional $1.1 million assessment will cause an irreparable hardship that tips strongly in favor of the City.

V. The City Is Likely to Succeed on Its Claim That HB 2756 Violates the VPA.

A. The VPA protects voter-approved laws from legislative changes.

The framers of the Arizona Constitution were "advocates of th[e] method of popular government" known as the initiative and referendum, "and the records of the constitutional convention, together with the language of the [] constitution, show clearly that it was the opinion

of the delegates who adopted and signed it that its provisions setting forth these principles were among the most important to be found therein." *Whitman*, 59 Ariz. at 218. "When the [constitution] was submitted to the voters for ratification, that issue was again the principal one before them and the constitution was ratified by a very large percentage of the votes cast." *Id.* As a result, and since statehood, the People of Arizona have reserved to themselves the power to "propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature," and "for use at their own option, the power to approve or reject at the polls any act, or item, section, or part of any act, of the legislature." Ariz. Const. art. IV, § 1(1). As a function of this constitutional reservation, "the power of the people to legislate is as great as the power of the legislature to legislate." *Iman v. Bolin*, 98 Ariz. 358, 364 (1965).

After decades of the Legislature undermining the will of Arizona voters, in 1998 the People adopted the VPA as a constitutional amendment, limiting the legislature's power to meddle with laws adopted by the voters. Ariz. Const. art. 4, pt. 1, § 1(6)(B)-(C), (14). Under the VPA, the Legislature cannot repeal voter-approved initiative measures, and it can amend or supersede an initiative only if the amendment "furthers the purposes" of the initiative and the Legislature passes it with "at least three-fourths of the members of each house[.]" *Id*. The purpose of the VPA is "to limit changes to voter-approved laws," *Meyer*, 246 Ariz. at 192 ¶ 10, and to prevent the legislature from "abusing its power to amend and repeal voter-endorsed measures." *Arizona Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 469 ¶ 7 (2009). The passage of the VPA thus "altered the balance of power between the electorate and the legislature[.]" *Id.*

HB 2756 passed with only a simple majority vote.[3] The only question, then, is whether HB 2756 amends A.R.S. § 23-364(I). It does.

[3] *See* Bill History for HB 2756, https://apps.azleg.gov/BillStatus/BillOverview?Sessionid=121 (last visited July 14, 2021).

B. HB 2756 amends A.R.S. § 23-364(I) in violation of the VPA.

Even if a law does not expressly purport to amend a voter-approved law, courts "must consider its effect on the fundamental purposes underlying the VPA." *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, 7 ¶ 23 (2013) ("[T]he legislature may not do indirectly what it is prohibited from doing directly.") (quoting *Caldwell v. Bd. of Regents,* 54 Ariz. 404, 410, 96 P.2d 401, 403 (1939)). With that consideration in mind, the Legislature "amends" a voter-approved law when it "in substance alters, modifies, or adds to" the law. *Meyer*, 246 Ariz. at 192 ¶ 11 (quoting *Cave Creek Unified Sch. Dist.*, 233 Ariz. at 7 ¶ 24).

In *State v. Maestas*, for example, the Arizona Supreme Court struck down a law because it amended Arizona's Medical Marijuana Act ("AMMA") but did not further the purpose of AMMA, as required by the VPA. 244 Ariz. 9, 13 ¶ 20 (2018). There, the challenged law added college campuses to the list of places where possession of medical marijuana is illegal, despite the already exhaustive list of places adopted by the voters in AMMA. *Id.* ¶ 16. Because the voters prescribed a list of places where medical marijuana is illegal that did not include college campuses, the voters did not intend to criminalize medical marijuana on college campuses, and the Legislature's attempt to do so improperly amended AMMA. *Id.* ¶ 15.

So too here. The voters specified in A.R.S. § 23-364(I) that a city has the right to adopt a local minimum wage, subject only to the condition that the local minimum wage cannot be lower than the State's minimum wage. By its terms, HB 2756 adds a new condition that the Legislature can impose on a city that adopts a higher local minimum wage: the city must reimburse the State for any costs attributable to the city's higher minimum wage. *See* A.R.S. § 35-121.01(A). The voters mandated that Prop 202 "shall not limit" a city's authority to adopt a higher minimum wage. A.R.S. § 23-364(I).[4] But HB 2756 does exactly that. It limits cities' authority to adopt a

[4] The Legislative Council analysis included this key provision in its brief description of Prop 202. [Compl. Ex. 2 ("a county, a city or a town may enact a law providing for a higher minimum wage than established by this proposition.")]

higher minimum wage by adding a new condition that allows the Legislature – in its complete discretion – to penalize them if they exercise that authority. HB 2756 purports to be an independent budgeting statute, but it "in substance alters, modifies, or adds to" A.R.S. § 23-364(I) in violation of the VPA. *Meyer*, 246 Ariz. at 192 ¶ 11.

If it weren't already clear from the plain language, the voters' intent in passing A.R.S. § 23-364(I) also reveals that HB 2756 amends it. *Ariz. Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 470, 471 ¶¶ 10, 14 (2009) ("Our primary objective in construing statutes adopted by initiative is to give effect to the intent of the electorate. . . . In determining the purpose of an initiative, we consider such materials as statements of findings passed with the measure as well as other materials in the Secretary of State's publicity pamphlet[.]") (quotations omitted). The People passed Prop 202 to "increase[e]" the minimum wage for Arizona's workers, "to assure 'the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers,'" and to make appropriate "cost of living adjustment[s]." Prop 202 Publicity Pamphlet, Arguments of the Arizona Minimum Wage Coalition. [*See* Compl. Ex. 2]. To further this purpose, the voters granted cities the right to adopt higher minimum wages to match local costs of living. Penalizing cities that exercise that right frustrates the voters' intent in passing Prop 202.

Beyond that, the Legislature's record since Prop 202's passage also supports a finding that that the Legislature has improperly amended A.R.S. § 23-364(I). Since Prop 202 passed, the Legislature has twice tried – and failed – to undercut the voters' grant of power to cities and towns under A.R.S. § 23-364(I). HB 2756 is yet another attempt to prevent cities from adopting higher minimum wages.

In the end, HB 2756 is precisely the kind of legislative meddling the VPA is designed to prevent. Allowing the Legislature to create and impose new burdens and restrictions on an initiative measure would thwart the VPA's purpose of stopping the Legislature from "abusing its power" to change voter-approved laws. *Brewer*, 221 Ariz. at 469 ¶ 7. The Court should strike

down HB 2756 and enjoin the $1.1 million assessment against the City.

VI. The City Will Suffer Irreparable Harm Without an Injunction.

To begin, a violation of the VPA constitutes irreparable harm, and an injunction is the only available remedy to prevent enforcement of an unconstitutional law. *See, e.g.*, *Goldie's Bookstore, Inc. v. Superior Ct. of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984) ("An alleged constitutional infringement will often alone constitute irreparable harm.") (citing Wright & Miller, 11 Fed. Prac. and P. § 2948 at 440 (1973)).

What's more, the City faces imminent irreparable harm to its budget and operations. If the Court does not enjoin the State from enforcing HB 2756, ADOA will assess $1.1 million against the City by July 31. And if the City does not pay the entire assessment by December 31, the Treasurer will withhold the City's share of State revenue. If the City has to pay a $1.1 million assessment in the next six months and risks losing State revenue, the City will not be able to fund critical infrastructure and services. [Compl. ¶¶ 67-70] The assessment in SB 1827 amounts to approximately 13% of the City's state shared sales taxes. [*Id.* ¶ 68] These revenues fund many operations through the City's General Fund, including, police, fire, parks and recreation, facilities, fleet maintenance, administration, legal services, information technology, finance, and human resources. [*Id.*] The unconstitutional assessment and resulting loss of revenues will likely disrupt the City's operations, cause the City to reduce its services, and create delays in the City's infrastructure and capital replacement. [*Id.* ¶ 69]

Indeed, the City's FY2021-2022 budget already accounts for the assessment in SB 1827 and, as a result, the City is unable to fund critical infrastructure and equipment under this budget. [*Id.* ¶ 70] For example, the City (1) does not have resources to upgrade its aging information technology systems and advanced measures for cyber security, (2) does not have sufficient funding to replace its aging body cameras for public safety, (3) lacks funding for overtime pay for its public safety employees, and (4) has to defer maintenance of its facilities. [*Id.* ¶ 71] The City lacks funding under the budget to replace its fire trucks, including a $1.4 million ladder

truck that is the only one available in the City's region. [*Id.* ¶ 72] The City must also extend the replacement term for fire trucks to 25 years, instead of the industry standard of 20 years. [*Id.*] Even more, the City anticipates that many other organizational needs will not be met under the current budget because it accounts for the assessment in SB 1827. [*Id.* ¶ 74]

VII. The Balance of Hardships and Public Interest Favor an Injunction.

Lastly, the balance of hardships and public interest weigh heavily in the City's favor. Arizona has a strong public policy favoring the People's fundamental right to legislate by initiative. An injunction would safeguard that interest against unconstitutional interference by the Legislature and preserve the will of the People. And because the $1.1 million assessment against the City violates the VPA, "public policy and the public interest are served by enjoining [this] unlawful action." *Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58 ¶ 27 (2020). Beyond that, the City faces grave hardships caused by the assessment. As detailed above, the unconstitutional assessment and imminent risk of losing State revenues frustrates the City's ability to provide critical services to its residents. [Compl. ¶¶ 67-74]

Conclusion

The City, through its own voters, carried out the power granted to it by the People and raised its minimum wage. The Legislature has tried for the third time to undermine that power in violation of the VPA. For all the reasons above, the Court should grant a preliminary injunction enjoining HB 2756 and Section 12 of SB 1827. The City also requests its attorneys' fees and costs under A.R.S. §§ 12-348.01, 12-341, and 12-1840.

RESPECTFULLY SUBMITTED this 15th day of July, 2021.

COPPERSMITH BROCKELMAN PLC

By /s/ Roopali H. Desai
Roopali H. Desai
D. Andrew Gaona
Kristen Yost

Attorneys for Plaintiff City of Flagstaff

Clerk of the Superior Court
*** Electronically Filed ***
D. Hill, Deputy
7/15/2021 2:15:09 PM
Filing ID 13128296

Roopali H. Desai (024295)
D. Andrew Gaona (028414)
Kristen Yost (034052)
COPPERSMITH BROCKELMAN PLC
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
T: (602) 381-5478
rdesai@cblawyers.com
agaona@cblawyers.com
kyost@cblawyers.com
Attorneys for Plaintiff City of Flagstaff

ARIZONA SUPERIOR COURT

MARICOPA COUNTY

CITY OF FLAGSTAFF, a political subdivision of the State of Arizona, Plaintiff, v. THE ARIZONA DEPARTMENT OF ADMINISTRATION, an agency of the State of Arizona; ANDY TOBIN, in his official capacity as the Director of the Arizona Department of Administration; KIMBERLY YEE, in her official capacity as the State Treasurer of Arizona; and STATE OF ARIZONA, a body politic. Defendants.	No. **CV2021-011210** **VERIFIED COMPLAINT** **(Tier 2)**

Plaintiff, for its Verified Complaint against Defendants, alleges as follows:

Parties, Jurisdiction and Venue

1. Plaintiff City of Flagstaff ("City") is a political subdivision of the State of Arizona.

2. In 2006, Arizona's voters approved the passage of Proposition 202, codified as A.R.S. § 23-364(I), which granted a "county, city, or town" the power to "regulate minimum wages and benefits within its geographic boundaries," only if they do "not provide for a

minimum wage lower than" the State's minimum wage.

3. Consistent with Prop 202, the City's voters approved the passage of Proposition 414 in 2016 (now codified as Flagstaff City Code 15-01-001-0003, a true and correct copy of which is attached as Exhibit 1), which adopted a local minimum wage that is higher than the State's minimum wage.

4. Defendant Arizona Department of Administration ("ADOA") is an agency of the State of Arizona responsible for providing support to the operation of state government. ADOA is required under A.R.S. § 35-121.01 to "assess and collect from a county, city or town an amount to reimburse this state for the cost to this state in the next fiscal year attributable to the county's, city's or town's establishment of a minimum wage if that minimum wage exceeds the minimum wage established by this state pursuant to section 23-363."

5. Defendant Andy Tobin is the Director of ADOA ("Director"), and is named in his official capacity.

6. Defendant Kimberly Yee is the State Treasurer of Arizona ("Treasurer") and is named in her official capacity. If a county, city, or town, does not pay an assessment described in Paragraph 4, the Treasurer is required under A.R.S. § 35-121.01 to "subtract the amount owed by the county, city or town from any payments required to be made by the state treasurer to that county, city or town pursuant to section 42-5029, subsection D, plus interest on that amount pursuant to section 44-1201," and "withhold from any other monies payable to that county, city or town from whatever state funding source is available an amount necessary to fulfill the requirement."

7. Defendant State of Arizona is a body politic.

8. Jurisdiction over this action is proper pursuant to A.R.S. §§ 12-123, 12-1831, and the Arizona Constitution, as well as Rule 4(a) of the Arizona Rules of Procedure for Special Actions.

9. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401 and Rule 4(b) of

the Arizona Rules of Procedure for Special Actions.

Factual Allegations

The People's Initiative Power and the Voter Protection Act

10. The framers of the Arizona Constitution were "advocates of th[e] method of popular government" known as the initiative and referendum, "and the records of the constitutional convention, together with the language of the [] constitution, show clearly that it was the opinion of the delegates who adopted and signed it that its provisions setting forth these principles were among the most important to be found therein." *Whitman v. Moore*, 59 Ariz. 211, 218 (1942), *overruled on other grounds by Renck v. Superior Court*, 66 Ariz. 320, 327 (1947).

11. "When the [constitution] was submitted to the voters for ratification, that issue was again the principal one before them and the constitution was ratified by a very large percentage of the votes cast." *Id.*

12. As a result, and since statehood, the people of Arizona have reserved to themselves the power to "propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature," and "for use at their own option, the power to approve or reject at the polls any act, or item, section, or part of any act, of the legislature." Ariz. Const. art. IV, § 1(1).

13. As a function of this constitutional reservation, "the power of the people to legislate is as great as the power of the legislature to legislate." *Iman v. Bolin*, 98 Ariz. 358, 364 (1965).

14. In 1998, and after decades of the Arizona Legislature meddling with and undermining measures approved at the ballot box, Arizona voters adopted the Voter Protection Act ("VPA") as a constitutional amendment, limiting the legislature's power to amend, repeal, or supersede laws adopted by the People. Ariz. Const. art. 4, pt. 1, § 1(6)(B)-(C), (14).

15. Under the VPA, the Legislature cannot repeal voter-approved initiative measures,

and it can amend or supersede an initiative only when the amendment "furthers the purposes" of the initiative and is passed by "at least three-fourths of the members of each house of the [L]egislature." *Id*.

16. The purpose of the VPA is "to limit changes to voter-approved laws," *Meyer v. State*, 246 Ariz. 188, 192 ¶ 10 (App. 2019), and to prevent the legislature from "abusing its power to amend and repeal voter-endorsed measures." *Arizona Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 469 ¶ 7 (2009).

17. The passage of the VPA thus "altered the balance of power between the electorate and the legislature[.]" *Id.*

State Prop 202 and Flagstaff Prop 414

18. In 2006, Arizona voters passed Prop 202, known as the "Raise the Minimum Wage for Working Arizonans Act."

19. As its name suggests, Prop 202's purpose was to "increase[e]" the minimum wage to ensure that "[a]ll working Arizonans [are] paid a minimum wage that is sufficient to give them a fighting chance to provide for their families," Prop 202 § 1, "to assure 'the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers,'" and to make appropriate "cost of living adjustment[s]." Prop 202 Publicity Pamphlet, Arguments of the Arizona Minimum Wage Coalition[1].

20. In the brief Legislative Council Analysis for Prop 202, the Legislative Council noted that "[t]he Legislature, a county, a city or a town may enact a law providing for a higher minimum wage than established by this proposition." (Emphasis added).

21. In line with this purpose, Prop 202 also authorized a "county, city, or town" to

[1] *See* 2006 General Election Information, Prop 202, https://apps.azsos.gov/election/2006/Info/PubPamphlet/english/Prop202.htm (last visited July 14, 2021). A true and correct copy of the 2006 publicity pamphlet materials relevant to Prop 202 is attached as Exhibit 2.

"regulate minimum wages and benefits within its geographic boundaries," subject to only one condition: the county, city, or town may not adopt a local minimum wage that is lower than the State's minimum wage. A.R.S. § 23-364(I).

22. Prop 202 also must "be liberally construed in favor of its purposes" and does not "limit the authority of the legislature or any other body to adopt any law or policy that requires payment of higher or supplemental wages or benefits[.]" *Id.* (emphasis added).

23. As authorized by Prop 202, in 2006 the City – through a local voter initiative known as Prop 414 – adopted a local minimum wage that is higher than the State's minimum wage. [*See* Exhibit 1 (Flagstaff City Code 15-01-001-0003)].

The Legislature's Attempts to Undermine the Will of the Voters

24. In 2013, the Legislature first attempted to amend or supersede Prop 202.

25. That year, the Legislature passed – and the Governor signed – HB 2280, which provided that "[t]he regulation of employee benefits, including compensation, paid and unpaid leave and other absences, meal breaks and rest periods . . . is not subject to further regulation by a city, town or other political subdivision of this state."

26. The Flagstaff Living Wage Coalition and several individuals filed a lawsuit challenging the constitutionality of HB 2280 under the VPA. *See Flagstaff Living Wage Coalition, et al. v. Arizona*, Maricopa County Superior Court, Case No. CV2015-004240.

27. The Attorney General did not defend HB 2280's constitutionality, and instead agreed to a stipulated judgment that invalidated the law.

28. Undeterred, the Legislature tried again in 2016.

29. That year, the Legislature passed – and the Governor signed – a HB 2579, which stated that "[t]he regulation of employee benefits, including nonwage compensation, paid and unpaid leave and other absences, meal breaks and rest periods . . . is not subject to further regulation by a city, town or other political subdivision of this state." A.R.S. § 23-204(A).

30. State legislators, city council members, and a workers' union challenged the

constitutionality of the law because it amended A.R.S. § 23-364(I) in violation of the VPA. *See UFCW Local 99, et al. v. Arizona*, Maricopa County Superior Court, Case No. CV2016-092409.

31. The Superior Court invalidated the law under the VPA.

32. The Arizona Court of Appeals affirmed, holding that HB 2579 violated the VPA because it amended or repealed Prop 202's provision "grant[ing] counties, cities, and towns" the right to "further increase wages *and benefits*[.]" *Meyer*, 246 Ariz. at 194 ¶ 17 (emphasis in original).

33. In 2019, the Legislature tried for the third time to amend Prop 202 when it passed – and the Governor signed – HB 2756, now codified as A.R.S. § 35-121.01 and, as amended, A.R.S. § 35-113. These provisions of this legislation are referred to collectively herein as "HB 2756".

34. A.R.S. § 35-121.01(A) provides that "the legislature may allocate and, if allocated, the department of administration shall assess and collect from a county, city or town an amount to reimburse this state for the cost to this state in the next fiscal year attributable to the county's, city's or town's establishment of a minimum wage if that minimum wage exceeds the minimum wage established by this state pursuant to section 23-363."

35. Until this legislative session (as detailed below), the Legislature had never allocated any amounts under A.R.S. § 35-121.01(A).

36. A.R.S. § 35-121.01(B) provides that ADOA

> shall assess the amounts under this section not later than July 31 of each year. The amounts are payable immediately on assessment. If the county, city or town does not pay to the department the amount allocated pursuant to this section on or before December 31 of the year the allocation is made, the department shall notify the state treasurer, who shall subtract the amount owed by the county, city or town from any payments required to be made by the state treasurer to that county, city or town pursuant to section 42-5029, subsection D, plus interest on that amount pursuant to section 44-1201, retroactive to the first day the amount was due. If the amount the state treasurer withholds is insufficient to meet the requirements of this section, the state treasurer shall withhold from any other monies payable to that

county, city or town from whatever state funding source is available an amount necessary to fulfill the requirement.

37. HB 2756 also amended A.R.S. § 35-113 to add a requirement that state "budget units" include in their annual budget estimates that are provided to the Governor's office of strategic planning and budgeting "a detailed estimate of the cost to the budget unit in the next fiscal year attributable to a county's, city's or town's establishment of a minimum wage if that minimum wage exceeds the minimum wage established by this state pursuant to section 23-363."

38. When HB 2756 was introduced in the House Appropriations Committee, Representative Randall Friese recognized that the law implicated the VPA. May 22, 2019 H. Approp. Comm. Mtg., https://www.azleg.gov/videoplayer/?eventID=2019051332 ("Is this a [VPA] issue? I mean [Prop 202] was voter-initiated.").

The State's Alleged Costs from the City's Minimum Wage

39. In October 2019, the Joint Legislative Budget Committee ("JLBC") sent a memorandum to various state agencies requesting that they include in their FY2021 budget estimates any costs to the State attributable to the City's minimum wage. *See* Oct. 8, 2019 JLBC Memorandum, a true and correct copy of which is attached as Exhibit 3.

40. As of February 21, 2020, at least seven State agencies and other entities included in their FY2021 budget estimates an amount of alleged costs attributable to the City's minimum wage.

41. On information and belief, State agencies included in their budget estimates the costs of paying the City's minimum wage to employees of the State.

42. Under Flagstaff City Code 15-01-001-0002, however, "the state of Arizona" is exempt from paying its employees the City's minimum wage.

43. On information and belief, political subdivisions of the state, including Coconino Community College ("CCC"), submitted budget estimates regarding their alleged costs attributable to the City's minimum wage.

44. CCC is not a State agency, and it has its own tax base and other sources of revenue.

45. On information and belief, CCC's estimated costs attributable to paying its employees the City's minimum wage are not "cost[s] to this state."

46. On information and belief, certain State agencies also included budget estimates under HB 2756 for amounts the State will not actually incur.

47. For example, the Arizona Historical Society ("AHS") included in its budget estimates the costs to AHS if it were to raise salaries for three positions, but on information and belief, AHS has not in fact raised the salaries for those positions. *See* Oct. 10, 2019 Letter from AHS to JLBC, a true and correct copy of which is attached as Exhibit 4.

48. On information and belief, even if AHS were to raise salaries for those positions, those positions are for employees of the State and thus exempt from the City's minimum wage.

49. Based on these budget estimates, the Legislature introduced a budget bill directing ADOA to "assess and collect the amount of $1,110,992 from the City of Flagstaff in fiscal year 2021-2022 to reimburse this state for costs to this state attributable to the establishment of a minimum wage that exceeds the minimum wage established by this state[.]" SB 1827, 55th Leg., 1st Reg. Sess. § 12 (Ariz. 2021) ("SB 1827").

50. On June 24, 2021, the Legislature passed SB 1827. The Governor signed it on June 30, 2021. A true and correct copy of the chaptered version of SB 1827 is attached as Exhibit 5.

51. At a Senate Appropriations Committee meeting on May 26, 2021, legislators correctly questioned the constitutionality of this assessment under the VPA.

52. Senator Martin Quezada noted that the assessment is a "financial penalty against City of Flagstaff for exercising express authority to raise its minimum wage" as granted to it by the people. *See* May 26, 2021 Sen. Approp. Comm. Mtg., https://www.azleg.gov/videoplayer/?eventID=2021051062 (last visited July 14, 2021).

Count I

(Declaratory Judgment – Violation of the Voter Protection Act)

(Against All Defendants)

53. The City re-alleges Paragraphs 1-52 as if fully set forth herein.

54. Prop 202 was passed by Arizona voters through an initiative measure.

55. Prop 202 expressly granted the City authority to adopt a different local minimum wage, as long as it is higher than the State's minimum wage. A.R.S. § 23-364(I).

56. Under the VPA, the Legislature cannot repeal Prop 202, and it can amend or supersede Prop 202 only if the amendment "furthers the purposes" of the Prop 202 and is passed by "at least three-fourths of the members of each house of the [L]egislature." Ariz. Const. art. 4, pt. 1, § 1(6)(B)-(C), (14).

57. HB 2756 amended or superseded Prop 202 by adding a condition to A.R.S. § 23-364(I) that penalizes cities for adopting a higher minimum wage.

58. HB 2756 does not further the purpose of Prop 202.

59. HB 2756 did not pass with a three-fourths majority vote in the Legislature.

60. An actual and justiciable controversy exists regarding the constitutionality of HB 2756 because the Legislature has allocated and directed ADOA to assess $1,110,992 against the City under Section 12 of SB 1827.

61. The City requests a declaration that HB 2756 and Section 12 of SB 1827 violate the VPA.

Count II

(Injunctive Relief – Violation of the Voter Protection Act)

(Against All Defendants)

62. The City re-alleges Paragraphs 1-61 as if fully set forth herein.

63. Defendants ADOA and the Director will assess $1,110,992 against the City by July 31, 2021 absent the entry of an injunction.

64. The City should not be compelled to pay the assessment because the assessment is unlawful for the reasons set forth in this Complaint.

65. Absent the entry of an injunction, the Treasurer can and will subtract and withhold State revenue owed to the City when the City does not pay the $1,110,992 assessment by December 31, 2021.

66. The State of Arizona and its agents will continue to allocate and assess future amounts against the City absent an injunction.

67. The City will suffer irreparable harm absent the entry of an injunction because it is subject to an unconstitutional assessment and is at imminent risk of losing State revenue, which will cause the City significant harm.

