

RESOURCE USE AND SHARING AGREEMENT

THIS RESOURCE USE AND SHARING AGREEMENT (hereafter “Agreement”) is made and entered into this ____ day of _____, 202__ by and between the CITY OF FLAGSTAFF, a political subdivision of the State of Arizona (hereafter “City”) and NORTHERN ARIZONA INTERGOVERNMENTAL PUBLIC TRANSPORTATION AUTHORITY (hereafter “Mountain Line”), a political subdivision of the state of Arizona. City and Mountain Line may be referred to in this Agreement individually as “Party” or together as “Parties.”

RECITALS

- A. WHEREAS, the Parties are members of a cooperative procurement agreement known as the Flagstaff Alliance for the Second Century Intergovernmental Agreements dated November 19, 2020 (hereafter the “Alliance IGA”), formed to address area-wide issues in the greater Flagstaff area and to better leverage the resources of Alliance members for the benefit of the community; and
- B. WHEREAS, through the Alliance IGA, the Parties are permitted to enter into additional agreements for the purpose of using and sharing resources in a manner consistent with the terms set forth within the Alliance IGA; and
- C. WHEREAS, the Parties desire to enter into this Agreement in accordance with the Alliance IGA and therein define the resource, the purpose, and the responsibilities of the Parties in conjunction with the project or resource referred to as: clean fill and crushed rock; and
- D. WHEREAS, the City has authority to enter into this Agreement pursuant to Arizona Revised Statutes (“A.R.S.”) §§ 11-952 and 41-2632 and the Flagstaff City Charter, Article I, Section 3; and
- E. WHEREAS, Mountain Line has authority to enter into this Agreement pursuant to A.R.S. §§ 11-952 and 28-9122(A)(4);; and
- F. WHEREAS, City needs to dispose of up to 50,000 cubic yards of clean fill (“Dirt”) as part of the Beulah/University Drive Realignment Project (“Road Project”); and
- G. WHEREAS, Mountain Line needs to purchase dirt in amount of approximately 11,540 CYs for its Commercial Driving License course project (“the CDL Project”) and approximately 18,500 CYs for its Downtown Connection Center (“the DCC Project”).

NOW THEREFORE, in consideration of the mutual obligations and covenants set forth herein, the Parties agree as follows:

AGREEMENT

A. TERM AND TERMINATION:

1. This Agreement shall become effective on the date it is adopted, approved, and fully executed by both the City and Mountain Line and shall continue in full force and effect for a period of five (5) years from the date of its execution unless otherwise terminated prior to that date by either Party pursuant to the terms and conditions of this Agreement so long as both Parties remain a Party to the Alliance IGA, and the Alliance IGA is not terminated. This Agreement may be renewed for one (1) additional five (5) year term through an addendum signed by both Parties so long as both Parties remain a Party to the Alliance IGA, and the Alliance IGA is not terminated.
2. Notwithstanding the foregoing, either Party may terminate this Agreement for convenience by providing the other Party ninety (90) days' prior written notice.

B. RESPONSIBILITIES:

1. Purchase Price. City agrees to sell, and Mountain Line agrees to purchase surplus dirt from City, at the negotiated price of \$356,121, plus taxes of 5.968% (\$21,253), for a total of \$377,374 for 30,040 CYs to include applicable state and local transaction privilege taxes. City will determine the amount of surplus Dirt available for sale. The sale price includes all labor, equipment, and materials necessary for the City to load the dirt onto Mountain Line's contractor trucks at the City's worksite location. Mountain Line warrants that this purchase price is less than or equal to the price for cubic yard that it would otherwise pay if not purchasing from the City.
2. Dirt Source. The Dirt is sold "as is" and will be sourced from the Road Project construction in the proximity of the southwest corner of University Avenue and Milton Road. Mountain Line has had the opportunity to inspect and test the Dirt source if so desired.
3. Cubic Yards Purchased and Schedule. Mountain Line shall notify City's Project Manager of the total cubic yards of dirt desired and proposed time frame for pickup. City's Contractor and City's Project Manager shall approve the following in advance in writing: the cubic yardage to be sold; date(s) and time(s) for pickup ("Approval"). If the parties are unable to agree in advance upon the cubic yardage to be sold, and date(s) and time for pickup, then City shall have no obligation to sell, and Mountain Line shall have no obligation to purchase Dirt. The City anticipates the Dirt will begin being available late April of 2023.
4. Pickup Location. Mountain Line shall remove the dirt from the City's worksite location at the southwest corner of University Avenue and Milton Road, as agreed upon in the Approval.
5. Loading; Ownership. City's Contractor will load the Dirt onto Mountain Line's contractor trucks for transport. The Dirt shall be deemed to be the property of Mountain Line upon loading it onto Mountain Line's contractor trucks. City shall not be responsible for any events related to the Dirt after loading, including but not limited to transportation, storage, or use of the Dirt.

6. Invoicing. Within 10 days from the date of a Dirt pickup from the worksite location, City shall invoice Mountain Line for the Dirt removed. Mountain Line shall have 30 days to confirm or dispute the invoice amount, and to pay the invoiced amount or adjusted amount agreed upon by the Parties.
7. Crediting. Mountain Line's payments to the City for Dirt shall be credited and applied towards Mountain Line's financial obligation to help pay for additional improvements to University Avenue pursuant to the First Amendment to Intergovernmental Agreement for Transit Service between the parties dated January, 2021.

C. PERSONNEL:

Each Party's personnel will not for any purpose be considered employees or agents of the other Party. Each Party assumes full responsibility for the actions of its personnel while performing activities and