68. The assessment set forth in SB 1827 amounts to approximately 13% of the City's state shared sales taxes. These revenues fund many operations through the City's General Fund, including, police, fire, parks and recreation, facilities, fleet maintenance, administration, legal services, information technology, finance, and human resources.

69. The assessment and resulting loss of revenues will likely disrupt the City's operations, cause the City to reduce its services, and create delays in the City's infrastructure and capital replacement.

70. Indeed, the City's fiscal year 2021-2022 budget already accounts for the assessment in SB 1827 and, as a result, the City is unable to fund critical infrastructure and equipment under this budget.

71. For example, under the City's budget that accounts for the assessment, the City (1) does not have resources to upgrade its aging information technology systems and advanced measures for cyber security, (2) does not have sufficient funding to replace its aging body cameras for public safety, (3) lacks funding for overtime pay for its public safety employees, and (4) has to defer maintenance of its facilities.

72. Among other things, the City lacks funding under the budget to replace its fire

trucks, including a $1.4 million ladder truck that is the only one available in the City's region. The City also must extend the replacement term for fire trucks to 25 years, instead of the industry standard of 20 years.

73. The City anticipates that many other organizational needs will not be met under the current budget because it accounts for the assessment in SB 1827.

74. The balance of hardships and public interest both favor the City, which seeks to uphold the Arizona Constitution and the will of Arizona's voters.

Count III

(Special Action – Prohibition – Violation of the Voter Protection Act)

(Against Defendants ADOA, the Director, and the Treasurer)

75. The City re-alleges Paragraphs 1-74 as if fully set forth herein.

76. For the reasons set forth above in Paragraphs 53-61, HB 2756 violates the VPA.

77. If ADOA and the Director impose the assessment under Section 12 of SB 1827 against the City, they will be proceeding without or in excess of their legal authority.

78. ADOA's and the Director's assessment against the City would be a determination that is arbitrary and capricious or an abuse of discretion.

79. If the Treasurer subtracts and withholds State revenue from the City based on the City's failure to pay the assessment, she will be proceeding without or in excess of her legal authority.

80. The Treasurer's withholding of State revenue from the City based on the City's failure to pay the assessment would be a determination that is arbitrary and capricious or an abuse of discretion.

81. The City has no other equally plain, speedy, and adequate remedy at law.

82. The City is entitled to special action relief prohibiting ADOA and the Director from assessing any amount against the City "an amount to reimburse this state for the cost to this state in the next fiscal year attributable to" the City's minimum wage.

83. The City is entitled to special action relief prohibiting the Treasurer from subtracting and withholding State revenue from the City based on the City's failure to pay the assessment.

Count IV

(Declaratory Judgment – Invalid Assessment)

(Against All Defendants)

84. The City re-alleges Paragraphs 1-83 as if fully set forth herein.

85. A.R.S. § 35-121.01 allows for reimbursement to the State only for "the cost to this state in the next fiscal year attributable to" the City's "establishment of a minimum wage" that exceeds the State's minimum wage.

86. "[T]he state of Arizona" is exempt from paying its employees the City's minimum wage. Flagstaff City Code 15-01-001-0002.

87. On information and belief, various state agencies included in their budget estimates the costs of paying the City's minimum wage to employees of the State of Arizona.

88. The cost of paying State employees a higher minimum wage that the City does not require is not a cost "attributable to" the City's establishment of a minimum wage higher than the State minimum wage.

89. On information and belief, a political subdivision's estimated costs attributable to paying its employees the City's minimum wage above the State's minimum wage are not necessarily "cost[s] to this state."

90. CCC, for example, has its own tax base and other sources of revenue beyond the revenue it receives from the State. If CCC incurs costs from paying certain employees the City's minimum wage, there is no way to trace those costs to the State.

91. On information and belief, the assessment in SB 1827 includes estimated costs to certain State agencies that those agencies will not actually incur.

92. An actual and justiciable controversy exists regarding the validity of the

assessment of $1,110,992 against the City because the assessment is based on budget estimates that do not include "cost[s] to this state" or costs "attributable to" the City's minimum wage.

93. The City requests a declaration that the assessment in Section 12 of SB 1827 is unlawful because it is not "an amount to reimburse this state for the cost to this state in the next fiscal year attributable to the [City's] establishment of a minimum wage . . . that . . . exceeds the [State's] minimum wage."

Count V

(Injunctive Relief – Invalid Assessment)

(Against ADOA, the Director, and the Treasurer)

94. The City re-alleges Paragraphs 1-93 as if fully set forth herein.

95. Defendants ADOA and the Director will assess $1,110,992 against the City by July 31, 2021 absent the entry of an injunction.

96. The City will not pay the assessment under Section 12 of SB 1827 because the assessment is unlawful for the reasons set forth in this Complaint.

97. Absent the entry of an injunction, the Treasurer will subtract and withhold State revenue owed to the City when the City does not pay the $1,110,992 assessment by December 31, 2021.

98. The City will suffer irreparable harm absent the entry of an injunction because it is subject to an unlawful assessment and is at imminent risk of losing State revenue, which will cause the City significant harm, as detailed in Paragraphs 67-73.

99. The balance of hardships and public interest both favor the City.

Count VI

(Special Action – Prohibition – Invalid Assessment)

(Against Defendants ADOA, the Director, and the Treasurer)

100. The City re-alleges Paragraphs 1-99 as if fully set forth herein.

101. For the reasons set forth above in Paragraphs 84-93, the assessment in Section 12 of SB 1827 is unlawful under A.R.S. § 35-121.01.

102. If ADOA and the Director impose the assessment against the City, they will be proceeding without or in excess of their legal authority.

103. ADOA's and the Director's assessment against the City would be a determination that is arbitrary and capricious or an abuse of discretion.

104. If the Treasurer subtracts and withholds State revenue from the City based on the City's failure to pay the assessment, she will be proceeding without or in excess of her legal authority.

105. The Treasurer's withholding of State revenue from the City based on the City's failure to pay the assessment would be a determination that is arbitrary and capricious or an abuse of discretion.

106. The City has no other equally plain, speedy, and adequate remedy at law.

107. The City is entitled to special action relief prohibiting ADOA and the Director from imposing the assessment under Section 12 of SB 1827.

108. The City is entitled to special action relief prohibiting the Treasurer from subtracting and withholding State revenue from the City based on the City's failure to pay the assessment.

Prayer for Relief

WHEREFORE, the City respectfully requests that this Court provide the following relief:

A. A declaratory judgment declaring that HB 2756 and Section 12 of SB 1827 violate the Voter Protection Act;

B. In the alternative, a declaratory judgment declaring that the assessment in Section 12 of SB 1827 is invalid under A.R.S. § 35-121.01;

C. A preliminary and permanent injunction enjoining ADOA and the Director from imposing an assessment against the City under A.R.S. § 35-121.01;

D. A preliminary and permanent injunction enjoining the Treasurer from withholding any State revenue from the City under A.R.S. § 35-121.01;

E. Special action relief prohibiting ADOA and the Director from imposing an assessment against the City under A.R.S. § 35-121.01;

F. Special action relief prohibiting the Treasurer from withholding any State revenue from the City under A.R.S. § 35-121.01;

G. A preliminary and permanent injunction enjoining the State or its agents from enforcing HB 2756 or Section 12 of SB 1827;

H. An order awarding the City its taxable costs under A.R.S. §§ 12-341 and 12-1840;

I. An order awarding the City its attorneys' fees under A.R.S. § 12-348.01 and any other applicable statute or equitable doctrine; and

J. Any other relief as may be appropriate.

RESPECTFULLY SUBMITTED this 15th day of July, 2021.

COPPERSMITH BROCKELMAN PLC

By /s/ Roopali H. Desai
Roopali H. Desai
D. Andrew Gaona
Kristen Yost

Attorneys for Plaintiff City of Flagstaff

EXHIBIT 1

Title 15
LABOR

CHAPTERS:

15-01 **Minimum Wage**

CHAPTER 15-01
MINIMUM WAGE*

Sections:

15-01-001-0001 Short Title
15-01-001-0002 Definitions
15-01-001-0003 Minimum Wage
15-01-001-0004 Notice and Recordkeeping Requirements
15-01-001-0005 Retaliation Prohibited
15-01-001-0006 Implementation, Investigation and Enforcement
15-01-001-0007 Civil Penalties and Remedies
15-01-001-0008 Other Legal Requirements
15-01-001-0009 No Effect on More Generous Policies
15-01-001-0010 Savings Clause
15-01-001-0011 Severability

* Code reviser's note: This chapter was adopted through the initiative process, approved as Proposition 414 at the November 8, 2016 election and proclaimed law by the Mayor on November 28, 2016. The provisions of this chapter may only be amended through the initiative process or as otherwise permitted by law.

15-01-001-0001 Short Title

This act may be cited as the "The Minimum Wage Act." (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

15-01-001-0002 Definitions

A. "City" is the City of Flagstaff.

B. "Office" is the department, division or office that the City shall establish, create or designate to enforce this chapter.

C. "Employ" includes to suffer or permit to work.

D. "Employee" is any individual who (1) works or is expected to work twenty-five (25) hours or more in any given calendar year within the geographic boundaries of the City for an employer and (2) is or was employed by an employer.

E. "Employer" includes any corporation, proprietorship, partnership, joint venture, limited liability company, trust, association, political subdivision of the state, individual or other entity acting directly or indirectly in the interest of an employer in relation to an employee, and shall include the City, but does not include the state of Arizona or the United States.

F. "Minimum Wage" is the minimum wage rate as set under Section 15-01-001-0003 of this chapter.

G. "Tip" means a verifiable sum presented by a customer as a gift or voluntary gratuity in recognition of some service performed for the customer by the employee receiving the tip.

H. "Tipped Employee" means an employee who customarily and regularly receives more than $30 a month in tips, has been informed by the employer in writing about the tip notice provisions required by this chapter, and retains all tips that he or she receives. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

15-01-001-0003 Minimum Wage

A. Employers shall pay employees no less than the minimum wage, which shall be not less than:

1. Ten dollars and fifty cents ($10.50) an hour on and after July 1, 2017;

2. Eleven dollars ($11.00) an hour on and after January 1, 2018;

3. Twelve dollars ($12.00) an hour on and after January 1, 2019;

4. Thirteen dollars ($13.00) an hour on and after January 1, 2020;

5. Fifteen dollars ($15.00) an hour or two dollars ($2.00) above the state minimum wage as provided for under Section 23-363, Arizona Revised Statutes, whichever is greater, on and after January 1, 2021;

6. Fifteen dollars and fifty cents ($15.50) an hour or two dollars ($2.00) above the state minimum wage as provided for under Section 23-363, Arizona Revised Statutes, whichever is greater, on and after January 1, 2022.

B. The minimum wage shall be increased on January 1, 2023 and on January 1 of successive years, by the increase in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents ($0.05).

C. In the event that the federal minimum wage is increased above the level of the minimum wage that is in force under this section, the minimum wage under this section shall be increased to match the higher federal wage, effective on the same date as the increase in the federal minimum wage, and shall become the new minimum wage in effect under this section.

D. Employees entitled to overtime pay under the federal Fair Labor Standards Act, 29 U.S.C. §§ 206, 207, 213 are entitled to overtime pay under this chapter in accordance with federal law and regulations concerning overtime compensation under 29 U.S.C. §§ 206, 207, 213. Such overtime pay shall be calculated based on the employee’s regular rate of pay or the minimum wage rate set forth in this section, whichever is higher.

E. For any tipped employee, the employer may pay a cash wage up to:

1. Three dollars ($3.00) per hour less than the minimum wage rate set forth in this section on or after July 1, 2017;

2. Two dollars and fifty cents ($2.50) per hour less than the minimum wage rate set forth in this section on or after January 1, 2022;

3. Two dollars ($2.00) per hour less than the minimum wage set forth in this section on or after January 1, 2023;

4. One dollar and fifty cents ($1.50) per hour less than the minimum wage set forth in this section on or after January 1, 2024;

5. One dollar ($1.00) per hour less than the minimum wage set forth in this section on or after January 1, 2025.

Provided, however, that the employer may only pay this lower cash wage if the employer can establish that for each week, when adding tips received and retained to wages paid, the employee received not less than the minimum wage for all hours worked and the employee has been informed in writing by the employer of the provisions of this section. All tips received by tipped employees are the sole property of the tipped employee and shall be retained by the tipped employee, except that nothing in this section shall prohibit a valid tip pool under which tips are pooled and distributed among tipped employees; provided, that only the amount actually retained by each employee shall be considered part of that employee's wages for purposes of this section. On and after January 1, 2026, an employer shall pay a tipped employee not less than the minimum wage set forth in this section for all hours worked. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016; Ord. 2017-08, Amended, 03/21/2017; Ord. 2017-23, Amended, 07/05/2017)

15-01-001-0004 Notice and Recordkeeping Requirements

A. The Office shall publish and make available to employers all of the following, in English, Spanish and any language spoken by more than 5% of the workforce in the City: (1) a bulletin announcing the adjusted minimum wage rate for the upcoming year and its effective date no less than two months before its effective date; (2) a template bulletin for employers to post in the workplace informing employees of the current minimum wage rate and their rights to the minimum wage, including information about the right to be free from retaliation and the right to file a complaint and the contact information for the Office; and (3) a template notice suitable for use by employers in complying with subsections B and C of this section.

B. Every employer shall post the bulletin referred to in subsection A in a conspicuous place at any workplace or job site in English, Spanish and any language spoken by at least 5% of the employees at the workplace or job site.

C. Every employer shall also provide each employee, at the time of hire or by July 1, 2017 whichever is later,

written notice of: the employer's business name, address, and telephone number; the employee's right to earn the minimum wage and the current minimum wage rate; the employee's right to be free from retaliation; the employee's right to file a complaint; and the contact information for the Office where questions about rights and responsibilities under this chapter can be answered. If the employee's primary language is one spoken by at least 5% of the employees at the workplace or jobsite, the notice required by this subsection shall be provided in English and in the employee's primary language.

D. Every employer shall maintain payroll records showing the hours worked for each day worked, and the wages paid to all employees for a period of four years and shall allow the Office access to such records to monitor compliance. Failure to maintain such records and/or allow the Office reasonable access to such records shall raise a rebuttable presumption that the employer did not pay the required minimum wage and the employee's reasonable estimate regarding hours worked and wages paid shall be relied on, absent clear and convincing evidence otherwise. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

15-01-001-0005 Retaliation Prohibited

A. No employer or other person shall discharge or take any other adverse action against any person in retaliation for asserting any claim or right under this chapter, for assisting any other person in doing so, or for informing any person about their rights. Taking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

15-01-001-0006 Implementation, Investigation and Enforcement

A. Administrative Hearing Process. To the extent allowable under state law, the City shall have the authority to coordinate implementation and enforcement of this chapter, including but not limited to establishing a civil administrative hearing process, including procedural rules, whereby the city shall receive employee complaints in writing and by telephone, investigate and prosecute complaints it deems meritorious and keep complainants notified regarding the status of the investigation. An administrative hearing judge shall hear and adjudicate the case and enter appropriate rulings pursuant to this chapter.

B. The Office may investigate any possible violations of this chapter by an employer or other person. Any person or organization may file an administrative complaint with the Office charging that an employer has violated this chapter as to any employee or other person. When the Office receives a complaint, it may review records regarding all employees at the employer's worksite in order to protect the identity of any employee identified in the complaint and to determine whether a pattern of violations has occurred. The name of any employee identified in the complaint shall be kept confidential as long as possible. Where the Office determines that an employee's name must be disclosed in order to investigate a complaint further, it may do so only with the employee's consent.

C. To the extent allowable by law, a civil action to enforce this chapter may be maintained in the Flagstaff

Municipal Court or in any court of competent jurisdiction by the City or by any private party injured by a violation of this chapter. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

15-01-001-0007 Civil Penalties and Remedies

A. Any employer who fails to pay the wages required under this chapter shall be required to pay the employee the balance of wages owed, including interest thereon at a rate of ten percent (10%) per annum, and an additional amount equal to twice the underpaid wages as liquidated damages.

B. Any employer who retaliates against an employee or other person in violation of this chapter shall be required to pay the employee a penalty set by the Office or a court sufficient to compensate the employee and deter future violations, but not less than $250 for each day that the violation continued or until legal judgment is final. In any case where an Employee has been discharged in retaliation for exercising rights under this ordinance, the period of violation extends from the day of discharge until the day the Employee is reinstated, the day the Employee agrees to waive reinstatement or, in the case of an Employee who may not be rehired, from the day of discharge until the day legal judgment is final.

C. Any employer who violates the recordkeeping, posting or other requirements that the Office may establish under this chapter shall be subject to a civil penalty payable to the City of at least $250 for a first violation, and least $1,000 for each subsequent or willful violation and may, if the Office or Court determines appropriate, be subject to special monitoring and inspections. In order to compensate the City for the costs of investigating and remedying violations under this chapter, the Office may also order a violating employer or person to pay to the City a civil penalty of not more than fifty dollars ($50.00) for each day and for each employee or person as to whom a violation of this chapter occurred or continued. To the extent allowable by law, such funds shall be allocated to the Office and shall be used to offset the costs of implementing and enforcing this chapter. Not less than fifty percent (50%) of such funds, and of any other civil penalties assessed and retained by the City pursuant to this chapter, shall be earmarked for the funding of the community-based outreach program provided for in this Section.

D. The Office and the courts shall have the authority to order payment of such unpaid wages, liquidated damages, and civil penalties and to order any other appropriate legal or equitable relief for violations of this chapter. To the extent allowable by law, civil penalties paid to the City shall be retained by the Office and used to finance activities to enforce this chapter. A prevailing plaintiff shall be entitled to reasonable attorneys' fees and costs of suit from a violating employer.

E. A civil action to enforce this chapter may be commenced no later than two years after a violation last occurs, or three years in the case of a willful violation, and may encompass all violations that occurred as part of a continuing course of employer conduct regardless of their date. The statute of limitations for bringing a civil action shall be tolled during any investigation of an employer by the Office or other law enforcement officer, but such investigation shall not bar a person from bringing a civil action under this chapter. The requirements of this chapter may also be enforced by the City Attorney. In such case, unpaid wages and damages recovered shall

be payable to the individual Employee as to whom the violation occurred. No verbal or written agreement or employment contract may waive any rights under this chapter.

F. The Office shall establish an education and outreach program in partnership with community-based organizations to conduct education and outreach to employees and employers of their rights and obligations under this chapter. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016; Ord. 2017-23, Amended, 07/05/2017)

15-01-001-0008 Other Legal Requirements

A. Nothing in this chapter shall be interpreted or applied so as to create a conflict with Federal or State law.

B. This chapter provides minimum requirements and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy, or standard that provides for greater protections to employees. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016; Ord. 2017-23, Amended, 07/05/2017)

15-01-001-0009 No Effect on More Generous Policies

A. Nothing in this chapter shall be construed to discourage or prohibit the adoption or retention of a wage policy more generous than that which is required herein.

B. Nothing in this chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous wages to an employee than required herein. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

15-01-001-0010 Savings Clause

This act does not affect rights and duties that matured, penalties that were incurred and proceedings that were begun before the effective date of this act. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

15-01-001-0011 Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

EXHIBIT 2

PUBLICITY PAMPHLET

Issued by

Janice K. Brewer

Arizona Secretary of State

Ballot Propositions
&
Judicial
Performance
Review

www.azsos.gov
1-877-THE VOTE

General Election
NOVEMBER 7, 2006

For a Spanish version of this publicity pamphlet call toll-free 1-877-THE VOTE (1-877-843-8683)
Para una versión en español de este folleto informativo, llame gratis al 1-877-THE VOTE (1-877-843-8683).

PROPOSITION 202

OFFICIAL TITLE

AN INITIATIVE MEASURE

REPEALING SECTION 23-362, AMENDING BY ADDING NEW SECTION 23-362 RELATING TO THE ARIZONA MINIMUM WAGE ACT

TEXT OF PROPOSED AMENDMENT

Section 1. This act may be cited as the "Raise the Minimum Wage for Working Arizonans Act"

Section 2. Purpose and intent

The People of the State of Arizona hereby make the following findings and declare their purpose in enacting this Act is as follows:

Article 8. Minimum Wage

The People of the State of Arizona hereby make the following findings and declare their purpose in enacting this Act is as follows:

1. All working Arizonans deserve to be paid a minimum wage that is sufficient to give them a fighting chance to provide for their families.
2. 70% of Arizona workers earning the minimum wage are adults.
3. More than 145,000 working Arizonans will benefit by increasing the minimum wage, half of whom are working women struggling to live on less than $11,000 per year.
4. Increasing the minimum wage reduces dependency on taxpayer-funded public services

23-362. DEFINITIONS

AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

A. "EMPLOYEE" MEANS ANY PERSON WHO IS OR WAS EMPLOYED BY AN EMPLOYER BUT DOES NOT INCLUDE ANY PERSON WHO IS EMPLOYED BY A PARENT OR A SIBLING, OR WHO IS EMPLOYED PERFORMING BABYSITTING SERVICES IN THE EMPLOYER'S HOME ON A CASUAL BASIS.

B. "EMPLOYER" INCLUDES ANY CORPORATION, PROPRIETORSHIP, PARTNERSHIP, JOINT VENTURE, LIMITED LIABILITY COMPANY, TRUST, ASSOCIATION, POLITICAL SUBDIVISION OF THE STATE, INDIVIDUAL OR OTHER ENTITY ACTING DIRECTLY OR INDIRECTLY IN THE INTEREST OF AN EMPLOYER IN RELATION TO AN EMPLOYEE, BUT DOES NOT INCLUDE THE STATE OF ARIZONA, THE UNITED STATES, OR A SMALL BUSINESS.

C. "SMALL BUSINESS" MEANS ANY CORPORATION, PROPRIETORSHIP, PARTNERSHIP, JOINT VENTURE, LIMITED LIABILITY COMPANY, TRUST, OR ASSOCIATION THAT HAS LESS THAN FIVE HUNDRED THOUSAND DOLLARS IN GROSS ANNUAL REVENUE AND THAT IS EXEMPT FROM HAVING TO PAY A MINIMUM WAGE UNDER SECTION 206(A) OF TITLE 29 OF THE UNITED STATES CODE.

D. "EMPLOY" INCLUDES TO SUFFER OR PERMIT TO WORK; WHETHER A PERSON IS AN INDEPENDENT CONTRACTOR OR AN EMPLOYEE SHALL BE DETERMINED ACCORDING TO THE STANDARDS OF THE FEDERAL FAIR LABOR STANDARDS ACT, BUT THE BURDEN OF PROOF SHALL BE UPON THE PARTY FOR WHOM THE WORK IS PERFORMED TO SHOW INDEPENDENT CONTRACTOR STATUS BY CLEAR AND CONVINCING EVIDENCE.

E. "WAGE" MEANS MONETARY COMPENSATION DUE TO AN EMPLOYEE BY REASON OF EMPLOYMENT, INCLUDING AN EMPLOYEE'S COMMISSIONS, BUT NOT TIPS OR GRATUITIES.

F. "LAW ENFORCEMENT OFFICER" MEANS THE ATTORNEY GENERAL, A CITY ATTORNEY, A COUNTY ATTORNEY OR A TOWN ATTORNEY.

G. "COMMISSION" MEANS THE INDUSTRIAL COMMISSION OF ARIZONA, ANY SUCCESSOR AGENCY, OR SUCH OTHER AGENCY AS THE GOVERNOR SHALL DESIGNATE TO IMPLEMENT THIS ARTICLE.

23-363. MINIMUM WAGE

A. EMPLOYERS SHALL PAY EMPLOYEES NO LESS THAN THE MINIMUM WAGE, WHICH SHALL BE SIX DOLLARS AND SEVENTY-FIVE CENTS ($6.75) AN HOUR BEGINNING ON JANUARY 1, 2007.

B. THE MINIMUM WAGE SHALL BE INCREASED ON JANUARY 1, 2008 AND ON JANUARY 1 OF SUCCESSIVE YEARS BY THE INCREASE IN THE COST OF LIVING. THE INCREASE IN THE COST OF LIVING SHALL BE MEASURED BY THE PERCENTAGE INCREASE AS OF AUGUST OF THE IMMEDIATELY PRECEDING YEAR OVER THE LEVEL AS OF AUGUST OF THE PREVIOUS YEAR OF THE CONSUMER PRICE INDEX (ALL URBAN CONSUMERS, U.S. CITY AVERAGE FOR ALL ITEMS) OR ITS SUCCESSOR INDEX AS PUBLISHED BY THE U.S. DEPARTMENT OF LABOR OR ITS SUCCESSOR AGENCY, WITH THE AMOUNT OF THE MINIMUM WAGE INCREASE ROUNDED TO THE NEAREST MULTIPLE OF FIVE CENTS.

C. FOR ANY EMPLOYEE WHO CUSTOMARILY AND REGULARLY RECEIVES TIPS OR GRATUITIES FROM PATRONS OR OTHERS, THE EMPLOYER MAY PAY A WAGE UP TO $3.00 PER HOUR LESS THAN THE MINIMUM WAGE IF THE EMPLOYER CAN ESTABLISH BY ITS RECORDS OF CHARGED TIPS OR BY THE EMPLOYEE'S DECLARATION FOR FEDERAL INSURANCE CONTRIBUTIONS ACT (FICA) PURPOSES THAT FOR EACH WEEK, WHEN ADDING TIPS RECEIVED TO WAGES PAID, THE EMPLOYEE RECEIVED NOT LESS THAN THE MINIMUM WAGE FOR ALL HOURS WORKED. COMPLIANCE WITH THIS PROVISION WILL BE DETERMINED BY AVERAGING TIPS RECEIVED BY THE EMPLOYEE OVER THE COURSE OF THE EMPLOYER'S PAYROLL PERIOD OR ANY OTHER PERIOD SELECTED BY THE EMPLOYER THAT COMPLIES WITH REGULATIONS ADOPTED BY THE COMMISSION.

23-364. ENFORCEMENT

A. THE COMMISSION IS AUTHORIZED TO ENFORCE AND IMPLEMENT THIS ARTICLE AND

MAY PROMULGATE REGULATIONS CONSISTENT WITH THIS ARTICLE TO DO SO.
B. NO EMPLOYER OR OTHER PERSON SHALL DISCHARGE OR TAKE ANY OTHER ADVERSE ACTION AGAINST ANY PERSON IN RETALIATION FOR ASSERTING ANY CLAIM OR RIGHT UNDER THIS ARTICLE, FOR ASSISTING ANY OTHER PERSON IN DOING SO, OR FOR INFORMING ANY PERSON ABOUT THEIR RIGHTS. TAKING ADVERSE ACTION AGAINST A PERSON WITHIN NINETY DAYS OF A PERSON'S ENGAGING IN THE FOREGOING ACTIVITIES SHALL RAISE A PRESUMPTION THAT SUCH ACTION WAS RETALIATION, WHICH MAY BE REBUTTED BY CLEAR AND CONVINCING EVIDENCE THAT SUCH ACTION WAS TAKEN FOR OTHER PERMISSIBLE REASONS.
C. ANY PERSON OR ORGANIZATION MAY FILE AN ADMINISTRATIVE COMPLAINT WITH THE COMMISSION CHARGING THAT AN EMPLOYER HAS VIOLATED THIS ARTICLE AS TO ANY EMPLOYEE OR OTHER PERSON. WHEN THE COMMISSION RECEIVES A COMPLAINT, THE COMMISSION MAY REVIEW RECORDS REGARDING ALL EMPLOYEES AT THE EMPLOYER'S WORKSITE IN ORDER TO PROTECT THE IDENTITY OF ANY EMPLOYEE IDENTIFIED IN THE COMPLAINT AND TO DETERMINE WHETHER A PATTERN OF VIOLATIONS HAS OCCURRED. THE NAME OF ANY EMPLOYEE IDENTIFIED IN A COMPLAINT TO THE COMMISSION SHALL BE KEPT CONFIDENTIAL AS LONG AS POSSIBLE. WHERE THE COMMISSION DETERMINES THAT AN EMPLOYEE'S NAME MUST BE DISCLOSED IN ORDER TO INVESTIGATE A COMPLAINT FURTHER, IT MAY SO DO ONLY WITH THE EMPLOYEE'S CONSENT.
D. EMPLOYERS SHALL POST NOTICES IN THE WORKPLACE, IN SUCH FORMAT SPECIFIED BY THE COMMISSION, NOTIFYING EMPLOYEES OF THEIR RIGHTS UNDER THIS ARTICLE. EMPLOYERS SHALL PROVIDE THEIR BUSINESS NAME, ADDRESS, AND TELEPHONE NUMBER IN WRITING TO EMPLOYEES UPON HIRE. EMPLOYERS SHALL MAINTAIN PAYROLL RECORDS SHOWING THE HOURS WORKED FOR EACH DAY WORKED, AND THE WAGES PAID TO ALL EMPLOYEES FOR A PERIOD OF FOUR YEARS. FAILURE TO DO SO SHALL RAISE A REBUTTABLE PRESUMPTION THAT THE EMPLOYER DID NOT PAY THE REQUIRED MINIMUM WAGE RATE. THE COMMISSION MAY BY REGULATION REDUCE OR WAIVE THE RECORDKEEPING AND POSTING REQUIREMENTS HEREIN FOR ANY CATEGORIES OF SMALL EMPLOYERS WHOM IT FINDS WOULD BE UNREASONABLY BURDENED BY SUCH REQUIREMENTS. EMPLOYERS SHALL PERMIT THE COMMISSION OR A LAW ENFORCEMENT OFFICER TO INSPECT AND COPY PAYROLL OR OTHER BUSINESS RECORDS, SHALL PERMIT THEM TO INTERVIEW EMPLOYEES AWAY FROM THE WORKSITE, AND SHALL NOT HINDER ANY INVESTIGATION. SUCH INFORMATION PROVIDED SHALL KEEP CONFIDENTIAL EXCEPT AS IS REQUIRED TO PROSECUTE VIOLATIONS OF THIS ARTICLE. EMPLOYERS SHALL PERMIT AN EMPLOYEE OR HIS OR HER DESIGNATED REPRESENTATIVE TO INSPECT AND COPY PAYROLL RECORDS PERTAINING TO THAT EMPLOYEE.
E. A CIVIL ACTION TO ENFORCE THIS ARTICLE MAY BE MAINTAINED IN A COURT OF COMPETENT JURISDICTION BY A LAW ENFORCEMENT OFFICER OR BY ANY PRIVATE PARTY INJURED BY A VIOLATION OF THIS ARTICLE.
F. ANY EMPLOYER WHO VIOLATES RECORDKEEPING, POSTING, OR OTHER REQUIREMENTS THAT THE COMMISSION MAY ESTABLISH UNDER THIS ARTICLE SHALL BE SUBJECT TO A CIVIL PENALTY OF AT LEAST $250 DOLLARS FOR A FIRST VIOLATION, AND AT LEAST $1000 DOLLARS FOR EACH SUBSEQUENT OR WILLFUL VIOLATION AND MAY, IF THE COMMISSION OR COURT DETERMINES APPROPRIATE, BE SUBJECT TO SPECIAL MONITORING AND INSPECTIONS.
G. ANY EMPLOYER WHO FAILS TO PAY THE WAGES REQUIRED UNDER THIS ARTICLE SHALL BE REQUIRED TO PAY THE EMPLOYEE THE BALANCE OF THE WAGES OWED, INCLUDING INTEREST THEREON, AND AN ADDITIONAL AMOUNT EQUAL TO TWICE THE UNDERPAID WAGES. ANY EMPLOYER WHO RETALIATES AGAINST AN EMPLOYEE OR OTHER PERSON IN VIOLATION OF THIS ARTICLE SHALL BE REQUIRED TO PAY THE EMPLOYEE AN AMOUNT SET BY THE COMMISSION OR A COURT SUFFICIENT TO COMPENSATE THE EMPLOYEE AND DETER FUTURE VIOLATIONS, BUT NOT LESS THAN ONE HUNDRED FIFTY DOLLARS FOR EACH DAY THAT THE VIOLATION CONTINUED OR UNTIL LEGAL JUDGMENT IS FINAL. THE COMMISSION AND THE COURTS SHALL HAVE THE AUTHORITY TO ORDER PAYMENT OF SUCH UNPAID WAGES, OTHER AMOUNTS, AND CIVIL PENALTIES AND TO ORDER ANY OTHER APPROPRIATE LEGAL OR EQUITABLE RELIEF FOR VIOLATIONS OF THIS ARTICLE. CIVIL PENALTIES SHALL BE RETAINED BY THE AGENCY THAT RECOVERED THEM AND USED TO FINANCE ACTIVITIES TO ENFORCE THIS ARTICLE. A PREVAILING PLAINTIFF SHALL BE ENTITLED TO REASONABLE ATTORNEY'S FEES AND COSTS OF SUIT.
H. A CIVIL ACTION TO ENFORCE THIS ARTICLE MAY BE COMMENCED NO LATER THAN TWO YEARS AFTER A VIOLATION LAST OCCURS, OR THREE YEARS IN THE CASE OF A WILLFUL VIOLATION, AND MAY ENCOMPASS ALL VIOLATIONS THAT OCCURRED AS PART OF A CONTINUING COURSE OF EMPLOYER CONDUCT REGARDLESS OF THEIR DATE. THE STATUTE OF LIMITATIONS SHALL BE TOLLED DURING ANY INVESTIGATION OF AN EMPLOYER BY THE COMMISSION OR OTHER LAW ENFORCEMENT OFFICER, BUT SUCH INVESTIGATION SHALL NOT BAR A PERSON FROM BRINGING A CIVIL ACTION UNDER THIS ARTICLE. NO VERBAL OR WRITTEN AGREEMENT OR EMPLOYMENT CONTRACT MAY WAIVE ANY RIGHTS UNDER THIS ARTICLE.
I. THE LEGISLATURE MAY BY STATUTE RAISE THE MINIMUM WAGE ESTABLISHED UNDER THIS ARTICLE, EXTEND COVERAGE, OR INCREASE PENALTIES. A COUNTY, CITY, OR TOWN MAY BY ORDINANCE REGULATE MINIMUM WAGES AND

BENEFITS WITHIN ITS GEOGRAPHIC BOUNDARIES BUT MAY NOT PROVIDE FOR A MINIMUM WAGE LOWER THAN THAT PRESCRIBED IN THIS ARTICLE. STATE AGENCIES, COUNTIES, CITIES, TOWNS AND OTHER POLITICAL SUBDIVISIONS OF THE STATE MAY CONSIDER VIOLATIONS OF THIS ARTICLE IN DETERMINING WHETHER EMPLOYERS MAY RECEIVE OR RENEW PUBLIC CONTRACTS, FINANCIAL ASSISTANCE OR LICENSES. THIS ARTICLE SHALL BE LIBERALLY CONSTRUED IN FAVOR OF ITS PURPOSES AND SHALL NOT LIMIT THE AUTHORITY OF THE LEGISLATURE OR ANY OTHER BODY TO ADOPT ANY LAW OR POLICY THAT REQUIRES PAYMENT OF HIGHER OR SUPPLEMENTAL WAGES OR BENEFITS, OR THAT EXTENDS SUCH PROTECTIONS TO EMPLOYERS OR EMPLOYEES NOT COVERED BY THIS ARTICLE.

Section 4. Severability

If any part of this law, or the application of the law to any person or circumstance, is held invalid, the remainder of this law, including the application of such part to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the parts of this law are severable.

Section 5. Effective Date

This article shall take effect January 1, 2007.

ANALYSIS BY LEGISLATIVE COUNCIL

Based on the federal law, the current minimum wage in Arizona is $5.15 per hour.

Proposition 202 would establish a state minimum wage law and raise the minimum wage to $6.75 per hour beginning January 1, 2007. The state minimum wage would be increased each January 1 for changes in the cost of living.

The new state minimum wage law would apply to all employers except:

1. Any person who is employed by a parent or a sibling.
2. A person who is employed performing babysitting services in the employer's home on a casual basis.
3. Employees who regularly receive tips and who are otherwise exempt under federal minimum wage law.
4. The State of Arizona government. But political subdivisions of this state would have to comply with the state minimum wage law.
5. The United States government.
6. A business that has less than $500,000 in gross annual revenue and that is exempt from having to pay a minimum wage under federal law.

Proposition 202 also contains employer notice and record keeping requirements and enforcement and civil penalty provisions. The Legislature, a county, a city or a town may enact a law providing for a higher minimum wage than established by this proposition.

FISCAL IMPACT STATEMENT

State law requires the Joint Legislative Budget Committee (JLBC) Staff to prepare a summary of the fiscal impact of certain ballot measures. The State may receive additional revenues in the form of civil penalties from violators of the provisions of Proposition 202. The state Industrial Commission will have responsibility to enforce these provisions. The civil penalties may be retained by the agency that recovered them and used to finance enforcement of the proposition. The total amount of civil penalties will depend on the level of compliance, which is difficult to predict in advance.

An increase in wages may also have an economic impact on state and local revenue collections and state spending. By increasing wages and business costs, the proposition may affect individual income tax, corporate income tax and sale tax collections. In addition, a minimum wage increase may affect participation in, and the cost of, public assistance programs. It is difficult to predict the impacts of the proposition on either state revenues or spending in advance.

ARGUMENTS "FOR" PROPOSITION 202

Raise the Minimum Wage and Reward Hard Work

The Raise the Minimum Wage Act for Working Arizonans increases the Minimum Wage to $6.75 and will be adjusted one time each year to keep pace with the cost of living. Arizonans value hard work. It's simple….If you work 40 hours a week, 52 weeks a year you should not live in poverty. The minimum wage is supposed to assure "the maintenance of the minimum standard of living necessary for health, efficiency, and general well being of workers." No one can say our current minimum wage of $5.15 an hour does this. A full time worker, who makes $5.15 an hour, earns $10,712 annually, which is significantly below the poverty line. We want low wage workers in our state to have a fighting chance to take care of themselves and their families. Raising the minimum wage to $6.75 per hour with a yearly modest cost of living adjustment will increase a full time workers' salary to $14,040.

74.4% of minimum wage workers are 20 and older. Women represent 57.8% of minimum wage workers. 33% are the primary wage earners for their families. These workers are often doing some of the most important work in our society, working in nursing homes, teachers' assistants and child care workers. Congress has refused to raise the Minimum Wage since 1996 and the Arizona Legislature has refused to have hearings on the issue. In response, the Arizona Minimum Wage Coalition and over 200,000 citizens have brought the issue to you. The 145,000 families who would currently receive the increased Minimum Wage on January 1, 2007, are asking you to do the right thing and show that Arizonans value hard work by voting yes on Proposition 202.

Rebekah Friend, Chair, Arizona Minimum Wage Coalition, Mesa

Sarah Markey, Treasurer, Arizona Minimum Wage Coalition, Phoenix

Paid for by "Arizona Minimum Wage Coalition"

Spelling, grammar and punctuation were reproduced as submitted in the "for" and "against" arguments.

Church Women United urges a YES vote on the "Raise the Minimum Wage for Working Arizonans" act . Although this measure does not provide a living wage, which would be higher, it does, at least, provide an improved minimum wage.

Church Women United was founded in 1941, and within four years, we were calling for a raise of the minimum wage-- to 65c and hour! In 1945 we said "The achievement of a minimum decent standard of living for all citizens is an objective consistent with the principals of Christianity and democracy." As family incomes fell behind, again and again, CWU consistently fought for fair increases, explaining in a 1965 policy statement that "minimum wage legislation, federal and state, should be supported as a practical and proven means to assure at least a minimum standard of living necessary for the maintenance of health and decency for family living." Practical and proven.

Will we be back, addressing this issue again? In the past, the battle for minimum protection of workers and families had to be fought every time the balance was tipped against them. But this ballot measure includes a mechanism to keep pace! Not as good as the pay raise mechanism that Congress has for itself, perhaps, but a real improvement over what exists now. Please vote YES.

Church Women United in Arizona

Pennie Doss, Treasurer, Glendale — Martha B. Hollcroft, Finance Chair, Phoenix

Paid for by "Church Women United in Arizona"

Imagine yourself working full time for an annual salary of about $10,000. With that $10,000 you have to pay for rent, transportation, food, medicine, clothing, and everything else necessary to live. Then imagine that your employer, like many nowadays only allows its employees to work 28–30 hours a week. That $10,000 is now down to $7,500. Could you make it on that salary? Could you make ends meet working two jobs? Three jobs? Lastly, imagine that you also have to care for one or more children on that income. Most of the people stuck in minimum wage jobs are women, and many of them have children to support.

It's time for a raise. Arizona's minimum wage workers haven't had one in almost 9 years. Anyone who works full time, and who works as hard as most minimum wage earners are required to do, should take home enough money to actually be able to live without being homeless, hungry, and without health care.

Don't listen to the scare stories. Other states have raised their minimum wage without losing jobs or putting small businesses into bankruptcy. The Arizona National Organization for Women (NOW) urges you to bring thousands of our children out of poverty by **voting Yes on I-13-2006.**

Karen Van Hooft, State Coordinator, Policy/ Spokesperson, Arizona NOW, Scottsdale — Eric Ehst, State Coordinator, Political Action, Arizona NOW, Phoenix

Paid for by "Arizona NOW"

Vote "YES" on Proposition 202 to increase the minimum wage for hard-working Arizonans and establish a State minimum wage. Federal law sets the floor on the minimum wage at $5.15 per hour, but individual states can enact legislation to pay a higher minimum wage. The U. S. Department of Labor reports that 17 states pay a minimum wage higher than the $5.15 under the federal law. We urge Arizonans to make our state the 18th to do so. Since September 1, 1997, the federal minimum wage has not increased and Arizona's families cannot afford to wait for Congress to approve an increase. Proposition 202 sets the minimum wage at $6.75 an hour, certainly not a liveable wage but much better than what exists today.

We have an opportunity to improve the lives of fellow Arizonans, to help people out of poverty, to decrease the welfare rolls, and improve Arizona's economy by increasing our state's minimum wage. The wages of hard working Arizonans have not increased, but their living expenses, housing expenses, and medical costs have continued to rise at an astronomical rate. Due to low wages, many Arizonans cannot adequately provide for their families, have experienced the loss of their family home, and cannot buy the necessary medication for an illness. Also, with gas prices at $3 per gallon, who can afford to work for $5.15!

We urge all of you to prove the validity of the NAU poll conducted March 15, 2006, that indicated that 81% of Arizona registered voters would vote "YES" to increase the minimum wage. By increasing our state's minimum wage, we have an opportunity to better the lives of many families throughout Arizona.

Proposition 202 represents sound and responsible public policy for Arizona and we ask that you **VOTE 'YES'.**

Jorge Luis Garcia, State Senator, Chairman, Legislative Latino Caucus, Tucson — Ben Miranda, State Representative, Chairman, Legislative Latino Caucus, Phoenix

Paid for by "Jorge Luis Garcia"

The Unitarian Universalist Church of Southeastern Arizona is in full support of the ballot measure to raise the minimum wage in Arizona.

The plight of minimum-wage earners in Arizona has become an emergency. As the Federal minimum wage has not been raised for over nine years, the value of $5.15 an hour has dropped precipitously, leaving many individuals and families, though employed, with incomes below the poverty line. Raising the wage to $6.75 would be a good first step in addressing this problem and would better reflect the moral and just society which we seek to create and sustain.

Furthermore, the built-in cost of living adjustments each year, far from being guaranteed "raises" that should

be based on merit as some have suggested, are simply a way of ensuring that the minimum wage remains at an amount that approaches its true value in the marketplace. We are committed to building a society where it is expected that full-time workers earn enough to meet the necessities of food, clothing, and shelter. For an eye-opening comparison, in the last nine years in which the minimum wage has remained at $5.15 ($10,700 a year at full-time), annual Congressional pay has *increased* by $31,000. And though we support this issue on the basis of our commitment to justice and equity within our communities, we approach it also with clear-eyed realism. Will raising the minimum wage create unforeseen challenges? Are there problems inherent in any such change in the economic landscape of our society? Of course! But it's time that we stop seeking solutions by demanding sacrifices exclusively from the poorest and most vulnerable members of our society. The challenges we face belong to all of us…together.

Ellen Taylor, President, Board of Trustees, Sierra Vista
Patricia Gerrodette, Treasurer, Sierra Vista

Paid for by "Unitarian Universalist Church of Southeastern Arizona"

As a candidate for the State Legislature in Legislative District 17, I fully support raising the minimum wage immediately. Currently, a full-time worker earning minimum wage is living under the poverty level. We should not expect our citizens to support their families on less than $11,000 a year. Parents are forced to work two jobs to keep a roof over their heads and food on the table. Who is there to raise their children, help with homework, and be an involved parent? Raising the minimum wage is a moral issue, one that has been ignored for long enough.

The minimum wage has not been raised since 1996. Imagine not getting a raise for 10 years – this is a reality for many of our hard-working citizens. I have worked at several minimum-wage jobs, and was a waitress as a second job until I was 30. Food servers make $2.13/hour. Imagine having to raise your family and feed your children on that, hoping that your patrons are generous enough that evening so you can average a decent salary. Please think about that the next time you go out for dinner.

Raising the minimum wage will not cause our state to suffer a significant negative economic impact. Evidence from past minimum wage hikes at the federal level indicates that there were no conclusive negative effects of raising the minimum wage. Fourteen states and the District of Columbia have minimum wages higher than the federal standard. Many of these increases were passed overwhelmingly by citizen initiatives. That is what I am asking of you – please vote "yes" on this initiative. We must continue to move Arizona forward, and fair wages for hard work is a huge step in the right direction. For more information about my campaign, please go to www.angiecrouse.com, or call 480-897-9444.

Angie Crouse, Chairman, Crouse for the House, Tempe

Vote "YES" on Proposition 202 to raise the minimum wage and reduce poverty.

No one who works full-time should get a wage so low that they still live in poverty. This is something I believe strongly in and as a Representative in the Arizona State House I fought hard to raise the Arizona minimum wage. Unfortunately, some of the leadership in the state house did not agree with me and consequently my legislation was never allowed to be voted on.

Fortunately, the voters of Arizona have an opportunity to stand up for the workers of this great state by voting to raise the minimum wage to $6.75 and showing that we value hard-work and applaud self-sufficiency.

At the present minimum wage of $5.15, a worker in our state that is supporting a family and working 40 hours a week, every week of the year, will earn less than $11,000 a year. $11,000 a year is hardly enough to support an individual, let alone a family. This financial strain almost always forces workers to get two or more jobs and work long shifts, often late into the evenings. These working poor rarely get the chance to see their family, yet day in and day out they work hard and strive to provide more for themselves and their loved-ones.

Currently, 15% of Arizona families live in poverty compared to 10% nationally, and 23% of Arizona children are living in poverty. The minimum wage must be raised to help these Arizona families work their way out of poverty. Raising the minimum wage to $6.75 is a necessary step not only to help minimum wage workers get out of poverty but also ensure Arizona's children have an opportunity to get ahead too.

Vote "YES" on Proposition 202.

Submitted by the Arizona Minimum Wage Coalition.

State Representative Steve Gallardo, Honorary Co-Chair, Arizona Minimum Wage Coalition, Phoenix

Paid for by "Arizona Minimum Wage Coalition"

ARIZONA'S FIREFIGHTERS ARE VOTING "YES" ON PROPOSITION 202.

The Professional Fire Fighters of Arizona urge a "YES" vote on Proposition 202 to raise Arizona's minimum wage to $6.75. Arizona's minimum wage has been frozen at $5.15 for over a decade, while the costs of food, gas, and utilities continue to rise.

Someone working full-time shouldn't have to struggle just to keep the lights or air conditioning on in their home, but it happens. Hard-working Arizonans earning the current minimum wage often have to choose between food and electricity. Arizona's Fire Fighters are forced to respond to fires caused by candles being used in place of lights and to help heatstroke victims who couldn't afford to have air conditioning during the summer's heat.

Spelling, grammar and punctuation were reproduced as submitted in the "for" and "against" arguments.

Voting "YES" on Proposition 202 will help hard-working citizens earn a fair wage to cover the most basic of needs. A "YES" vote will show that Arizonans value hard-work and believe that someone who works hard and plays by the rules deserves to earn a fair wage.

Vote "YES" on Proposition 202

Tim Hill, President, Professional Fire Fighters of Arizona, Phoenix

Bill Whitaker, Director of Political Affairs, Professional Fire Fighters of Arizona, Phoenix

Paid for by "William G. Whitaker"

It's time….it's time to raise the Minimum Wage.

This November voters have an opportunity, to strengthen Arizona families and reward the value of hard work. By raising the minimum wage we go well beyond helping just those individuals who benefit directly. We benefit all of Arizona's working families.

In Arizona, we can agree on two things; People who work hard and play by the rules should not be forced to live in poverty, and; We should not be have to shoulder unreasonable burden of paying for public services that should be the responsibility of the corporations that fight this initiative. Yet, these same corporations think nothing of the outrageous compensation of their CEO's. **For instance, it would take a minimum wage worker at Taco Bell more than 826 years of full time work to equal the 2004 compensation of its parent company CEO! At Home Deport, a minimum wage worker would have to work 3357 years to equal its CEO!** (source: Corporate Library)

According to CNN ("Mind the Gap"-01-27-2006), Arizona currently leads the nation in income gap between the rich and poor. This widening gap creates an increasing burden to the working people of Arizona who pay a disproportionate amount for public services, such as health care and food inspection. CNN continues to cite "a stagnant minimum wage as…disproportionately hurting the earnings of low and middle income households…which leads to increased rates of personal bankruptcy and higher divorce rates."

The unions of the Arizona AFL-CIO are proud to be leading the fight to accomplish what the Arizona Legislature has refused to do. We ask that all Arizonans join us in assuring that hard working Arizonans are given a hand up in the fight for economic justice.

Vote yes on Proposition 202!

Michael E. McGrath, Secretary/Treasurer, Arizona AFL-CIO, Tucson

Rebekah Friend, President, Arizona Arizona AFL-CIO, Mesa

Paid for by "Arizona AFL-CIO"

VOTE YES ON PROPOSITION 202

The Arizona United Food and Commercial Workers strongly urge a **"yes" vote on Proposition 202 to increase the minimum wage to $6.75 an hour.**

Under Arizona's current minimum wage, a full-time employee, working 40 hours a week, earns less than $11,000 a year in Arizona -- just $11,000 a year to provide shelter, food, and clothes for themselves and their family. At Arizona's current minimum wage, most minimum wage workers struggle to make ends meet, often having to work 80 hours or more a week, leaving little time for family.

Arizona's minimum wage workers are single-parents struggling to put food on the table, senior citizens scraping by to cover the cost of their medicine, and first-generation university scholars working to pay for their tuition. These are hard working citizens who deserve a fair wage.

This is not a hand-out; it is simply paying a fair wage to those who work hard.

Raising Arizona's minimum wage to $6.75 will show that we as Arizona's value hard work and believe that an honest day's work deserves an honest day's pay.

Arizona's United Food and Commercial Workers agree with the business owners, community leaders, religious leaders, elected officials, workers, and concerned Arizonans who believe that people who work hard deserve a fair wage.

VOTE YES ON PROPOSITION 202

Jim McLaughlin, President, UFCW Local 99, Gilbert

Mike Vespoli, Recorder, UFCW Local 99, Glendale

Paid for by "UFCW"

The minimum wage has been a key part of our nation's economy for over six decades. As a critical safeguard for America's low-wage workers, it has served as a basic statement of how we value work in this country. Stuck at $5.15 an hour – just $10,712 a year - for almost a decade, the value of the minimum wage is now at its lowest point in 50 years. The decline of the minimum wage has been a major factor in the growth of income inequality in recent decades. As a recent letter signed by over 550 economists supporting an increase in the minimum wage stated, it "is causing hardship for low-wage workers and their families." The erosion of the wage floor has also helped fuel the proliferation of the low-wage, no benefits, high-turnover business model creating an irresistible incentive for employers to cut corners on labor costs rather than investing in a well-trained, stable workforce. In response, 20 states have already raised minimum wages above that of the federal standard, and over a dozen are currently considering such proposals.

This proposal simply aims to restore a portion of the value that the minimum wage has lost over time because it has not kept up with the rising cost of living. The minimum wage has lost value every year since it was last increased and is now only 37 percent of the median hourly wage in Arizona. When the minimum wage was last increased in 1997, it was 52 percent of the state median wage. Setting a new minimum wage of $6.75 an hour would help restore some of the buying power to this important wage floor. Indexing the minimum wage to inflation will protect our low wage workforce from losing ground each year as inflation eats away at their paychecks.

Alicia Russel, Phoenix ACORN, Phoenix
Paid for by "AZ ACORN Statewide"

Minimum Wage Ballot Initiative Faith Response

There are many sound economic reasons to raise the minimum wage, but for persons of faith, it is a moral issue. Every religion tells its followers to pay workers fairly. Every religion warns against the exploitation of others for economic gain. Back in 1938, faithful citizens established the Fair Labor Standards Act, which included an hourly minimum wage for working people. The amount was based on how much it would cost to sustain the basic needs of a full time worker and his or her family. It wasn't about luxury but decency. It still is today. A nineteenth century visitor to the United States described us as "a nation with the soul of a church." The faith of the people he met here was publicly expressed in concern for the common good, including "the least among us." Helping others lift themselves out of poverty through an increase in the minimum wage is current proof that the faith our forebears is still with us today.

Rev. Trina Zelle, Interfaith Worker Justice of Arizona, Tempe
Paid for by "Arizona Minimum Wage Coalition"

I am a small business owner and I am voting "YES" on Proposition 202 to raise Arizona's minimum wage.

As a small business owner, I recognize the difficulties many small businesses face to stay afloat and profitable, but I know that raising the minimum wage will not adversely affect the success of a business. In fact, recent studies have shown that raising the minimum wage improves the standard of living of families without hurting businesses. (State Minimum Wages and Employment in Small Business, Fiscal Policy Institute, 4/21/04, www.fiscalpolicy.org)

Raising the minimum wage to $6.75 would directly benefit 145,000 Arizonans and indirectly benefit hundreds of thousands more Arizonans as additional wages are increased.

The majority of workers who will benefit from this minimum wage increase are adults, mostly women, who are trying to support themselves and their families. In fact, nearly 25% of all minimum wage workers are single mothers, 74% of minimum wage workers are over the age of 20, and nearly two-thirds are women.

This initiative will not just benefit teenage workers who are getting their first job, this initiative will help everyday working men and women just trying to get by and often working paycheck to paycheck. Raising the minimum wage helps all Arizonans.

Vote "YES" on Proposition 202. Raise Arizona's Minimum Wage.

Richard Shapiro, Shapiro and Associates, Scottsdale
Paid for by "Arizona Minimum Wage Coalition"

Raising the Minimum Wage Benefits Retirees

The Arizona Alliance for Retired Americans supports the Minimum Wage Coalition in urging the voters of Arizona to raise the minimum wage from $5.15 an hour to $6.75 an hour, adjusted annually for inflation. Like all Arizonans, the Alliance values hard work and the pursuit of economic viability for all workers so that they and their families may enjoy lives of dignity, fulfillment, and security. Many minimum-wage workers care for the elderly, the very young, the sick and disabled in our state, and it is crucial that employees receive fair compensation to restore the sense of pride in their work for these indispensable workers.

Additionally, a growing trend is that many senior citizens are now among the minimum-wage workers. Senior citizens are returning to the workforce at a record pace to combat the rising cost of health care, to pay for basics like groceries and housing, or because their retirement benefits are not keeping up with the cost of living. In fact, working seniors, women (especially single mothers), rural workers, African Americans and Latinos are all groups with much higher proportions of minimum-wage workers than the general populace.

By voting yes on Proposition 202, we show that we truly value the hard work performed by Arizonans by increasing the minimum wage so that workers in our state will have the economic resources to take care of their families.

Doug Hart, President, Arizona Alliance for Retired Americans, Tempe
John Campbell, Vice President, Arizona Alliance for Retired Americans, Glendale
Paid for by "Michelle Davidson"

A majority of peer-reviewed studies - as well as evidence from the 20 states that have already raised their minimum wage - prove that modest increases in the minimum wage substantially benefit low-income workers and families without causing job loss or business flight. For example, recent studies have found that states that

have higher than federal minimum wages continue to experience strong growth in employment, even in low-wage service sector industries. A study released this spring by the Fiscal Policy Institute found that states with minimum wages higher than the federal minimum wage had faster small business and retail job growth than states with minimum wages set the same as the federal.

When low wage workers get a raise, they spend that money in the local economy, providing an economic stimulus. Research and evidence from cities and states that have enacted wage increases indicates that increasing pay can also lead to reduced absenteeism and employee turnover as well as increased worker productivity. In the end, both workers and businesses stand to gain from modest minimum wage increases.

Nancy Cantor, Phoenix ACORN, Scottsdale
Paid for by "AZ ACORN Statewide"

Members of the Monsignor Edward J. Ryle Fund Committee urge Arizonans to support the ballot measure to establish a minimum wage in Arizona of $6.75 per hour in 2007 with subsequent annual inflation adjustments. The federal standard of $5.15 per hour that Arizona follows has not changed in nine years.

If you work, then you shouldn't be poor. When a worker earns the minimum wage, he or she is still below the federal poverty level with an annual income under $11,000. A majority of minimum-wage earners are women. At this level, a family must struggle to meet even basic needs of food, shelter, transportation or clothing. Often, the family will be forced to seek state or federal subsidized services for health care, food, child care or rent assistance, to be certain there is food on the table or immunizations for the children. Establishing the minimum wage of a modest $6.75 per hour in Arizona is necessary and the fair thing to do.

A local study conducted in 2002 by researchers from the University of Washington, found that two adult wage earners in a family of four each had to earn at least $9 an hour in rural Arizona or at least $12 an hour in the Phoenix metro area to be free of publicly funded services. Hopes that a vibrant economy would allow families to achieve this goal have not borne out. Many Arizona families remain in poverty, and household incomes have fallen since 2000. After nine years of a fixed minimum wage, it is time to raise it.

If you value those who work, play by the rules, and seek to be self-sufficient, we urge you to vote YES on the Arizona minimum wage ballot initiative.

Joe Anderson Chairman and CEO, Schaller Anderson, Inc., Monsignor Edward J. Ryle Fund Committee Member and Fund Advisor, Phoenix

Guy Mikkelsen, President and CEO, Foundation for Senior Living, Monsignor Edward J. Ryle Fund Committee Member and Fund Advisor, Phoenix

Eddie Sissons, Research Advisory Services, Monsignor Edward J. Ryle Fund Committee Member, Phoenix
Paid for by "Arizona Minimum Wage Coalition"

Argument FOR Ballot Measure I-13-2006

A full time worker making the current minimum wage of $5.15 only earns $10, 712 per year – more than $3,000 below the poverty line for a family of three. Today's minimum wage of $5.15 is lower than the minimum wage of 1950, which would be $6.30 in 2006 dollars. It would take $9.31 today to match the buying power of the minimum wage of 1968. Every day without a minimum wage raise means another day choosing between rent and health care, putting food in the refrigerator or gas in the car. For every hour worked, a person making $5.15 per hour can only afford 1 ¾ gallons of gas…that means that a minimum wage worker today has to work at least 1 hour each day to pay for their transportation.

Faith-based organizations and charities are straining to serve escalating requests for emergency food from their pantries and soup kitchens, especially from working people…Increasing the minimum wage by one dollar and sixty cents to $6.75 per hour would mean an additional $3,328.00 per year for full-time workers—money that could buy groceries, pay, rent, or otherwise help low-income workers in need.

The minimum wage is a bedrock moral value. It is immoral that workers who care for children, the ill and the elderly struggle to care for their own families. It's immoral that the minimum wage keeps people in poverty instead of out of poverty. A job should keep you out of poverty, not keep you in it.

We strongly encourage you to vote FOR an increase in the Arizona Minimum Wage – IT IS JUST THE RIGHT THING TO DO. Working should NEVER equal poverty!!

Tamera Zivic, PhD, WHEAT Executive Director, Phoenix

Cheryl Thompson, Chair, WHEAT Board of Directors, Phoenix

Paid for by "WHEAT"

Too many working families in Arizona struggle to provide the basic necessities for themselves and their families. Over 14 percent of Arizonans live in poverty, and almost 13 percent are hungry or at risk of hunger. A low minimum wage is a key part of this problem. Congress and our state elected officials have failed to raise the minimum wage in almost a decade; in the same time period, Congress has received a raise 9 times. The result is that even full time low wage workers are working harder for less and struggling to get by. We can do better.

Most of the workers who would benefit from the proposed minimum wage increase are adults earning the

majority of their family's income. 74 percent of Arizona's workers earning less than $7.00 an hour are 20 years and older. These workers do some of the hardest and most essential jobs that help keep our state's economy going. They care for our children and our elderly, serve our food, secure our buildings and clean our streets and offices. With a small adjustment to the minimum wage, Arizona can send a message that its citizens value work - and begin to ensure that those who work hard everyday and play by the rules are able to provide an adequate standard of living for themselves and their families. An estimated 303,000 Arizona workers would be affected by increasing the minimum wage to $6.75 with an annual cost of living increase.

Lana Cudmore, Mesa ACORN, Mesa
Paid for by "AZ ACORN Statewide"

Arizona Green Party urges a YES vote on the minimum wage initiative.

There is nothing sacred about the relationship between an American worker and her boss. It is pure contract. And the state does have a role to play in contract law. That role is to assure fair play. And to look out for the future. Arizona Green Party has Future Focus as a key value, and we are very concerned about the direction that future has been heading. (Read more about Arizona Green Party values at www.azgp.org.)

Because of decisions, made by politicians bought off by PACs, wealth has become too concentrated in the hands of the few, the rich, the crony. Which means less money in the pockets of the working poor, and the shrinking middle class. This has not happened by chance, but by deliberate political choices.

Among these decisions was allowing the minimum wage to dwindle, well below a living wage. And then, to insult the workers who are left with less, to imply that they live off of others. Teens at home, old folks on pensions, housewives looking for pin money, say the disparagers. Think about it. Folks struggling on inadequate, and shamefully low, wages, are forced to figure out how to get by. And then blamed and shamed for the decisions they make in getting by.

Next we're told that a decent minimum wage will "ruin the economy." Well "the economy" was in pretty good shape when the minimum wage was gauged to actually support working folks. Remember? For the Arizona Green Party position on other ballot issues please go to: www.azgp.org.

Ignore the nonsense. Stand up for decency. Vote YES.

Robert Neal, Treasurer, Arizona Green Party, Tempe
Paid for by "Arizona Green Party State Committee"

ARGUMENTS "AGAINST" PROPOSITION 202

Argument AGAINST Proposition 202

Fellow Arizonans join me in voting no on Proposition 202. Setting a state minimum wage at a rate that is almost 28% higher than the federal minimum wage and increasing it every year by indexing it to the cost of living is bad public policy. It will have severe damaging unintended consequences that our state cannot afford.

Most importantly it will make our already intolerable illegal alien crisis even worse. We will be providing the worst of both worlds in creating economic incentives that will only serve to further attract more illegal aliens.

On one hand many employers will find themselves forced to cut back on employment in order to accommodate the minimum wage. Unscrupulous employers will opt for employing illegals off the books at below minimum wage to maintain their business operations. This will be taking jobs away from our own citizens, promoting an expanded underground economy and depriving our state of tax revenue.

Just as important on the other hand is the enhancement to illegal employers to risk the consequences hiring of illegal aliens. By setting an artificially high minimum wage illegal aliens will now have a greater incentive to enter our country and enjoy even higher rewards for being here.

Making our state even more attractive to illegal immigration is something that makes no sense. Rather than creating more incentives for illegal aliens through the creation of an artificially high state minimum wage we should be pursuing policies to reduce the economic incentives for illegal aliens. What should be done is reduce government burden on small businesses and allow free-market concepts to work. That is what made America so great.

I urge fellow Arizonans to vote no on Proposition 202.

Representative Russell Pearce, Arizona House of Representative, Mesa
Paid for by "Russell Pearce 2004"

The Arizona Farm Bureau opposes proposition 202.

Minimum wage jobs are for part-time, very basic entry-level and transition positions.
From our review of the economic literature and research, minimum wage increases may create more pay for given parties, but it certainly reduces the creation of new jobs. Arbitrarily driving up wages also results in higher consumer prices that affect the poor and those on fixed incomes disproportionately.

Arizona voters should consider this perspective before automatically approving a measure that might seem intuitively appropriate on the surface.

Kevin G. Rogers, President, Arizona Farm Bureau, Mesa
James W. Klinker, Chief Administrative Officer, Arizona Farm Bureau, Mesa
Paid for by "Arizona Farm Bureau Federation"

Spelling, grammar and punctuation were reproduced as submitted in the "for" and "against" arguments.

The Arizona Tourism Alliance is opposed to the establishment of a state minimum wage law. Arizona's tourism and visitor industry is particularly vulnerable to the negative affects should this proposition pass and the resulting impact on Arizona's economy.

Setting a state minimum wage that is almost 28% higher than the federal level and indexing it to increase each year based on the cost of living is just not good public policy. It will raise labor costs in our industry and subject us to a competitive disadvantage with other states whose tourism and visitor industries are not subject to a state minimum wage.

Many Arizonans seek employment in the tourism and visitor industry as entry level and supplemental opportunities. Frequently our workforce represents individuals who are enrolled in school are single parents or other part time workers. By raising our costs of labor there would be pressure to eliminate these minimum compensation jobs thus depriving these people of much needed employment.

In addition the smallest of businesses that exceed the $500,000 threshold could be placed in the position of adjusting their overall labor costs by cutting employee related expenses such as health care or pension benefits or rolling back the services they provide.

This combination of reduced jobs and potential lowering of benefits will have a negative affect on our industries and the people who work for us. That combination does not bode well for an industry that provides one of the top two economic engines in Arizona.

We urge its defeat.

Jody Harwood, President, Arizona Tourism Alliance, Phoenix

Karen Churchard, Executive Director, Arizona Tourism Alliance, Phoenix

Paid for by "Arizona Tourism Alliance"

PROPOSITION 202

Proposition 202 creating a minimum wage in Arizona at a level significantly above the federal minimum wage and indexing it to the cost of living is not in the best interest of jobs, the price of goods and services or the Arizona economy and should be defeated in November.

There is one thing we have learned throughout the history of our economic experience it is that wage and price regulation does not work to achieve the desired ends and invariably creates unintended consequences that damage the very people that the regulations were designed to protect.

By creating an artificially high minimum wage the state will be forcing businesses into making basic economic decisions that are not good for workers and not good for consumers. When the cost of producing goods and services is increased employers must compensate to maintain their businesses viability.

Those who believe that establishing a high state minimum wage will benefit workers in the lowest rung of jobs in Arizona are wrong. Creating a state minimum wage will put pressure on employers that will result in a reduction in the job pool, elimination of employee benefits and a softening of the economy in key employment areas like tourism, agriculture and construction.

Further the creation of a state minimum wage is bad for consumers. Artificially raising employer payroll expenses will result in higher prices of the impacted goods and services.

For these reasons I urge my fellow Arizonans to vote against Proposition 202.

Barry M. Aarons, Senior Fellow, Americans for Tax Reform, Phoenix

"Help wanted." The signs are plentiful, which is a great indication that Arizona's economy is doing well and that job seekers and employees are in an enviable position. Employers need to attract new employees and retain the current workforce. Employers are competing for employees and a very valuable tool in that competition is wage. Retailers, with very few exceptions, pay higher than minimum wage. But what will happen if the economy doesn't continue to keep the current pace? Under the current scenario employers have options, but certain operating expenses can only be marginally controlled. Retailers have adapted to the federal minimum wage, but other expenses have been increasing beyond any forecasting - gasoline costs, which increase the wholesale and transportation cost of goods, healthcare costs, energy costs to heat, cool and light facilities, and increasing competition from Internet sales. All these factors continue to chip away at the profitability of retailers and therefore reduce the options when the economy takes a turn for the worse. The minimum wage initiative will automatically increase wages on an annual basis and therefore add to the factors that retailers can only marginally control. The options left to businesses are to reduce payroll hours and/or reduce benefits. The Proponents of the minimum wage increase would not embrace either of these options. Regardless of the unintended consequences, the proponents want to encourage government intervention and increase demands on businesses.

Vote no on the minimum wage initiative and allow businesses to respond to the needs of employees.

Richard B. Mazzoni, President, Arizona Retailers Association, Scottsdale

Michelle A. Ahlmer, Secretary, Arizona Retailers Association, Mesa

Paid for by "Arizona Retailers Associtation"

The only relevant question when considering a wage hike is: will it work? In other words, will its benefits outweigh the costs? A brief examination proves the answer to be a resounding "no."

To begin with, the majority of the benefits would go to employees who are not poor. According to U.S. Census data, only 15% of minimum wage recipients are raising a family on the minimum wage. The remaining 85% are teenagers living with their working parents, adults living alone, or dual-earner married couples. U.S. Census

data show that the average family income of a minimum wage recipient is almost $46,000 a year.

Consequently, attempting to target poor families by manipulating wages is an inefficient means of addressing the problem.

Advocates supporting a minimum wage increase insist that millions of minimum wage employees have not received a raise since 1997. But research from Miami University of Ohio and Florida State University shows that every year nearly two-thirds of minimum wage employees receive an increase in pay.

Not only will a wage hike be inefficient, it will be downright harmful. Decades of economic research prove that employers will cut employment in response to a minimum wage increase. Researchers at Cornell University found that vulnerable groups of young adults without a high school degree and young black adults and teenagers suffered significantly more employment loss as a result of a minimum wage increase.

To maintain profits, employers cut entry-level positions, where employees are able to gain the skills necessary to improve their future earnings. Without this vital gateway into the labor force, these individuals will be deprived of future economic success. In this way, the employees the minimum wage is designed to help—the least skilled—are the ones it hurts the most.

Donald H. Ellis, Chairman of the Board, Mesa Michael Head, Secretary, Scottsdale

Paid for by "Arizona Restaurant & Hospitality Association"

Decades of economic research prove that employers will cut employment in response to a minimum wage increase. In addition, employers will take the following steps, none of which is beneficial to low-skill employees:

Hire skilled applicants with more experience, rather than taking a chance on individuals with little education or experience. The displacement of these less-skilled employees is seen in the higher employment loss for vulnerable groups such as teens, minority teens, and adults without a high school diploma.

Automate services once performed by entry-level employees. Self-service gas stations, automated phone systems, automatic teller machines, self-service soda fountains, and self-checkout lanes at grocery stores are all examples of the automation of jobs that were once held by low-skilled, entry-level individuals. In these positions, employees were able to gain the skills necessary to improve their future earnings. Without this vital gateway into the labor force, these individuals will be deprived of future economic success.

Cut back on customer service.

It has become quite common for customers at fast-food restaurants to bus their own tables. Baggers at many grocery stores have been eliminated. Forced to pay high mandated wages, employers are choosing to cut back on services rather than raise prices.

This results in fewer opportunities for low-skilled Americans.

This clearly demonstrates why a mandated minimum wage increase with automatic annual increases isn't the answer to an employee's compensation.

Steve Chucri, Chairman, Jobs First Against I-13-2006, Mesa

Paid for by "Jobs First Against I-13-2006"

The Arizona Chamber of Commerce and Industry urges Arizona voters to reject the creation of a reckless and job-killing state minimum wage and vote NO on Proposition 202.

Proposition 202 is reckless not only because it establishes an uncompetitive minimum wage rate but because it threatens to undermine worker benefits, especially health care coverage. With its passage, small businesses will be forced to cut costs by scaling back or, more likely, eliminating expensive employer benefits. With Arizona's large number of uninsured, coupled with double-digit annual increases in the cost of health care coverage, Proposition 202 recklessly threatens the health and welfare of our workers and their families.

Moreover, Proposition 202 is a job-killer, targeting our least-skilled and most vulnerable workers. Now Arizona employers can recruit workers at the beginning of their careers, before they have acquired the skills and experience to command higher wages and salaries. Most often these workers are young people just entering the workforce. Proposition 202 will make it harder for small businesses to hire these workers especially during any future downturn in our economy. Government should not be in the business of setting wages.

Proposition 202's creation of a much higher minimum wage seems like an attractive idea, but there will be a cost that regrettably will be borne by the very workers it's promised to benefit. That is why the Arizona Chamber of Commerce and Industry recommends a NO vote on Proposition 202.

Steve Twist, Chairman of Board of Directors, Arizona Chamber of Commerce and Industry, Scottsdale

James J. Apperson, President & CEO, Arizona Chamber of Commerce and Industry, Scottsdale

Paid for by "Arizona Chamber of Commerce"

Minimum wage laws are a primary reason for the demise of rural and inner city communities. These are low rent areas where the cost of living can be ten to twenty time less than expensive city areas.

The low cost areas began to fail with the advent of minimum wage. The slow paced stores, cafes, gas stations closed. These communities unraveled as businesses and job mentors left. Learning a work ethic was lost as the young were unable to find entry level jobs. Vandalism and crime followed. Tens of thousands of businesses and homes were boarded up or bulldozed. Government spent billions trying to revitalize inner cities.

Rural dwellers that once drove five miles to shop, must now drive fifty or more. The poor and the young lack

transportation to jobs and shopping.

Imagine having a home that rents for $300 in a country town with a nearby easy-going job. It's possible without minimum wage. Walmart aggressively supports minimum wage increases, which suppress community stores with lower revenue.

The stores, motels, and hotels that survive have become havens for hard-working Asian families. The children and the elderly pitch in with stocking and cleaning without pay. Cultural groups without these values get edged out, creating tensions. Stereotyping and classification result.

Having thousands of mom and pop businesses over a diverse area provided shopping and services to bus travelers. Bus stations closed.

Inner city areas and small towns had character and personality. Big box stores and corporate chains are the same everywhere. They're impersonal, abusive to employees, and move us to foreign products over U.S. manufacturing.

Minimum wage laws disproportionately hurt the poor, create waste and reliance on automobiles and foreign goods, divide cultural groups, and interfere with natural entry level job training. No to minimum wage!

David Weary, Tempe

There is no quicker way to increase poverty, cut health benefits for workers, and chop employment opportunities than to increase the minimum wage. But this ballot initiative goes a big step farther in making the pain permanent, by linking all future increases to rises in the Consumer Price Index. When voters in Washington state did this in 1998, Ohio University Professors Richard Vedder and Lowell Galloway found four years later that is had increased poverty, not alleviated it. In their report, The Economic Impact of Washington's Minimum Wage Law, the professors found that the CPI linkage increased poverty by "largely creating unemployment and reduced hours for workers … Some occupations relying heavily on relatively less-skilled labor were particularly impacted." Despite its media portrayal, the minimum-wage rate is an entry-level wage, not a living- or family-sustaining wage. As the U.S. Bureau of Labor Statistics puts it in its Characteristics of Minimum Wage Workers 2003 study, "Minimum-wage workers tend to be young. Slightly over half of workers earning $5.15 or less were under age 25, and about one-fourth were age 16-19 … Never-married workers, who also tend to be quite young, were more likely to earn the minimum wage than persons who are married." As Lawrence McQuillan of the Pacific Research Institute wrote, "Businesses offer the mix of wages and benefits necessary to attract an optimal workforce. After a minimum-wage hike, many businesses cut training, health care benefits, and other perks for low-income workers to offset the mandated pay increase. Although many of these workers might prefer health insurance to more pay, they have no say in the matter since businesses must pay the legal minimum." This is a bad initiative for every Arizonan. Vote no.

Michelle Bolton, State Director of the National Federation of Independent Business, Phoenix

I ask you to join me in voting AGAINST this initiative that would create a harmful effect on the small business owners, entry level workers and the economy of our state. We are now experiencing an economic boom due in large part to the actions of our Republican Legislature who battled with the current government to force a reduction in taxes. Their refusal to implement another series of new programs proposed by Napolitano has limited future tax increases and allowed employers to plan expansion with comfort.

Now the friends of the governor – the lobbyists and labor bosses who are her main supporters – have decided to take another swipe at the entrepreneurial spirit of our state with this ill conceived measure. It is established without doubt that the success of our nation and state is the economic model that is founded on the free enterprise system. Whenever government injects itself into that model with intrusive regulations and rules, the economic life blood is harmed.

I call on you to defeat this attack on the small business owners that provide eighty percent of all new jobs. The governor and her friends would do better to reform our education system so that we are graduating students to meet the modern work force needs. Passage of this measure would drastically harm the ability of our state to attract new businesses to relocate or start up in our state.

I ask you to join me in voting AGAINST this measure and vote FOR a more vibrant economy. **Paid for by Goldwater for Governor Committee.**

Don Goldwater, Goldwater for Governor, Laveen

This proposition should be called the "Illegal Immigration Incentive and Rewards Act."

Arizona is on the frontlines of illegal immigration. We have hundreds of miles of lightly guarded border; thousands of illegals cross daily, most of whom continue on to other parts of the country.

However, if Prop 202 passes, that will change. Rather than following federal minimum wage law, Arizona will rocket to one of the highest in the nation. Illegals will have a strong financial reason to stay here.

After 2007, no other border state will pay as much as Arizona. Illegals will have to travel 1,000 miles to Washington State or 2,000 miles to Vemont to find a job that pays more than Arizona. Why would they?

Arizona will become an even greater magnet for illegal immigration.

Unscrupulous people will pay illegals "cash under the table" to avoid the minimum wage. But illegals will still be paid more than surrounding states. This law will provide an even greater incentive to hire illegals, especially with little enforcement.

But wait, there's more…

Amazingly, this proposition says every PERSON shall receive a minimum wage, not just citizens. If an illegal is ever fired (i.e. if Arizona finally cracks down on illegal immigration) this proposition allows the illegal to sue or force the state to sue on their behalf (at taxpayers' expense), and the court is REQUIRED to award them 2-3 times their total pay at Arizona's higher minimum wage. This is the new Global Communism.

Why would an illegal ever go anywhere else for a job? In Arizona they'll get a bonus if they get caught!

Let's get our priorities straight: enforce our border, and don't give benefits to lawbreakers. Vote NO on Prop 202.

Sen. Dean Martin, Chairman, Senate Finance Committee, Phoenix

BALLOT FORMAT

PROPOSITION 202

PROPOSED AMENDMENT BY INITIATIVE PETITION

OFFICIAL TITLE AN INITIATIVE MEASURE REPEALING SECTION 23-362, AMENDING BY ADDING NEW SECTION 23-362 RELATING TO THE ARIZONA MINIMUM WAGE ACT
DESCRIPTIVE TITLE RAISES MINIMUM WAGE TO $6.75 PER HOUR BEGINNING JANUARY 1, 2007, WITH CERTAIN EXCEPTIONS; PROVIDES YEARLY ANNUAL COST OF LIVING INCREASES; REQUIRES THAT EMPLOYERS POST NOTICE ABOUT EMPLOYEE RIGHTS; ESTABLISHES PENALTIES AND PERMITS PRIVATE LAWSUITS AND ENFORCEMENT BY THE INDUSTRIAL COMMISSION.

PROPOSITION 202

A "yes" vote shall have the effect of raising the minimum wage to $6.75 per hour with certain exceptions beginning January 1, 2007, providing for yearly minimum wage cost of living increases, requiring employers to post notice about employee minimum wage rights, establishing penalties for violations of the law and permitting private lawsuits to enforce the law.	**YES** ☐
A "no" vote shall have the effect of continuing to follow existing federal minimum wage laws, which currently provide a minimum wage of $5.15 per hour.	**NO** ☐

EXHIBIT 3

Joint Legislative Budget Committee
Staff Memorandum

1716 West Adams
Phoenix, Arizona 85007

Telephone: (602) 926-5491
azleg.gov

DATE: October 8, 2019

TO: Selected Agency Directors

FROM: Richard Stavneak, Director

SUBJECT: FLAGSTAFF MINIMUM WAGE COSTS

As you may be aware, the City of Flagstaff's minimum wage will be $13.00 per hour on January 1, 2020, or $1.00 higher than the Arizona minimum wage. On January 1, 2021, Flagstaff's minimum wage will be $15.00 per hour compared to a statewide Arizona minimum wage of approximately $12.25. The City of Flagstaff is the only local jurisdiction currently with a minimum wage higher than the state's minimum wage.

Laws 2019, Chapter 272 adds the following requirement to A.R.S. § 35-113, which requires agencies to include their estimated cost associated with any extra local minimum wage levels in their annual budget request:

> "The estimates shall include a detailed estimate of the cost to the budget unit in the next fiscal year attributable to a county's, city's or town's establishment of a minimum wage if that minimum wage exceeds the minimum wage established by this state pursuant to A.R.S. § 23-363."

Chapter 272 also added A.R.S. § 35-121.01, which permits the Legislature to consider that budget estimate information in billing any county, city or town for the upcoming fiscal year's costs associated with the establishment of a minimum wage higher than the state minimum wage.

OSPB's FY 2021 budget instructions require agencies to include the information required by A.R.S. § 35-113 in an attachment to the cover letter of the budget request.

Most agencies did not address in their budget submission whether they would have such costs. As a result, House Appropriations Chairman Regina Cobb and Senate Appropriations Chairman David Gowan have requested that we confirm whether the absence of such information was an oversight or was intended to suggest that your agency would not have any extra Flagstaff local minimum wage costs.

(Continued)

We did not see this information attached to your budget request. If we missed this information, please indicate to us where we can find it. If there was no information, please respond either to this email with your detailed estimate or a statement indicating you believe there is no impact.

We would also emphasize that these reports should only address costs associated with the higher Flagstaff minimum wage above the statewide minimum wage. We are not seeking information on your costs to meet the statewide minimum wage.

Please respond to this request by Tuesday, October 22 to jlbcwebmaster@azleg.gov. If you have further questions, please contact your JLBC Staff analyst.

RS:lm
Attachment
xc: Representative Regina Cobb
Senator David Gowan

Attachment

Distribution List:
Arizona Department of Administration
Arizona Department of Agriculture
AHCCCS
Attorney General
Department of Child Safety
Coconino Community College
Registrar of Contractors
Arizona Department of Corrections
Arizona State Schools for the Deaf and the Blind
Arizona Department of Education
Department of Emergency and Military Affairs
Department of Forestry & Fire Management
Arizona Game & Fish Department
Arizona Department of Gaming
Arizona Department of Health Services
Arizona Historical Society
Judiciary
Department of Juvenile Corrections
Arizona State Parks & Trails
Department of Public Safety
School Facilities Board
Secretary of State
Arizona Department of Transportation
Arizona Board of Regents
Arizona State University
Northern Arizona University
University of Arizona
Department of Veterans' Services
Department of Water Resources

EXHIBIT 4

ARIZONA HISTORICAL SOCIETY
FLAGSTAFF | TEMPE | TUCSON | YUMA

October 10, 2019

Mr. Richard Stavneak, Director
Joint Legislative Budget Committee
1716 West Adams
Phoenix, AZ 85007

Re: Flagstaff Minimum Wage Costs

Mr. Stavneak,

The Historical Society inadvertently did not include the Flagstaff minimum wage costs with the budget submission for FY 2021.

The agency runs the Pioneer Museum and operates the Riordan Mansion State Park, both located in Flagstaff. We have had several conversations about the increase in minimum wage and the ability to retain staff. Currently there are three positions that are paid between 13.00 and 13.26 per hour. This is the same as the minimum wage starting on January 1, 2020 or slightly above. Due to the lack of funds to pay the increasing minimum wage in Flagstaff, two of the three positions are currently vacant and are posted in the state job search web-site.

The estimated increased cost for the three positions is $12,461 annually if we were to pay them all $15.00 per hour. This includes an estimate for ERE for the vacant positions. Two of the three positions are not eligible for insurance but are ASRS members. One of the positions is full-time with full benefits.

Please contact Kim Bittrich, 520-617-1164, if you have any questions or need any additional information. Thank you.

Sincerely,

W. James Burns

W. James Burns
Executive Director

C. Matt Gress, Director, OSPB

EXHIBIT 5

Senate Engrossed

revenue; budget reconciliation; 2021-2022

FILED
KATIE HOBBS
SECRETARY OF STATE

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 411

SENATE BILL 1827

AN ACT

AMENDING TITLE 23, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 11; AMENDING SECTION 42-5029, ARIZONA REVISED STATUTES; REPEALING SECTION 42-5041, ARIZONA REVISED STATUTES; AMENDING SECTION 43-1011, ARIZONA REVISED STATUTES; AMENDING LAWS 2016, CHAPTER 125, SECTION 21, AS AMENDED BY LAWS 2017, CHAPTER 215, SECTION 1; AMENDING LAWS 2016, CHAPTER 125, SECTION 22, AS AMENDED BY LAWS 2017, CHAPTER 215, SECTION 2; AMENDING LAWS 2016, CHAPTER 125, SECTION 26, AS AMENDED BY LAWS 2017, CHAPTER 215, SECTION 3; AMENDING LAWS 2016, CHAPTER 125, SECTION 28, AS AMENDED BY LAWS 2017, CHAPTER 215, SECTION 4; APPROPRIATING MONIES; RELATING TO REVENUE BUDGET RECONCILIATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 23, Arizona Revised Statutes, is amended by adding chapter 11, to read:

CHAPTER 11

MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT

ARTICLE 1. GENERAL PROVISIONS

23-1701. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "COMMISSION" MEANS THE INDUSTRIAL COMMISSION OF ARIZONA.

2. "FIREFIGHTER" HAS THE SAME MEANING PRESCRIBED IN SECTION 23-901.09.

3. "FIRE INVESTIGATOR" HAS THE SAME MEANING PRESCRIBED IN SECTION 23-901.09.

4. "FUND" MEANS THE MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT FUND.

5. "MUNICIPAL PAYOR" MEANS ANY OF THE FOLLOWING:

(a) A WORKERS' COMPENSATION INSURER USED BY A CITY OR TOWN.

(b) A SELF-INSURANCE PROGRAM APPROVED PURSUANT TO SECTION 23-961 USED BY A CITY OR TOWN.

(c) A PUBLIC AGENCY POOL THAT IS ESTABLISHED PURSUANT TO SECTION 11-952.01 AND THAT IS USED BY A CITY OR TOWN.

23-1702. Municipal firefighter cancer reimbursement fund; exemption; rulemaking; annual report

A. THE MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT FUND IS ESTABLISHED CONSISTING OF MONIES DEPOSITED IN THE FUND PURSUANT TO SECTION 23-1703. THE COMMISSION SHALL ADMINISTER THE FUND. MONIES IN THE FUND SHALL BE USED TO REIMBURSE MUNICIPAL PAYORS FOR THE COMPENSATION AND BENEFITS PAID BY MUNICIPAL PAYORS TO MUNICIPAL FIREFIGHTERS AND MUNICIPAL FIRE INVESTIGATORS UNDER SECTION 23-901.09 FOR:

1. COMPENSATION FOR TEMPORARY PARTIAL DISABILITY, PERMANENT PARTIAL DISABILITY AND LOST EARNING CAPACITY AS PRESCRIBED IN SECTION 23-1044.

2. COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND PERMANENT TOTAL DISABILITY AS PRESCRIBED IN SECTION 23-1045.

3. MEDICAL, SURGICAL AND HOSPITAL BENEFITS AS PRESCRIBED IN SECTION 23-1062.

4. DEATH BENEFITS AS PRESCRIBED IN SECTION 23-1046.

B. THE FUND CONSISTS OF THE FOLLOWING:

1. FEES FROM CITIES AND TOWNS DEPOSITED PURSUANT TO SECTION 23-1703.

2. MONIES RECEIVED FROM ANY OTHER SOURCE, INCLUDING FEDERAL MONIES, INVESTMENT INCOME AND PRIVATE GRANTS, GIFTS, CONTRIBUTIONS AND DEVISES.

C. THE COMMISSION SHALL ANNUALLY DISTRIBUTE THE MONIES IN THE FUND ON A PRORATED BASIS BASED ON THE AMOUNT OF THE INDIVIDUAL COMPENSATION AND BENEFITS PAID BY A MUNICIPAL PAYOR FOR COMPENSATION AND BENEFITS TO A MUNICIPAL FIREFIGHTER OR MUNICIPAL FIRE INVESTIGATOR FOR A DISEASE,

INFIRMITY OR IMPAIRMENT AS PRESCRIBED IN SECTION 23-901.09 IN PROPORTION TO THE STATEWIDE AGGREGATE OF ALL COMPENSATION AND BENEFITS PAID TO MUNICIPAL FIREFIGHTERS AND MUNICIPAL FIRE INVESTIGATORS PURSUANT TO SECTION 23-901.09 FOR THE FISCAL YEAR. THE COMMISSION MAY NOT REIMBURSE MONIES FOR EXPENSES RELATING TO CASE MANAGEMENT, VOCATIONAL REHABILITATION OR SIMILAR NONMEDICAL COSTS. THE PRORATED SHARE SHALL BE DISTRIBUTED TO THE MUNICIPAL PAYORS ENTITLED TO A SHARE WITHOUT REGARD TO THE ORDER IN WHICH THE RESPECTIVE COMPENSATION AND BENEFITS WERE PAID IN THE FISCAL YEAR.

D. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS.

E. ON OR BEFORE JANUARY 1, 2022, THE COMMISSION SHALL ADOPT RULES PURSUANT TO TITLE 41, CHAPTER 6 TO CARRY OUT THIS CHAPTER.

F. ON OR BEFORE APRIL 1 OF EACH YEAR, THE COMMISSION SHALL SUBMIT A REPORT TO THE LEGISLATURE AND THE MUNICIPAL PAYORS REIMBURSED FROM THE FUND ON THE FINANCIAL STATUS OF THE FUND. THE REPORT SHALL INCLUDE ALL OF THE FOLLOWING:

1. THE TOTAL NUMBER OF FUND REIMBURSEMENT CLAIMS THE COMMISSION RECEIVED IN THE IMMEDIATELY PRECEDING FISCAL YEAR.

2. FOR THE IMMEDIATELY PRECEDING FISCAL YEAR, THE NUMBER OF FUND REIMBURSEMENT CLAIMS APPROVED, THE TOTAL DOLLAR AMOUNT OF FUND REIMBURSEMENT CLAIMS PAID BY THE FUND AND THE AMOUNT PAID TO EACH MUNICIPAL PAYOR REIMBURSED BY THE FUND.

3. THE AMOUNT OF ANY ANTICIPATED SURPLUS IN THE FUND.

23-1703. Assessment

A. FROM AND AFTER JUNE 30, 2021, THE COMMISSION SHALL ASSESS AND COLLECT FEES FROM CITIES AND TOWNS FOR DEPOSIT IN THE FUND. THE FEE SHALL BE ASSESSED TO EACH CITY AND TOWN THAT RECEIVES STATE SHARED REVENUES PURSUANT TO SECTIONS 42-5029 AND 43-206. THE TOTAL AMOUNT OF FEES FOR ALL CITIES AND TOWNS MAY NOT EXCEED $15,000,000 IN EACH FISCAL YEAR. THE SHARE OF FEES ASSESSED IN EACH FISCAL YEAR TO EACH CITY AND TOWN SHALL BE BASED ON THE POPULATION OF THE CITY OR TOWN AS DETERMINED BY THE MOST RECENT POPULATION ESTIMATES OF THE UNITED STATES CENSUS BUREAU AS OF JULY 1 IN PROPORTION TO THE TOTAL POPULATION OF ALL INCORPORATED CITIES AND TOWNS.

B. THE COMMISSION SHALL ASSESS THE FEES UNDER THIS SECTION NOT LATER THAN JULY 31 OF EACH YEAR, AND THE FEES ARE PAYABLE IMMEDIATELY ON ASSESSMENT. IF A CITY OR TOWN FAILS TO PAY THE ASSESSMENT IN FULL ON OR BEFORE SEPTEMBER 30, THE COMMISSION SHALL NOTIFY THE STATE TREASURER WHO SHALL WITHHOLD THE DELINQUENT AMOUNT FROM THE DISTRIBUTION OF MONIES TO THE APPROPRIATE CITY OR TOWN PURSUANT TO SECTIONS 42-5029 AND 43-206 AND SHALL CONTINUE TO WITHHOLD MONIES UNTIL THE CITY OR TOWN HAS PAID THE ENTIRE AMOUNT OF THE ASSESSMENT.

C. ALL MONIES PAID TO THE COMMISSION OR WITHHELD BY THE STATE TREASURER FOR THE FEES ASSESSED PURSUANT TO THIS SECTION SHALL BE DEPOSITED IN THE FUND.

D. CITIES AND TOWNS MAY MEET THEIR OBLIGATION FOR THE ASSESSMENT FROM ANY SOURCE OF CITY OR TOWN REVENUE DESIGNATED BY THE APPROPRIATE CITY OR TOWN. CITY AND TOWN PAYMENTS MADE PURSUANT TO THIS SECTION ARE EXCLUDED FROM THE APPLICABLE EXPENDITURE LIMITATIONS.

Sec. 2. Section 42-5029, Arizona Revised Statutes, is amended to read:

42-5029. Remission and distribution of monies; withholding; definition

A. The department shall deposit, pursuant to sections 35-146 and 35-147, all revenues collected under this article and articles 4, 5 and 8 of this chapter pursuant to section 42-1116, separately accounting for:

1. Payments of estimated tax under section 42-5014, subsection D.

2. Revenues collected pursuant to section 42-5070.

3. Revenues collected under this article and article 5 of this chapter from and after June 30, 2000 from sources located on Indian reservations in this state.

4. Revenues collected pursuant to section 42-5010, subsection G and section 42-5155, subsection D.

5. Revenues collected pursuant to section 42-5010.01 and section 42-5155, subsection E.

B. The department shall credit payments of estimated tax to an estimated tax clearing account and each month shall transfer all monies in the estimated tax clearing account to a fund designated as the transaction privilege and severance tax clearing account. The department shall credit all other payments to the transaction privilege and severance tax clearing account, separately accounting for the monies designated as distribution base under sections 42-5010, 42-5164 and 42-5205. Each month the department shall report to the state treasurer the amount of monies collected pursuant to this article and articles 4, 5 and 8 of this chapter.

C. On notification by the department, the state treasurer shall distribute the monies deposited in the transaction privilege and severance tax clearing account in the manner prescribed by this section and by sections 42-5164 and 42-5205, after deducting warrants drawn against the account pursuant to sections 42-1118 and 42-1254.

D. Of the monies designated as distribution base, ~~and subject to the requirements of section 42-5041,~~ the department shall:

1. Pay twenty-five percent to the various incorporated municipalities in this state in proportion to their population to be used by the municipalities for any municipal purpose.

2. Pay 38.08 percent to the counties in this state by averaging the following proportions:

(a) The proportion that the population of each county bears to the total state population.

(b) The proportion that the distribution base monies collected during the calendar month in each county under this article, section 42-5164, subsection B and section 42-5205, subsection B bear to the total distribution base monies collected under this article, section 42-5164, subsection B and section 42-5205, subsection B throughout the state for the calendar month.

3. Pay an additional 2.43 percent to the counties in this state as follows:

(a) Average the following proportions:

(i) The proportion that the assessed valuation used to determine secondary property taxes of each county, after deducting that part of the assessed valuation that is exempt from taxation at the beginning of the month for which the amount is to be paid, bears to the total assessed valuations used to determine secondary property taxes of all the counties after deducting that portion of the assessed valuations that is exempt from taxation at the beginning of the month for which the amount is to be paid. Property of a city or town that is not within or contiguous to the municipal corporate boundaries and from which water is or may be withdrawn or diverted and transported for use on other property is considered to be taxable property in the county for purposes of determining assessed valuation in the county under this item.

(ii) The proportion that the distribution base monies collected during the calendar month in each county under this article, section 42-5164, subsection B and section 42-5205, subsection B bear to the total distribution base monies collected under this article, section 42-5164, subsection B and section 42-5205, subsection B throughout the state for the calendar month.

(b) If the proportion computed under subdivision (a) of this paragraph for any county is greater than the proportion computed under paragraph 2 of this subsection, the department shall compute the difference between the amount distributed to that county under paragraph 2 of this subsection and the amount that would have been distributed under paragraph 2 of this subsection using the proportion computed under subdivision (a) of this paragraph and shall pay that difference to the county from the amount available for distribution under this paragraph. Any monies remaining after all payments under this subdivision shall be distributed among the counties according to the proportions computed under paragraph 2 of this subsection.

4. After any distributions required by sections 42-5030, 42-5030.01, 42-5031, 42-5032, 42-5032.01 and 42-5032.02, and after making any transfer to the water quality assurance revolving fund as required by

section 49-282, subsection B, credit the remainder of the monies designated as distribution base to the state general fund. From this amount the legislature shall annually appropriate to:

(a) The department of revenue sufficient monies to administer and enforce this article and articles 5 and 8 of this chapter.

(b) The department of economic security monies to be used for the purposes stated in title 46, chapter 1.

(c) The firearms safety and ranges fund established by section 17-273, fifty thousand dollars derived from the taxes collected from the retail classification pursuant to section 42-5061 for the current fiscal year.

E. If approved by the qualified electors voting at a statewide general election, all monies collected pursuant to section 42-5010, subsection G and section 42-5155, subsection D shall be distributed each fiscal year pursuant to this subsection. The monies distributed pursuant to this subsection are in addition to any other appropriation, transfer or other allocation of public or private monies from any other source and shall not supplant, replace or cause a reduction in other school district, charter school, university or community college funding sources. The monies shall be distributed as follows:

1. If there are outstanding state school facilities revenue bonds pursuant to title 15, chapter 16, article 7, each month one-twelfth of the amount that is necessary to pay the fiscal year's debt service on outstanding state school improvement revenue bonds for the current fiscal year shall be transferred each month to the school improvement revenue bond debt service fund established by section 15-2084. The total amount of bonds for which these monies may be allocated for the payment of debt service shall not exceed a principal amount of eight hundred million dollars exclusive of refunding bonds and other refinancing obligations.

2. After any transfer of monies pursuant to paragraph 1 of this subsection, twelve per cent of the remaining monies collected during the preceding month shall be transferred to the technology and research initiative fund established by section 15-1648 to be distributed among the universities for the purpose of investment in technology and research-based initiatives.

3. After the transfer of monies pursuant to paragraph 1 of this subsection, three per cent of the remaining monies collected during the preceding month shall be transferred to the workforce development account established in each community college district pursuant to section 15-1472 for the purpose of investment in workforce development programs.

4. After transferring monies pursuant to paragraphs 1, 2 and 3 of this subsection, one-twelfth of the amount a community college that is owned, operated or chartered by a qualifying Indian tribe on its own Indian reservation would receive pursuant to section 15-1472, subsection D, paragraph 2 if it were a community college district shall be

distributed each month to the treasurer or other designated depository of a qualifying Indian tribe. Monies distributed pursuant to this paragraph are for the exclusive purpose of providing support to one or more community colleges owned, operated or chartered by a qualifying Indian tribe and shall be used in a manner consistent with section 15-1472, subsection B. For the purposes of this paragraph, "qualifying Indian tribe" has the same meaning as defined in section 42-5031.01, subsection D.

5. After transferring monies pursuant to paragraphs 1, 2 and 3 of this subsection, one-twelfth of the following amounts shall be transferred each month to the department of education for the increased cost of basic state aid under section 15-971 due to added school days and associated teacher salary increases enacted in 2000:

(a) In fiscal year 2001-2002, $15,305,900.

(b) In fiscal year 2002-2003, $31,530,100.

(c) In fiscal year 2003-2004, $48,727,700.

(d) In fiscal year 2004-2005, $66,957,200.

(e) In fiscal year 2005-2006 and each fiscal year thereafter, $86,280,500.

6. After transferring monies pursuant to paragraphs 1, 2 and 3 of this subsection, seven million eight hundred thousand dollars is appropriated each fiscal year, to be paid in monthly installments, to the department of education to be used for school safety as provided in section 15-154 and two hundred thousand dollars is appropriated each fiscal year, to be paid in monthly installments to the department of education to be used for the character education matching grant program as provided in section 15-154.01.

7. After transferring monies pursuant to paragraphs 1, 2 and 3 of this subsection, no more than seven million dollars may be appropriated by the legislature each fiscal year to the department of education to be used for accountability purposes as described in section 15-241 and title 15, chapter 9, article 8.

8. After transferring monies pursuant to paragraphs 1, 2 and 3 of this subsection, one million five hundred thousand dollars is appropriated each fiscal year, to be paid in monthly installments, to the failing schools tutoring fund established by section 15-241.

9. After transferring monies pursuant to paragraphs 1, 2 and 3 of this subsection, twenty-five million dollars shall be transferred each fiscal year to the state general fund to reimburse the general fund for the cost of the income tax credit allowed by section 43-1072.01.

10. After the payment of monies pursuant to paragraphs 1 through 9 of this subsection, the remaining monies collected during the preceding month shall be transferred to the classroom site fund established by section 15-977. The monies shall be allocated as follows in the manner prescribed by section 15-977:

(a) Forty per cent shall be allocated for teacher compensation based on performance.

(b) Twenty per cent shall be allocated for increases in teacher base compensation and employee related expenses.

(c) Forty per cent shall be allocated for maintenance and operation purposes.

F. The department shall credit the remainder of the monies in the transaction privilege and severance tax clearing account to the state general fund, subject to any distribution required by section 42-5030.01.

G. Notwithstanding subsection D of this section, if a court of competent jurisdiction finally determines that tax monies distributed under this section were illegally collected under this article or articles 5 and 8 of this chapter and orders the monies to be refunded to the taxpayer, the department shall compute the amount of such monies that was distributed to each city, town and county under this section. Each city's, town's and county's proportionate share of the costs shall be based on the amount of the original tax payment each municipality and county received. Each month the state treasurer shall reduce the amount otherwise distributable to the city, town and county under this section by one thirty-sixth of the total amount to be recovered from the city, town or county until the total amount has been recovered, but the monthly reduction for any city, town or county shall not exceed ten percent of the full monthly distribution to that entity. The reduction shall begin for the first calendar month after the final disposition of the case and shall continue until the total amount, including interest and costs, has been recovered.

H. On receiving a certificate of default from the greater Arizona development authority pursuant to section 41-2257 or 41-2258 and to the extent not otherwise expressly prohibited by law, the state treasurer shall withhold from the next succeeding distribution of monies pursuant to this section due to the defaulting political subdivision the amount specified in the certificate of default and immediately deposit the amount withheld in the greater Arizona development authority revolving fund. The state treasurer shall continue to withhold and deposit the monies until the greater Arizona development authority certifies to the state treasurer that the default has been cured. In no event may the state treasurer withhold any amount that the defaulting political subdivision certifies to the state treasurer and the authority as being necessary to make any required deposits then due for the payment of principal and interest on bonds of the political subdivision that were issued before the date of the loan repayment agreement or bonds and that have been secured by a pledge of distributions made pursuant to this section.

I. Except as provided by sections 42-5033 and 42-5033.01, the population of a county, city or town as determined by the most recent United States decennial census plus any revisions to the decennial census

certified by the United States bureau of the census shall be used as the basis for apportioning monies pursuant to subsection D of this section.

J. Except as otherwise provided by this subsection, on notice from the department of revenue pursuant to section 42-6010, subsection B, the state treasurer shall withhold from the distribution of monies pursuant to this section to the affected city or town the amount of the penalty for business location municipal tax incentives provided by the city or town to a business entity that locates a retail business facility in the city or town. The state treasurer shall continue to withhold monies pursuant to this subsection until the entire amount of the penalty has been withheld. The state treasurer shall credit any monies withheld pursuant to this subsection to the state general fund as provided by subsection D, paragraph 4 of this section. The state treasurer shall not withhold any amount that the city or town certifies to the department of revenue and the state treasurer as being necessary to make any required deposits or payments for debt service on bonds or other long-term obligations of the city or town that were issued or incurred before the location incentives provided by the city or town.

K. On notice from the auditor general pursuant to section 9-626, subsection D, the state treasurer shall withhold from the distribution of monies pursuant to this section to the affected city the amount computed pursuant to section 9-626, subsection D. The state treasurer shall continue to withhold monies pursuant to this subsection until the entire amount specified in the notice has been withheld. The state treasurer shall credit any monies withheld pursuant to this subsection to the state general fund as provided by subsection D, paragraph 4 of this section.

L. Except as otherwise provided by this subsection, on notice from the attorney general pursuant to section 41-194.01, subsection B, paragraph 1 that an ordinance, regulation, order or other official action adopted or taken by the governing body of a county, city or town violates state law or the Constitution of Arizona, the state treasurer shall withhold the distribution of monies pursuant to this section to the affected county, city or town and shall continue to withhold monies pursuant to this subsection until the attorney general certifies to the state treasurer that the violation has been resolved. The state treasurer shall redistribute the monies withheld pursuant to this subsection among all other counties, cities and towns in proportion to their population as provided by subsection D of this section. The state treasurer shall not withhold any amount that the county, city or town certifies to the attorney general and the state treasurer as being necessary to make any required deposits or payments for debt service on bonds or other long-term obligations of the county, city or town that were issued or incurred before committing the violation.

M. For the purposes of this section, "community college district" means a community college district that is established pursuant to sections 15-1402 and 15-1403 and that is a political subdivision of this state and, unless otherwise specified, includes a community college tuition financing district established pursuant to section 15-1409.

Sec. 3. Repeal

Section 42-5041, Arizona Revised Statutes, is repealed.

Sec. 4. Section 43-1011, Arizona Revised Statutes, is amended to read:

43-1011. Taxes and tax rates

A. There shall be levied, collected and paid for each taxable year on the entire taxable income of every resident of this state and on the entire taxable income of every nonresident that is derived from sources within this state taxes determined in the following manner:

1. For taxable years beginning from and after December 31, 1996 through December 31, 1997:

(a) In the case of a single person or a married person filing separately:

If taxable income is:	The tax is:
$0 - $10,000	2.90% of taxable income
$10,001 - $25,000	$290, plus 3.30% of the excess over $10,000
$25,001 - $50,000	$785, plus 3.90% of the excess over $25,000
$50,001 - $150,000	$1,760, plus 4.80% of the excess over $50,000
$150,001 and over	$6,560, plus 5.17% of the excess over $150,000

(b) In the case of a married couple filing a joint return or a single person who is a head of a household:

If taxable income is:	The tax is:
$0 - $20,000	2.90% of taxable income
$20,001 - $50,000	$580, plus 3.30% of the excess over $20,000
$50,001 - $100,000	$1,570, plus 3.90% of the excess over $50,000
$100,001 - $300,000	$3,520, plus 4.80% of the excess over $100,000
$300,001 and over	$13,120, plus 5.17% of the excess over $300,000

2. For taxable years beginning from and after December 31, 1997 through December 31, 1998:

(a) In the case of a single person or a married person filing separately:

If taxable income is:	The tax is:
$0 – $10,000	2.88% of taxable income
$10,001 – $25,000	$288, plus 3.24% of the excess over $10,000
$25,001 – $50,000	$774, plus 3.82% of the excess over $25,000
$50,001 – $150,000	$1,729, plus 4.74% of the excess over $50,000
$150,001 and over	$6,469, plus 5.10% of the excess over $150,000

(b) In the case of a married couple filing a joint return or a single person who is a head of a household:

If taxable income is:	The tax is:
$0 – $20,000	2.88% of taxable income
$20,001 – $50,000	$576, plus 3.24% of the excess over $20,000
$50,001 – $100,000	$1,548, plus 3.82% of the excess over $50,000
$100,001 – $300,000	$3,458, plus 4.74% of the excess over $100,000
$300,001 and over	$12,938, plus 5.10% of the excess over $300,000

3. For taxable years beginning from and after December 31, 1998 through December 31, 2005:

(a) In the case of a single person or a married person filing separately:

If taxable income is:	The tax is:
$0 – $10,000	2.87% of taxable income
$10,001 – $25,000	$287, plus 3.20% of the excess over $10,000
$25,001 – $50,000	$767, plus 3.74% of the excess over $25,000
$50,001 – $150,000	$1,702, plus 4.72% of the excess over $50,000
$150,001 and over	$6,422, plus 5.04% of the excess over $150,000

(b) In the case of a married couple filing a joint return or a single person who is a head of a household:

If taxable income is:	The tax is:
$0 – $20,000	2.87% of taxable income
$20,001 – $50,000	$574, plus 3.20% of the excess over $20,000

$50,001 - $100,000	$1,534, plus 3.74% of the excess over $50,000
$100,001 - $300,000	$3,404, plus 4.72% of the excess over $100,000
$300,001 and over	$12,844, plus 5.04% of the excess over $300,000

4. For taxable years beginning from and after December 31, 2005 through December 31, 2006:

(a) In the case of a single person or a married person filing separately:

If taxable income is:	The tax is:
$0 - $10,000	2.73% of taxable income
$10,001 - $25,000	$273, plus 3.04% of the excess over $10,000
$25,001 - $50,000	$729, plus 3.55% of the excess over $25,000
$50,001 - $150,000	$1,617, plus 4.48% of the excess over $50,000
$150,001 and over	$6,097, plus 4.79% of the excess over $150,000

(b) In the case of a married couple filing a joint return or a single person who is a head of a household:

If taxable income is:	The tax is:
$0 - $20,000	2.73% of taxable income
$20,001 - $50,000	$546, plus 3.04% of the excess over $20,000
$50,001 - $100,000	$1,458, plus 3.55% of the excess over $50,000
$100,001 - $300,000	$3,233, plus 4.48% of the excess over $100,000
$300,001 and over	$12,193, plus 4.79% of the excess over $300,000

5. Subject to subsections B and C of this section, for taxable years beginning from and after December 31, 2006 through December 31, 2018:

(a) In the case of a single person or a married person filing separately:

If taxable income is:	The tax is:
$0 - $10,000	2.59% of taxable income
$10,001 - $25,000	$259, plus 2.88% of the excess over $10,000
$25,001 - $50,000	$691, plus 3.36% of the excess over $25,000
$50,001 - $150,000	$1,531, plus 4.24% of the excess over $50,000

$150,001 and over	$5,771, plus 4.54% of the excess over $150,000

(b) In the case of a married couple filing a joint return or a single person who is a head of a household:

If taxable income is:	The tax is:
$0 - $20,000	2.59% of taxable income
$20,001 - $50,000	$518, plus 2.88% of the excess over $20,000
$50,001 - $100,000	$1,382, plus 3.36% of the excess over $50,000
$100,001 - $300,000	$3,062, plus 4.24% of the excess over $100,000
$300,001 and over	$11,542, plus 4.54% of the excess over $300,000

6. Subject to ~~subsection~~ SUBSECTIONS D AND E of this section, for taxable years beginning from and after December 31, 2018:

(a) In the case of a single person or a married person filing separately:

If taxable income is:	The tax is:
$0 - $26,500	2.59% of taxable income
$26,501 - $53,000	$686, plus 3.34% of the amount over $26,500
$53,001 - $159,000	$1,571, plus 4.17% of the amount over $53,000
$159,001 and over	$5,991, plus 4.50% of the amount over $159,000

(b) In the case of a married couple filing a joint return or a single person who is a head of a household:

If taxable income is:	The tax is:
$0 - $53,000	2.59% of taxable income
$53,001 - $106,000	$1,373, plus 3.34% of the amount over $53,000
$106,001 - $318,000	$3,143, plus 4.17% of the amount over $106,000
$318,001 and over	$11,983, plus 4.50% of the amount over $318,000

B. For the taxable year beginning from and after December 31, 2014 through December 31, 2015, the department shall adjust the income dollar amounts for each rate bracket prescribed by subsection A, paragraph 5 of this section according to the average annual change in the metropolitan Phoenix consumer price index published by the United States department of labor, bureau of labor statistics. The revised dollar amounts shall be raised to the nearest whole dollar. The income dollar amounts for each rate bracket may not be revised below the amounts prescribed in the prior taxable year.

C. For each taxable year beginning from and after December 31, 2015 through December 31, 2018, the department shall adjust the income dollar amounts for each rate bracket prescribed by subsection A, paragraph 5 of this section according to the average annual change in the metropolitan Phoenix consumer price index published by the United States department of labor, bureau of labor statistics. The revised dollar amounts shall be raised to the nearest whole dollar. The income dollar amounts for each rate bracket may not be revised below the amounts prescribed in the prior taxable year.

D. For each taxable year beginning from and after December 31, 2019, the department shall adjust the income dollar amount for each rate bracket prescribed by subsection A, paragraph 6 of this section according to the average annual change in the metropolitan Phoenix consumer price index published by the United States department of labor, bureau of labor statistics. The revised dollar amounts shall be raised to the nearest whole dollar. The income dollar amounts for each rate bracket may not be revised below the amounts prescribed in the prior taxable year.

E. FOR EACH TAXABLE YEAR BEGINNING FROM AND AFTER DECEMBER 31, 2020, FOR TAXABLE INCOME THAT IS SUBJECT TO THE INCOME TAX SURCHARGE IMPOSED BY SECTION 43-1013, THE COMBINED TAX RATE OF THE INCOME TAX SURCHARGE IMPOSED BY SECTION 43-1013 AND THE HIGHEST TAX RATE IMPOSED BY SUBSECTION A, PARAGRAPH 6, 7, 8 OR 9 OF THIS SECTION MAY NOT EXCEED FOUR AND ONE-HALF PERCENT. IF THE COMBINED TAX RATE EXCEEDS FOUR AND ONE-HALF PERCENT, THE HIGHEST TAX RATE IMPOSED BY SUBSECTION A, PARAGRAPH 6, 7, 8 OR 9 OF THIS SECTION SHALL BE REDUCED SO THAT THE COMBINED TAX RATE IS FOUR AND ONE-HALF PERCENT. THE DEPARTMENT MAY ADOPT RULES PURSUANT TO TITLE 41, CHAPTER 6 TO CARRY OUT THIS SUBSECTION.

Sec. 5. Laws 2016, chapter 125, section 21, as amended by Laws 2017, chapter 215, section 1, is amended to read:

Sec. 21. Veterans' income tax settlement fund; exemption from lapsing

A. The veterans' income tax settlement fund is established consisting of monies appropriated by the legislature and other monies donated or accruing to the fund. Monies in the fund are continuously appropriated to the department of revenue for the purposes of Laws 2016, chapter 125, sections 19 through 27.

B. The department of revenue shall administer the fund. On notice from the department, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, Arizona Revised Statutes, and monies earned from investment shall be credited to the fund. Monies in the fund are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, except that unexpended and unencumbered monies remaining in the fund on June 30, ~~2021~~ 2023 revert to the state general fund.

C. Five percent of the monies in the fund at the beginning of each fiscal year are appropriated separately to both the department of revenue and the department of veterans' services for administrative costs incurred under Laws 2016, chapter 125, sections 19 through 27 ~~of this act~~ during the fiscal year. Any unexpended and unencumbered balance of either appropriation remaining at the end of the fiscal year reverts to the fund.

Sec. 6. Laws 2016, chapter 125, section 22, as amended by Laws 2017, chapter 215, section 2, is amended to read:

Sec. 22. Income tax settlement claims; requirements; procedure; approval or denial of claim

A. A veteran or, if the veteran is deceased, the veteran's surviving spouse, personal representative, executor or other official representative of the estate, as designated pursuant to applicable state or tribal law or tradition, may file a claim for a settlement payment for any period of active duty in the armed forces of the United States during which the veteran:

1. Was an enrolled member of a tribe.

2. Maintained a domicile within the boundaries of the veteran's reservation or the reservation of the veteran's spouse or within the boundaries of lands held in trust by the United States for the benefit of the veteran, the veteran's spouse or the tribe of the veteran or spouse.

3. Had Arizona state income tax withheld from the veteran's active duty military pay on or after July 1, 1977 and before January 1, 2006, and the amount withheld:

(a) Has not already been refunded to the veteran or the deceased veteran's estate.

(b) Cannot be claimed as a refund by filing a state income tax return because the period for filing a claim for refund has lapsed under the applicable statute of limitations.

B. The claim for a settlement payment must include evidence of the veteran's eligibility for and the amount of the claim as follows:

1. The claimant must provide a copy of the veteran's certificate of release or discharge from active duty (DD Form 214) or other proof of service provided by the United States department of defense and approved by the department of veterans' services. If a claimant does not have a copy of the veteran's DD Form 214 or other proof of service, the claimant may request that the department of veterans' services request the veteran's DD Form 214 or other proof of service from the United States department of defense.

2. The claimant must provide a statement, signed by the claimant, that the veteran is or was duly registered on the tribal rolls of a tribe during the period or periods of the veteran's active duty in the armed forces.

3. The claimant must provide evidence of domicile within the boundaries of the veteran's reservation or the reservation of the veteran's spouse or within the boundaries of lands held in trust by the United States for the benefit of the veteran, the veteran's spouse or the tribe of the veteran or spouse during the taxable years the state income tax was withheld from active duty military pay. If the veteran's address shown on the veteran's DD Form 214 or other proof of service:

(a) Is on the veteran's tribal land, that evidence is sufficient for the purposes of this paragraph.

(b) Is not on the veteran's tribal land or if the veteran has no DD Form 214 and the claimant cannot otherwise establish that the veteran's domicile was on the veteran's tribal land, the claimant must provide a signed statement, under penalty of perjury, that the veteran was domiciled on tribal land during the period or periods the state income tax was withheld. The statement must include the veteran's address on the tribal land for each period, and an official designated by the tribe must attest that each address is on tribal land.

4. The claimant must provide evidence of the amount of state income tax withheld from active duty military pay by providing copies of the United States internal revenue service Form W-2 covering active duty military pay for the year or years during which state personal income tax was withheld. If the claimant does not have copies of the applicable Form W-2 for one or more of those years, the claimant may request that the department of revenue obtain the veteran's Form W-2, or other withholding information in a form approved by the department of revenue, from the United States department of defense.

5. The claimant must provide a signed statement attesting, under penalty of perjury, that the veteran has not received a refund of the state income tax withheld for the years for which the claimant is filing a claim for a settlement payment.

C. A claim for settlement payment under this section must be filed by the eligible veteran or, if the veteran is deceased, by the veteran's surviving spouse, successor or other personal representative. The following apply if the claim is made for a deceased veteran:

1. The claimant must include a copy of the veteran's death certificate or other proof of death.

2. If the veteran's estate exceeds ~~thirty thousand dollars~~ $30,000, only the surviving spouse, personal representative, executor or other official representative of the estate, as designated pursuant to applicable state or tribal law or tradition, may file the claim.

3. If the claimant is a successor who is not the surviving spouse, personal representative, executor or other official representative of the estate, the claimant must include a dated and notarized statement, signed under penalty of perjury, that:

(a) The value of the entire probate estate of the deceased veteran, wherever located, minus liens and encumbrances, does not exceed ~~thirty thousand dollars~~ $30,000.

(b) At least thirty days have elapsed since the veteran's death.

(c) The successor is entitled to receive the settlement payment.

4. If the claimant is a personal representative, executor or other official representative of the estate, the claimant must include:

(a) A signed, dated and notarized statement that the claimant has been duly appointed as the personal representative, executor or other representative of the veteran's estate pursuant to applicable state or tribal law or tradition.

(b) A copy of the claimant's appointment.

D. A claim for a settlement payment shall be denied for any amount of withholding tax that can be claimed as a refund by filing a state income tax return pursuant to title 43, Arizona Revised Statutes. A state income tax return may be filed by a veteran to claim the refund by the later of December 31 of the year three years after:

1. The veteran separated from military service.

2. The year in which Arizona withholding tax was withheld from the veteran's active duty pay.

E. A claim for a settlement payment must be made on a claim form prescribed by the department of revenue and filed with the department of veterans' services.

F. The department of veterans' services shall not accept claims submitted from and after December 31, ~~2019~~ 2022.

G. Within two hundred ten days after receiving a complete and correct claim form, the department of veterans' services shall determine whether the claim meets the requirements of subsection B, paragraphs 1, 2 and 3 of this section, transmit qualifying claim forms to the department of revenue and notify the claimant of the department's approval or denial. The failure of the department of veterans' services to respond within two hundred ten days after receiving a complete and correct claim form is considered to be a denial.

H. Within two hundred ten days after receiving the claim form from the department of veterans' services, the department of revenue shall determine whether the claim meets the requirements of subsection A, paragraph 3 and subsection B, paragraphs 4 and 5 of this section and notify the claimant and the department of veterans' services of its approval or denial. The failure of the department of revenue to respond within two hundred ten days after receiving the claim form is considered to be a denial.

Sec. 7. Laws 2016, chapter 125, section 26, as amended by Laws 2017, chapter 215, section 3, is amended to read:

Sec. 26. Veterans' income tax settlement; annual reports

The director of the department of revenue shall report the following information to the senate appropriations and finance committees and to the house of representatives appropriations and ways and means committees on or before October 1 in each of years 2017 through ~~2021~~ 2023:

1. Estimates of the amount of state income tax withholdings subject to payments under Laws 2016, chapter 125, sections 22 and 23.

2. The number of veterans affected by withholdings subject to payments under Laws 2016, chapter 125, sections 22 and 23.

3. Expenditures from the veterans' income tax settlement fund during the previous fiscal year.

4. Anticipated expenditures from the veterans' income tax settlement fund during the current fiscal year.

5. Anticipated appropriations to the fund necessary to meet expected payments in the next fiscal year.

Sec. 8. Laws 2016, chapter 125, section 28, as amended by Laws 2017, chapter 215, section 4, is amended to read:

Sec. 28. Repeal

~~Laws 2016, chapter 125, sections 19 through 26~~ THE FOLLOWING are repealed from and after December 31, ~~2021~~ 2023:

1. LAWS 2016, CHAPTER 125, SECTION 19.

2. LAWS 2016, CHAPTER 125, SECTION 20.

3. LAWS 2016, CHAPTER 125, SECTION 21, AS AMENDED BY LAWS 2017, CHAPTER 215, SECTION 1 AND THIS ACT.

4. LAWS 2016, CHAPTER 125, SECTION 22, AS AMENDED BY LAWS 2017, CHAPTER 215, SECTION 2 AND THIS ACT.

5. LAWS 2016, CHAPTER 125, SECTION 23.

6. LAWS 2016, CHAPTER 125, SECTION 24.

7. LAWS 2016, CHAPTER 125, SECTION 25.

8. LAWS 2016, CHAPTER 125, SECTION 26, AS AMENDED BY LAWS 2017, CHAPTER 215, SECTION 3 AND THIS ACT.

Sec. 9. Department of gaming regulatory assessment; pari-mutuel pool

Notwithstanding any other law, in fiscal year 2021-2022, the department of gaming shall establish and collect a regulatory assessment from each commercial racing permittee, payable from amounts deducted from pari-mutuel pools by the permittee, in addition to the amounts the permittee is authorized to deduct pursuant to section 5-111, subsection B, Arizona Revised Statutes, from amounts wagered on live and simulcast races from in-state and out-of-state wagering handled by the permittee, in the amount of 0.5 percent of the amounts wagered.

Sec. 10. Agricultural fees; continuation; intent; rulemaking exemption

A. Notwithstanding any other law, the director of the Arizona department of agriculture, with the assistance of the department of agriculture advisory council, may continue, increase or lower existing fees from fiscal years 2019-2020 and 2020-2021 in fiscal year 2021-2022 for services provided in fiscal year 2021-2022.

B. The legislature intends that the additional revenue generated by the fees prescribed in subsection A of this section not exceed $218,000 to the state general fund, $113,000 to the pesticide trust fund established by section 3-350, Arizona Revised Statutes, and $26,000 to the dangerous plants, pests and diseases trust fund established by section 3-214.01, Arizona Revised Statutes, in fiscal year 2021-2022.

C. The Arizona department of agriculture is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, until July 1, 2022 for the purpose of establishing fees pursuant to this section.

Sec. 11. County fiscal obligations; report

A. Notwithstanding any other law, for fiscal year 2021-2022, a county with a population of less than two hundred fifty thousand persons according to the 2010 United States decennial census may meet any county fiscal obligation from any source of county revenue designated by the county, including monies of any countywide special taxing jurisdiction of which the board of supervisors serves as the board of directors. Under the authority provided in this subsection, a county may not use more than $1,250,000 for purposes other than the purposes of the revenue source.

B. On or before October 1, 2021, each county with a population of less than two hundred fifty thousand persons according to the 2010 United States decennial census shall report to the director of the joint legislative budget committee whether the county used a revenue source for purposes other than the purposes of the revenue source to meet a county fiscal obligation pursuant to subsection A of this section and, if so, the specific source and amount of revenues that the county intends to use in fiscal year 2021-2022.

Sec. 12. City of Flagstaff; local minimum wage assessment; retroactivity

A. Pursuant to section 35-121.01, Arizona Revised Statutes, the department of administration shall assess and collect the amount of $1,110,992 from the City of Flagstaff in fiscal year 2021-2022 to reimburse this state for costs to this state attributable to the establishment of a minimum wage that exceeds the minimum wage established by this state pursuant to section 23-363, Arizona Revised Statutes.

B. This section applies retroactively to from and after June 30, 2021.

Sec. 13. Exemption from rulemaking

A. Notwithstanding any other law, for the purposes of title 23, chapter 11, Arizona Revised Statutes, as added by this act, the industrial commission of Arizona is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act, except that the commission shall provide the public with a reasonable opportunity to comment on proposed rules and shall publish otherwise exempt rules.

B. Notwithstanding any other law, for the purposes of section 43-1011, subsection E, Arizona Revised Statutes, as added by this act, the department of revenue is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.

Sec. 14. Legislative intent

The legislature intends that:

1. Title 23, chapter 11, Arizona Revised Statutes, as added by this act, does not convey any responsibility of firefighter cancer compensation and benefits claims onto this state. All costs incurred shall be paid for by monies collected from cities and towns pursuant to section 23-1703, Arizona Revised Statutes, as added by this act.

2. Any monies in the municipal firefighter cancer reimbursement fund established by section 23-1702, Arizona Revised Statutes, as added by this act, are not subject to transfer from the municipal firefighter cancer reimbursement fund to the state general fund in any fiscal year.

Sec. 15. Retroactivity

A. Title 23, chapter 11, Arizona Revised Statutes, as added by this act, section 42-5029, Arizona Revised Statutes, as amended by this act, and section 42-5041, Arizona Revised Statutes, as repealed by this act, apply retroactively to from and after June 30, 2021.

B. The following apply retroactively to from and after December 31, 2019:

1. Laws 2016, chapter 125, section 21, as amended by Laws 2017, chapter 215, section 1 and this act.

2. Laws 2016, chapter 125, section 22, as amended by Laws 2017, chapter 215, section 2 and this act.

3. Laws 2016, chapter 125, section 26, as amended by Laws 2017, chapter 215, section 3 and this act.

4. Laws 2016, chapter 125, section 28, as amended by Laws 2017, chapter 215, section 4 and this act.

APPROVED BY THE GOVERNOR JUNE 30, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 30, 2021.

Passed the House June 24, 2021,

by the following vote: 31 Ayes,

29 Nays, 0 Not Voting

Speaker of the House
Ao Tayone

Chief Clerk of the House

Passed the Senate June 22, 2021,

by the following vote: 16 Ayes,

14 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

28 day of June, 2021,

at 12:52 o'clock P M.

Secretary to the Governor

Approved this 30 day of

June, 2021,

at 9:12 o'clock A M.

Governor of Arizona

S.B. 1827

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 30th day of JUNE, 2021,

at 4:00 o'clock P M.

Secretary of State

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Kristine Pavlik, Housing and Grants Administrator
Date:	01/12/2023
Meeting Date:	01/17/2023

TITLE:

Community Development Block Grant (CDBG) Introduction and Overview; Establishment of CDBG Council Priorities for Program Years 2023 and 2024

DESIRED OUTCOME:

Receive Council direction on CDBG priorities for the next two program years (2023 and 2024).

EXECUTIVE SUMMARY:

The City of Flagstaff receives an annual allocation of Community Development Block Grant (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD) on a “Program Year” basis (July 1 – June 30). The CDBG allocation amount for Program Year 2022 was $531,639. The allocation for 2023 has not yet been published.

The purpose of CDBG is to develop viable urban communities through the provision of decent affordable housing, a suitable living environment, and economic opportunity, principally for low and moderate-income persons. In Flagstaff, for 2022, low to moderate-income (80% of the Area Median Income or below) is defined as a 4-member household earning under $68,700.

Every two years, City Council is presented with the opportunity to establish local priorities for allocating CDBG funds within the City of Flagstaff community. Staff will provide an overview of CDBG eligible activities and discuss the 2021-2025 Consolidated Plan (a 5-year community needs assessment for CDBG funding) as well as progress towards goals identified in the 2021-2025 Consolidated Plan. Staff is seeking City Council direction on three to four new CDBG priorities for the allocation of funding for the next two program years.

After receiving Council direction on local priorities, staff will conduct a Notice of Funding Availability (NOFA) process, review and rank the received applications, and will return to Council on April 11th, 2023, with recommendations for funding. City Council will make all final funding decisions. This process will result in the creation of the 2023 Annual Action Plan, a document that will demonstrate to HUD how the City plans to spend its Program Year 2023 CDBG allocation.

INFORMATION:

The City of Flagstaff Council's CDBG Priorities for Program Years 2021 and 2022 were:

- Provide affordable housing (rental and ownership)
- Address homelessness
- Improve neighborhood revitalization
- Promote workforce job training

Applicable Regional Plan Goals include:

- Goal NH.1. Foster and maintain healthy and diverse urban, suburban, and rural neighborhoods in the Flagstaff region.
  - Policy NH.1.1. Preserve and enhance existing neighborhoods.
- Goal NH.4. All housing is safe and sanitary.
  - Policy NH.4.1. Expand the availability of affordable housing throughout the region by preserving existing housing, including housing for very low-income persons.
  - Policy NH.4.3. Address accessibility issues and other housing barriers to persons with disabilities or special needs.
  - Policy NH.4.4. Encourage green practices in housing construction and rehabilitation that support durable, healthy, and energy efficient homes.
  - Policy NH.4.5. Renovate the existing housing stock to conserve energy and reduce utility and maintenance costs for owners and occupants.
  - Policy NH.4.7. Enforce compliance with fair housing laws.
- Goal NH.5. Eliminate homelessness.
  - Policy NH.5.1. Provide adequate resources for families with children experiencing homelessness.
  - Policy NH.5.2. Provide adequate resources for individuals experiencing homelessness.
  - Policy NH.5.3. Support and expand programs that prevent homelessness.
  - Policy NH.5.4. Make transitional housing resources available to populations experiencing homelessness.

Attachments: CDBG Presentation

City of Flagstaff

Community Development Block Grant

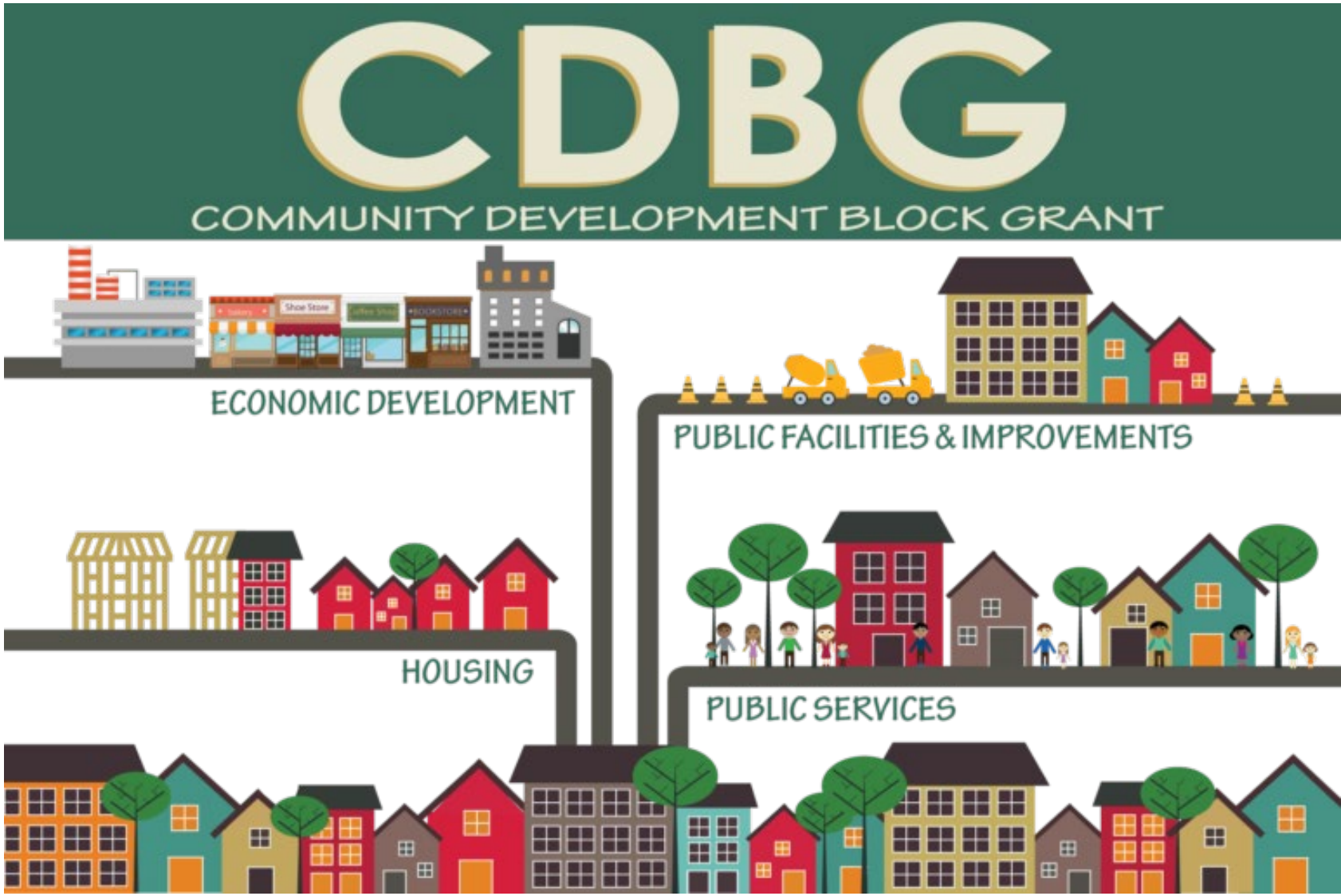
Introduction and Overview
2023 and 2024 Priority Setting

TEAM FLAGSTAFF
WE MAKE THE CITY BETTER

Kristine Pavlik, Housing and Grants Administrator

Today

- Intro & overview of CDBG
- Eligible uses of CDBG funds
- Establish CDBG Priorities for 2023/2024



CDBG Introduction

What is the Community Development Block Grant?

- Federal grant program administered by the U.S. Department of Housing and Urban Development (HUD).
- Created in 1974 to provide funding for housing and community development activities, serving primarily low to moderate income individuals and households.

CDBG Introduction

Why does the City of Flagstaff receive CDBG money?

As a metropolitan city with a population of more than 50,000, Flagstaff is considered an Entitlement Community and receives an annual allocation based on a formula taking population, age of housing and other community information into consideration.

CDBG Introduction

How does the City access the funds?

- **Annual Action Plan –** "What are we are going to do?"

  Due in May
- **Substantial Amendments to Annual Action Plan –** CDBG-CV Funds
  Due as needed
- **Consolidated Annual Performance Evaluation Report (CAPER) -** "What did we do?" - Due in September
- **Consolidated Plan -** "5-year assessment of housing and community development needs" Every 5 years - Due in May 2026
- **Analysis of Impediments to Fair Housing choice** "Fair Housing Plan" Every 5-years – Due May 2026

CDBG Overview

How can the City spend the money?

The easy answer:

- As the City Council determines based on:

- Needs identified in the Consolidated Plan
- The Primary Objective
- One or more of the National Objectives

CDBG Overview

Primary National Objective

The development of viable urban communities through the provision of the following, **principally for low to moderate income persons**:

- Decent housing
- A suitable living environment
- Economic opportunity

80% AMI example: Household of 4 income limit is $68,700

CDBG Overview

Benefiting low to moderate income persons

To be eligible, an activity must meet one or more of the following National Objectives:

1. Limited Clientele
2. Housing Activity
3. Area Benefit
4. Job Creation or Retention Activities

CDBG Overview

1) Limited Clientele

An activity benefiting persons who are presumed to be **low income or at least 51% of whom are low to moderate income persons.**

Presumed benefit populations include: *(HUD's Language)*

- Abused/neglected children
- Severely disabled adults
- Migrant farm workers
- Persons with HIV/AIDS
- Survivors of domestic violence
- Illiterate adults
- Homeless
- Seniors

Past Projects:

- Operational Assistance for Coordinated Entry
- Homeless Outreach Operations

CDBG Overview

2.) Housing Activity

An activity undertaken for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low to moderate income persons

Past Projects:

- Owner Occupied Housing Rehabilitation
- Down payment and closing cost assistance
- New housing developments by a Community Based Development Organization (CBDO)

CDBG Overview

3.) Area Benefit

An activity that benefits all residents in a particular area, where at least 51 percent of the residents are low to moderate income persons.

The City has four target neighborhoods – as established in the Consolidated Plan:

- **Sunnyside**
- **Southside**
- **La Plaza Vieja**
- **Pine Knoll**

Past Projects:

- Capital Improvements in target neighborhoods
- Hal Jensen Recreation Center Rehabilitation
- Arroyo Park and Guadalupe Park Improvements

CDBG Overview

4.) Job Creation/ Retention Activities

An activity designed to create or retain permanent jobs. A minimum 51% of which, computed on a full-time basis, involve the employment of low to moderate income persons.

Examples:

- Sharon's Attic Job Training

CDBG Overview

HUD Annual Funding Caps

20% Spending Cap for Administration Costs

Historically the City utilizes 10% for Admin costs and 10% for Indirect Costs

This administration spending cap applies to subrecipients as well

The City of Flagstaff is ultimately responsible for use of funds, even if spent by outside agency

CDBG Overview

Public Service – 15% Cap

There is a high demand for Public Service Projects with limited funding available.

2022 Total Public Service Allowable = $90,250*

Examples:

- Services for People Experiencing Homelessness
- Eviction Prevention
- Fair Housing Services
- Health Services
- Services from Children to Senior Citizens

CDBG Overview

Criteria for use of CDBG Funds

- At least 70% of the CDBG funds must benefit low to moderate income persons over the fiscal year (July 1 to June 30)

- Historically CDBG in Flagstaff serves 100% low to moderate income persons

CDBG Overview

How are the funds distributed?

An annual open **proposal process** is conducted allowing community agencies (non-profits and units of local government) to apply for use of funds

CDBG Overview

Proposal Process

Staff Responsibility

- Determine activity eligibility
- Assess activity viability
- Conduct agency risk assessment
- Proposal Ranking Committee with citizen participation
- Weighted scoring criteria

CDBG Overview

City Contract Requirements

- Procurement
- Insurance
- Payment Procedures
- Monthly Reporting
- Monitoring
- Close-out
- Audit

CDBG Overview

Federal Overlay Statutes:

- Fair Housing
- Environmental Standards
- Labor Standards (Davis Bacon)
- Testing (Asbestos and Lead)
- Procurement
- Equal Opportunity
- Relocation
- Handicapped Accessibility

CDBG Overview

Proposal Process

Public Participation

- Ranking Committee
- 2 public meetings
  - January (Proposal Process starts)
  - February (Review of Proposals received)

- 2 council meetings
  - Work session with recommendations – April 11
  - Action item to adopt Resolution – April 18

A draft Annual Action Plan is available for public comment for 30 days prior to the April Council Meetings

CDBG Overview

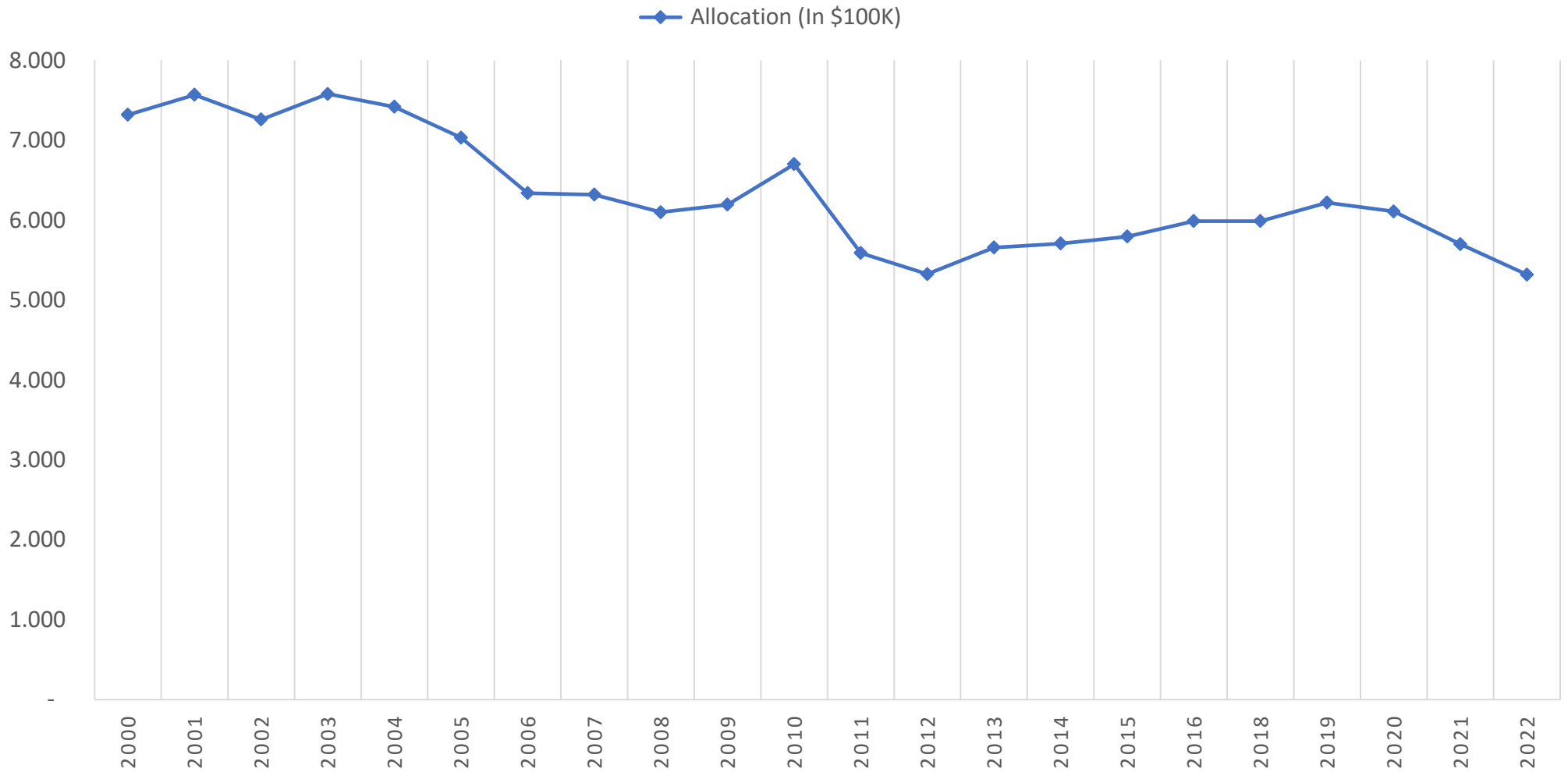
What has changed in recent years?

- Funding from HUD
  - 2003 highest award = $758,000
  - 2018 = $621,455
  - 2020 = $611,295
  - 2022 = $531,639

- Emphasis on Performance Measures
  - Focus is on **numbers served & service type** provided
  - Performance measurements require significant additional data to be collected

CDBG Overview

Allocation over the years



CDBG Overview

Coronavirus Aid, Relief and Economic Security Act

- City of Flagstaff CARES Act Funding – CDBG-CV
  - 1st Allocation - $359,605
  - 2nd Allocation - $755,661

- CARES Act Provided Waivers
  - Public Participation
  - Public Service Caps
  - CAPER Extension
  - Reimbursement of Costs
  - Con Plan and AAP Extensions

CDBG Overview

2021-2022 CDBG CAPER

- Sharon Manor Expansion and Rehab
- Catholic Charities Closing the Gap Acquisition
- La Plaza Vieja Infrastructure Improvements

- 3 Sewing and Textile Employment Pathway Graduates
- Eviction Prevention for 39 households

5-year Consolidated Plan Goals

Activity	Special Population	Priority Level	5-year Goal
Priority Need: Revitalization, Public Facilities & Infrastructure			
Facility Improvements	X	H	500 people
ADA Accessibility Improvements	X	L	500 people
Land Acquisition for Affordable Housing Development		L	5 households
Infrastructure for Affordable Housing Development		L	5 households
Priority Need: Public Services & Economic Opportunities			
Service and Facility Operating Support	X	H	2,000 individuals
Employment & Job Training Support Services		L	5 individuals
Housing Stabilization Services including Eviction/Foreclosure Prevention and Legal Services		H	500 households
Priority Need: Addressing Homelessness			
Service and Facility Operating Support, including Outreach	X	H	5,000 people
Increase number of emergency /transitional shelter beds for families	X	H	20 beds
Increase supply of permanent supportive housing	X	H	15 beds
Priority Need: Decent Affordable Housing			
Owner-occupied Housing Rehabilitation		H	25 units
Rental Housing Construction		H	5 units
Owner Housing Construction		H	2 units
First-time Homebuyer Assistance		H	25 households
Rental Housing Rehabilitation		L	10 units

CDBG Priorities

2021 and 2022 CDBG Council Priorities

- Housing (rental & ownership)
- Neighborhood Revitalization
- Homelessness
- Workforce Job Training

Contact Information

Kristine Pavlik

Housing and Grants Administrator

City of Flagstaff

Kristine.Pavlik@flagstaffaz.gov

(928) 213–2749

11. B.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Neil Chapman, Forest Health Supervisor
Date:	01/13/2023
Meeting Date:	01/17/2023

TITLE

Wildland Fire Management Program Update

STAFF RECOMMENDED ACTION:

Wildland Fire Management staff will present a program update.
No direct action is needed.

EXECUTIVE SUMMARY:

Wildland Fire Management staff will present an update on Fire Adapted Community efforts with a focus on Flagstaff Watershed Protection Project activities in the Upper Rio de Flag watershed.

INFORMATION:

The Wildland Fire Management program supports all 7 key community priorities.
This discussion will focus on:
High Performing Governance - Serve the public by providing high quality internal and external customer service
High Performing Governance - Implement innovative local government programs, new ideas and best practices; be recognized as a model for others to follow
Safe and Healthy Community - Provide public safety with the resources, staff, and training to respond to community needs
Safe and Healthy Community - Ensure the built environment is safe through the use of consistent standards, rules and regulations, and land use practices
Environmental Stewardship - Actively manage and protect all environmental and natural resources

Attachments: WFM Presentation 1.17.2023
WFM Strategy 1-Page
FWPP 1.17.2023 Talking Points

Flagstaff
discoverflagstaff.com
Arizona's destination for all seasons

Who are we? What do we do? Why do we do it?

Jerry Bills, Deputy Chief
Community Risk Reduction

Neil Chapman, Captain,
Forest Health

Paul Oltrogge, Wildland
Fire Battalion Chief

Dylan Guffey, Captain,
Operations

WILDLAND FIRE MANAGEMENT

Our Mission: Increase and maintain wildfire resilience for the City of Flagstaff, Summit Fire & Medical District, and priority watersheds. **Our Vision:** We envision a community where Flagstaff thrives due to the Wildland Fire Management Division's unique skills, knowledge, and abilities within Wildland Fire Operations, Forest Management, Firewise Development, and Wildland Urban Interface Code Enforcement.

Initiatives

- Flagstaff Watershed Protection Project
- Flagstaff Carbon Neutrality Plan
- National Emergency Response Support (Call-Out Program)
- Greater Flagstaff Forest Partnership
- Four Forest Restoration Initiative
- Federal Wildfire Mitigation and Management Commission
- Flagstaff Wildland Urban Interface Code
- Fire Adapted Communities Learning Network
- Prescribed Fire Training Exchange Network
- Hepa Air Purifier Distribution

Our Tactics (7 E's of Community Risk Reduction)

1. Work with partners to create & manage fire adapted **Ecosystems**
2. Develop and **Enforce** firewise codes and ordinances
3. **Engineer** a fire adapted built environment
4. Continuously improve **Emergency Response** based on lessons learned
5. **Educate** citizens on the natural role of forest fire and how to minimize smoke impacts
6. Support **Economic Incentives** that encourage wildfire risk reduction investments
7. Work in a way that **Enables** and inspires other communities to become fire adapted

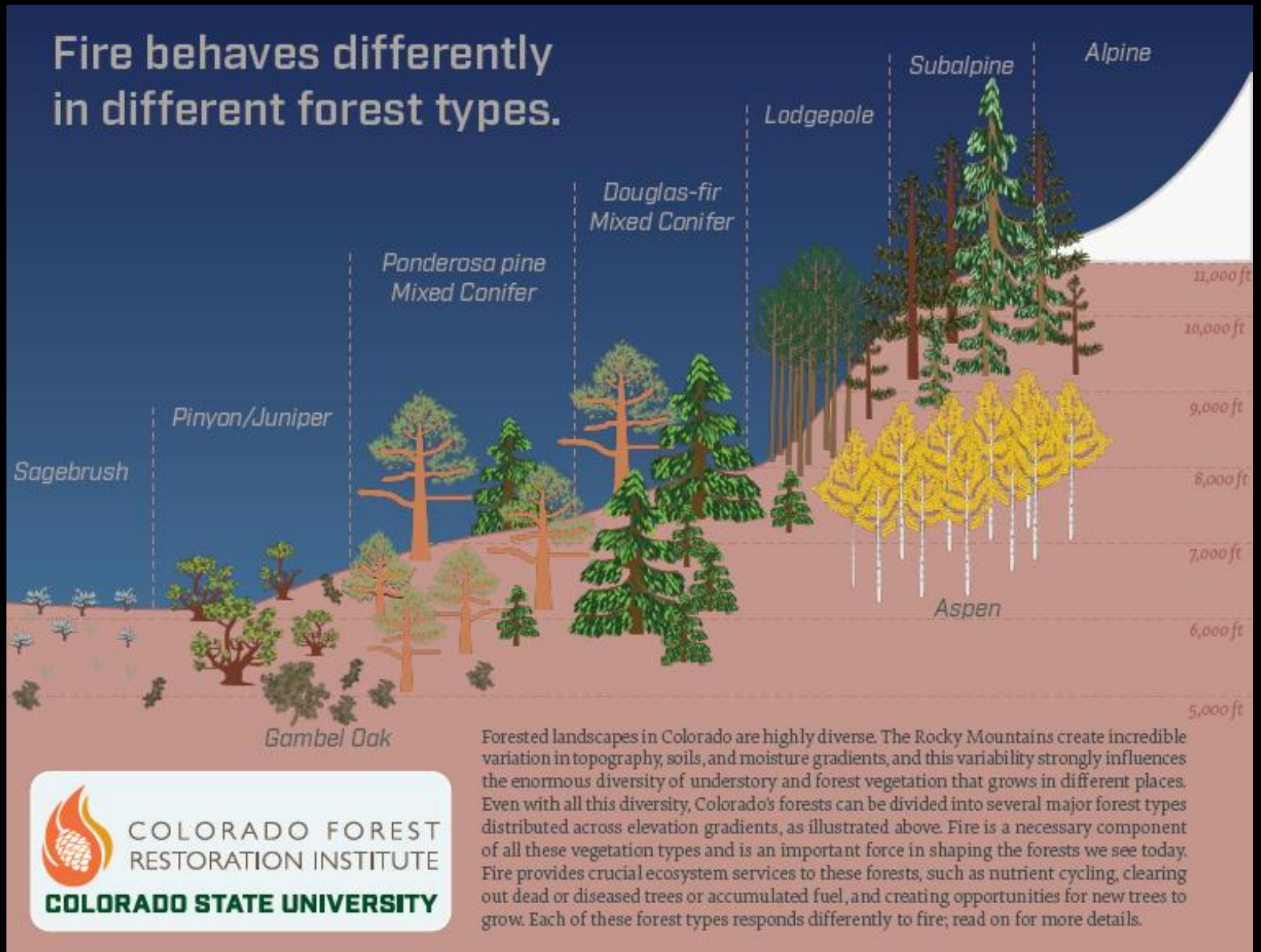
Challenge

Social, economic and environmental impacts of unnatural, high severity forest fire

Fire Suppression and Exclusion

Photos taken at the same location

"Fire is Local"



Nature Based Solution to Reduce Undesirable Fire Effects

Restore the natural, fire adapted structure and pattern to Northern Arizona's Ponderosa Pine and Dry Mixed Conifer forests

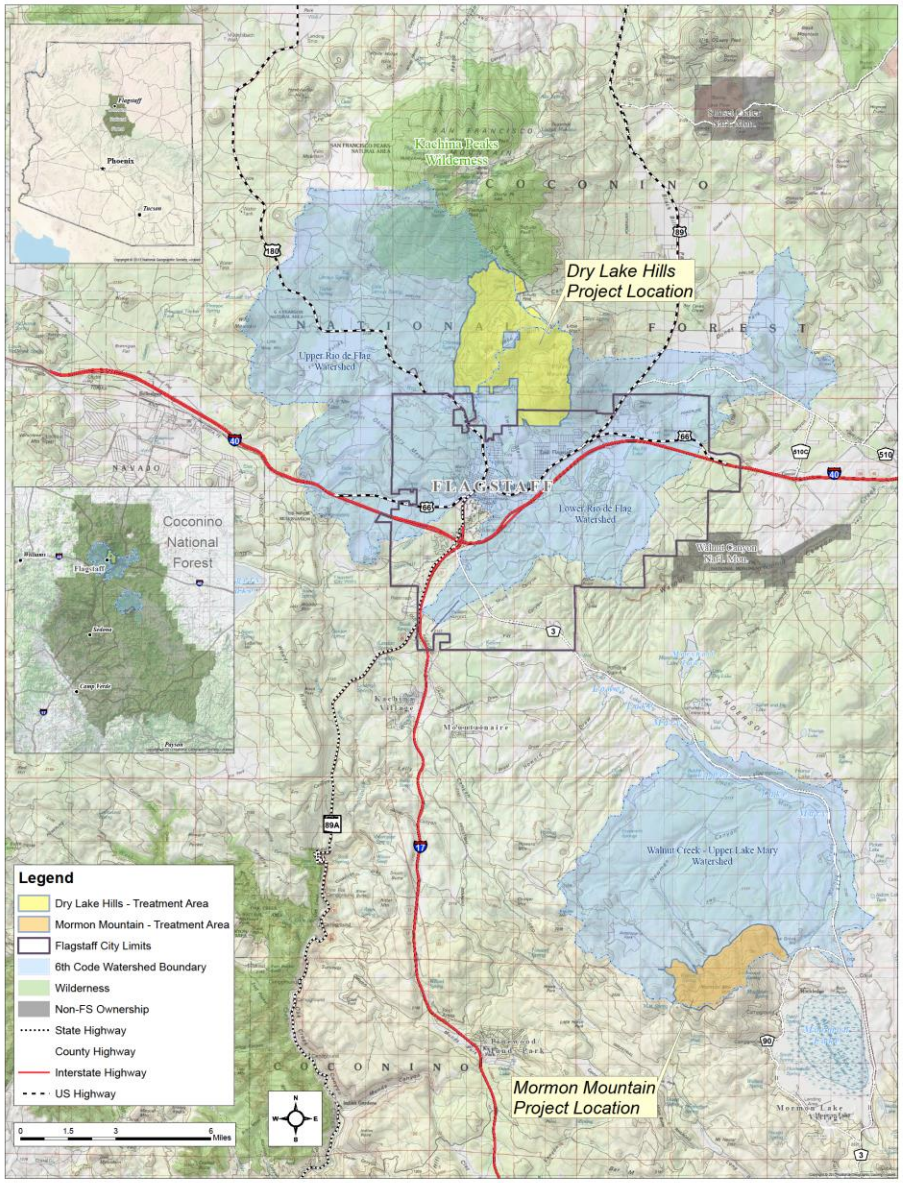
Tools

Thinning: Mechanical, Hand crew, Private Sector Capacity

Fire: Prescribed Fire, Wildfire that meets Forest Plan Objectives, Agency Capacity

Flagstaff Watershed Protection Project

General Location of Treatment Areas



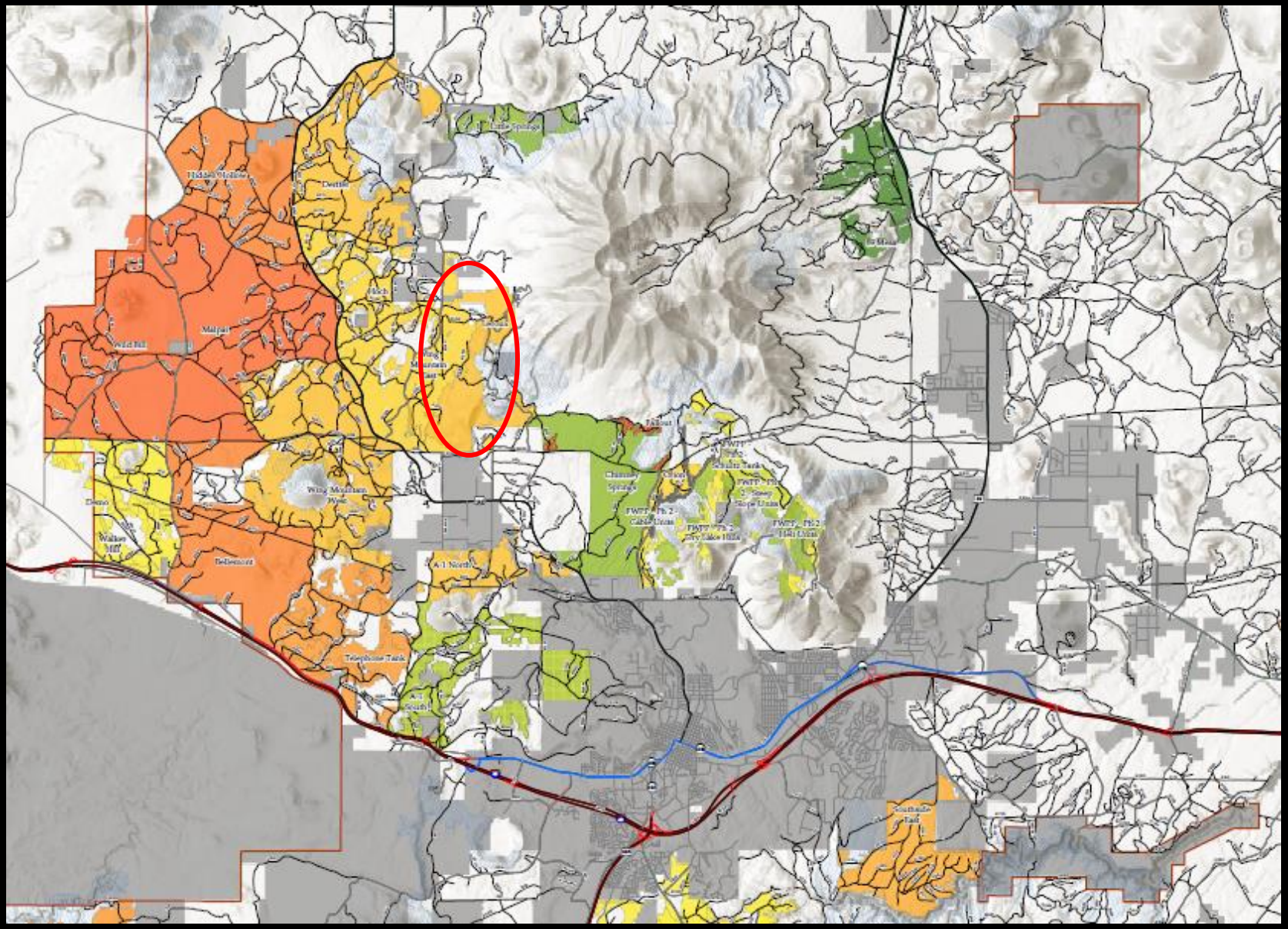
FWPP Thinning To-Do List

Upper Rio de Flag and City Limits = 25K acres

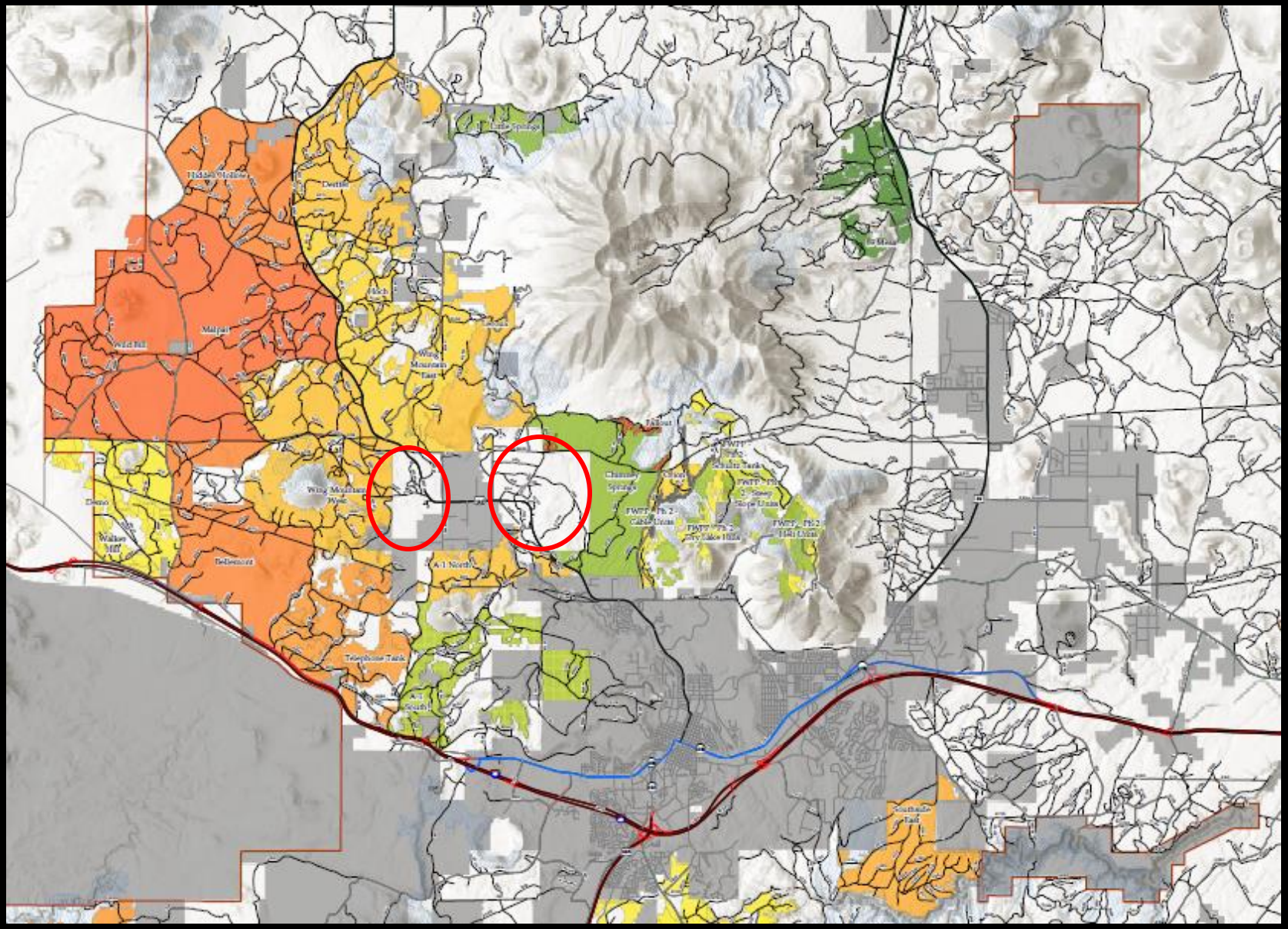
Lake Mary Watershed = 18K acres

PENDING & IN PROGRESS		Total Acres	Acres Completed	% Completed	Acres Remaining	
City Limits	Picture Canyon handthin	200	120	60	80	
	Southside Airport	2,023	0	0	2,023	Bob Lee and Sons Logging
	Southside East	2,000				2024
	Lowell Observatory	660				GFFP
Upper Rio de Flag Watershed						
	Mt Elden Unit	178	0	0	178	TBD
	Dry Lake Hills Service Contract	474	295	62	179	Markit Foretsry
	Schultz Tank Timber Sale	466	250	54	216	Bob Lee and Sons Logging
	Leroux	1,651				TBD
	Wing MTN East	2,603				2023
	Wing MTN West	4,865				2024
	Derffer	2,586				2024
	Hoch	2,053				2023
	New Orion	600				2025
	A-1 North	1,047				2024
	A-1 South	2,600	1,367	53	1,233	Joe Dirt Excavating
	Fallout (remaining Chimney units)	48				TBD
	FVEF West	250				TBD
	FVEF East	1,000				TBD
Lake Mary Watershed						
	Elk Clark Stewardship	1,738	455	26	1,283	Restoration Forest Products
	Johnneys	2,670				REPI
	Paired Watershed Study Area	2,500				TBD
	Pine grove	2,733				2025
	Bootleg Antelope	1,452				2024
	Coulter Park	1,021				2025
	Lagunitas	1,750				2026
	Marshall	2,330				REPI
	MSO PACs - Bonita Tank, Iris, Mayflower	1,411	1,057	75	354	NFF
	Mormon MTN Timber Sale	640	45	7	595	Suarez Forestry
	Mormon MTN Weimer Springs	363				REPI
	SUB-TOTAL	43,912	3,589	37		
	Project Total	54,137	13,814			

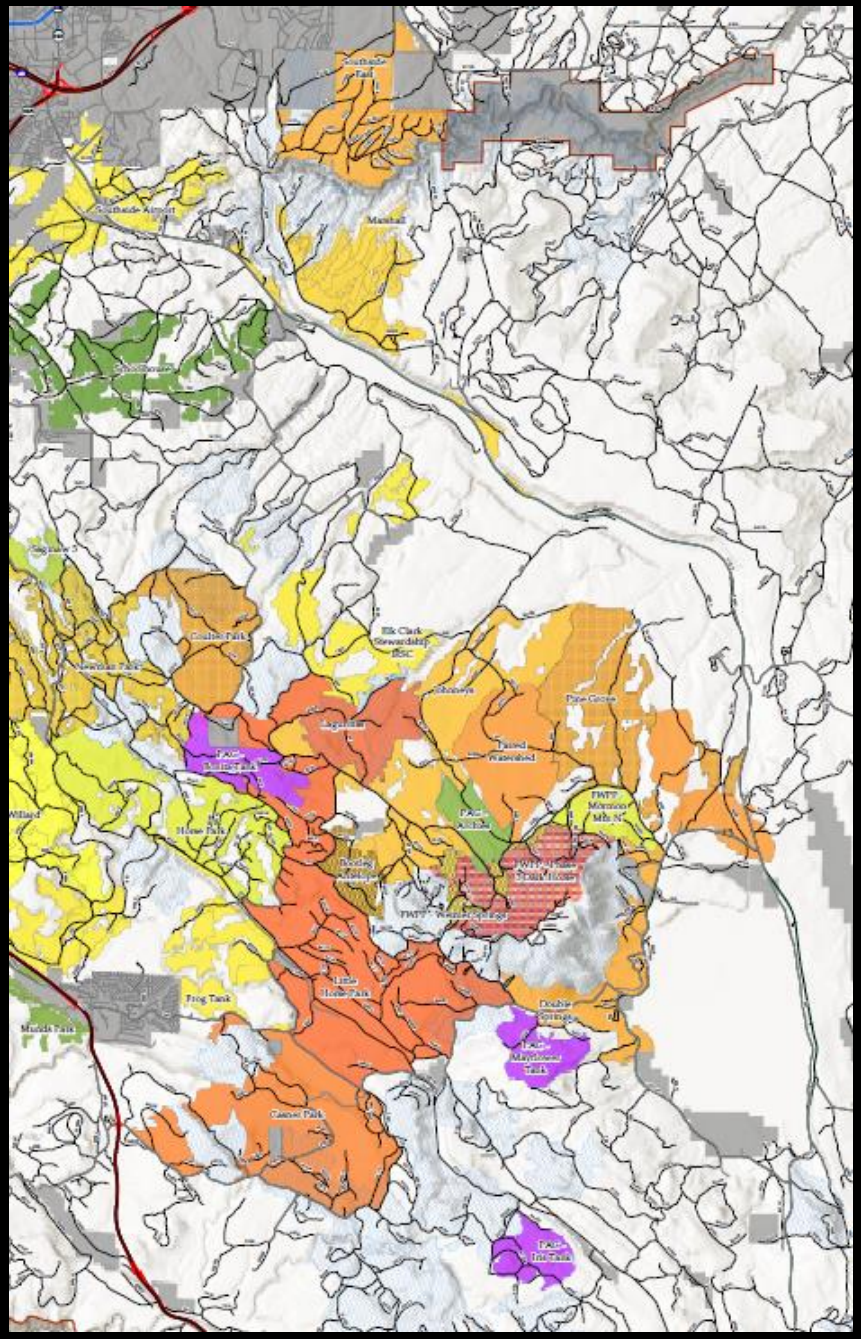
Upper Rio de Flag Watershed & Leroux Project Analysis



Upper Rio de Flag Watershed & Fort Valley Experimental Forest



Lake Mary Watershed



Why should we fund forest thinning projects in Arizona?

It's good for the economy!

Here's what happened in Arizona's national forests in 2019...

6 million hikers generated
$541 Million

Healthy forests are a vital resource for Arizona's many outdoor recreation activities.

5.6 million lovers of wildlife, birds and nature viewing generated
$420 Million

Arizona has six national forests that hosted more than **13 million visitors in 2019!**

1.2 million anglers generated
$124 Million

A large wildfire means the closure of forest lands, trails, and access to rivers and lakes.

1 million campers generated
$110 Million

Some facilities may be closed up to 10 years after a wildfire.

726,000 hunters generated
$98 Million

Closure as the result of wildfires could **cost the Arizona economy BILLIONS of dollars in revenue!**

WIFA's Forest Thinning & Restoration Program

WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

Recreational Value of Forest Thinning

How do Healthy Forests Support Arizona's Economy?

Arizona's forests support environmental biodiversity and bountiful recreational opportunities for residents and visitors alike. They are also a vital source of income and tax revenues, create jobs, and support the livelihoods of millions of Arizona families. Taking proactive steps to ensure the future health and integrity of these lands through vegetative management and forest thinning practices is critical to protecting the environmental and economic resources they provide.

How are Arizona's forests supporting local economies? What would happen if these forests were damaged by a large wildfire and had to be closed?

Recent wildfires in Arizona forests have closed recreational facilities for months -- some for years!

Recreational National Forest Area: Coconino

www.azwifa.gov

Turning a billion-dollar challenge into healthy forests, safe communities and good jobs

WILDLAND FIRE MANAGEMENT

Our Mission

Increase and maintain wildfire resilience for the City of Flagstaff, Summit Fire & Medical District, and priority watersheds.

Our Vision

We envision a community where Flagstaff thrives due to the Wildland Fire Management Division's unique skills, knowledge, and abilities within Wildland Fire Operations, Forest Management, Firewise Development, and Wildland Urban Interface Code Enforcement.

Initiatives

- Flagstaff Watershed Protection Project
- Flagstaff Carbon Neutrality Plan
- National Emergency Response Support (Call-Out Program)
- Greater Flagstaff Forest Partnership
- Four Forest Restoration Initiative
- Federal Wildfire Mitigation and Management Commission
- Flagstaff Wildland Urban Interface Code
- Fire Adapted Communities Learning Network
- Prescribed Fire Training Exchange Network
- Hepa Air Purifier Distribution

Our Tactics (7 E's of Community Risk Reduction)

1. Work with partners to create & manage fire adapted **Ecosystems**
2. Develop and **Enforce** firewise codes and ordinances
3. **Engineer** a fire adapted built environment
4. Continuously improve **Emergency Response** based on lessons learned
5. **Educate** citizens on the natural role of forest fire and how to minimize smoke impacts
6. Support **Economic Incentives** that encourage wildfire risk reduction investments
7. Work in a way that **Enables** and inspires other communities to become fire adapted

Flagstaff Watershed Protection Project

Paul Oltrogge, Wildland Fire Battalion Chief, poltrogge@flagstaffaz.gov, 928-600-6951
Neil Chapman, Wildland Fire Captain, neil.chapman@flagstaffaz.gov, 928-606-9840

The City of Flagstaff's Wildland Fire Management Program (WFM), managed within the Flagstaff Fire Department (FFD), has been supporting fire adapted community efforts since 1996. The WFM's mission is to increase and maintain wildfire resilience for the City of Flagstaff, Summit Fire & Medical District, and priority watersheds.

Background:

- Founding member of the Greater Flagstaff Forests Partnership in 1996
- Community Wildfire Protection Plan completed in 2005
- City of Flagstaff Wildland Urban Interface Code adopted in 2008
- Since 2012, the Flagstaff Watershed Protection Project (FWPP) has completed 10,255 acres of wildfire risk reduction thinning.
- Northern Arizona University completes the FWPP Cost Avoidance Study in October 2014
- In February 2020, The City of Flagstaff closed a loan with the Arizona Water Infrastructure Finance Authority (WIFA) regarding financing the remaining balance of the Flagstaff Watershed Protection Project (FWPP) Bond. The recently closed Clean Water State Revolving Fund (CWSRF) loan features $1 million in forgivable principal. Combined with interest savings on forgivable principal, this will result in a $1.4 million savings for Flagstaff's property taxpayers.
- Starting in the summer of 2020, the City of Flagstaff created the Water Resource and Infrastructure Protection Fee to provide stable and reliable funding for WFM. This fee is part of a larger municipal services billing restructure based on consumption that maintained monthly water costs for average water volume users while raising costs for large volume water users.
- The Hepa Filter Donation Program was initiated by WFM and the Sustainability Division in 2020
- WFM hosted Arizona's first Prescribed Fire Training Exchange in 2021
- WFM staff appointed to the Federal Wildfire Mitigation and Management Commission in 2022
- City, State, Federal and NGO funds designated for FWPP have always been unrestricted or project specific and can be used for any agreed upon forest health treatment. Coconino County Flood Control District funds are self-restricted to steep slope areas defined as slopes greater than 30%.
- Prescribed fire has proven to be the most effective, nature-based way to maintain thinning treatment investments.

2022-2023 Updates:

- 25,304 acres are planned for mechanical thinning contract offerings over 5 years within City Limits and the Upper Rio de Flag watershed (Avoided cost estimate $616M - $1.2B)
- 18,608 acres are planned for mechanical thinning contract offerings over 5 years within the Lake Mary watershed (Avoided cost estimate = $106M - $271M)

- Federal FY22: USFS committed $11.6M to FWPP over 5 years for project implementation.
  - This $$ is not currently planned to be transferred to the City of Flagstaff.
  - In 2022, $1.5M was committed to FWPP for additional service items within the Dry Lake Hills Service Contract.
  - No additional allocation of this funding is planned for Federal FY23.

- The City of Flagstaff and USFS are working through agreement details for a $3.5M Community Project Funding allocation that was included in the FY2022 Omnibus Appropriations bill. This funding will support wildfire risk reduction thinning in the Upper Lake Mary Watershed in partnership with the Coconino National Forest, National Forest Foundation, the Department of Defense Readiness and Environmental Protection Integration Program, and Coconino County.

- The Upper Rio de Flag watershed is about 50K acres. Working collaboratively, the Flagstaff Ranger District and City of Flagstaff have prioritized this landscape since 2012.
  - Comprehensive wildfire risk reduction requires landscape level investments (Bain & Company, Accelerating Forest Restoration, 2020)
  - Over 25K acres of mechanical thinning is planned to be offered over the next 5 years within the Upper Rio de Flag watershed and inside City Limits.
  - These acres are incredibly important to the growing forest restoration product utilization industry based on the west side of Northern Arizona's ponderosa pine forest.
  - A reliable supply of ground-based mechanical acres is the #1 need for private sector businesses to continue to invest in this work, reducing the per acre cost for all projects.

- Northern Arizona has a 25-year track record of science, monitoring, and response-based experience when it comes to the effectiveness of wildfire risk reduction based mechanical thinning. Treatments on steep slopes are a relatively new approach in northern Arizona and treatment effectiveness is still being studied.

- Two new areas in the Upper Rio de Flag watershed have been identified by the City, USFS and Coconino County as priorities that require new analysis through the federal National Environmental Policy Act (NEPA) process:

  - **The Leroux Project Analysis** includes 1600 acres just north of Fort Valley in between Hart Prairie Road and Snowbowl Road. This analysis is expected to be completed by Summer 2024. Contracts may be awarded in 2025. This site includes an estimated 900 acres of steep slope projects. The impact and cost of Leroux Project treatments cannot be determined until the analysis is complete with site specific thinning prescriptions and fire effects models.

  - **The Fort Valley Experimental Forest** (FVEF) includes 1,250 acres and **borders nearly 4 miles of private lands in the Fort Valley community**. No timeline is in place yet for this analysis, but FVEF staff are actively pursuing this project with partners. No steep slope acres are included in this project.

- Requests for additional Federal investments are most effective when the process is comprehensive, science based, and collaborative.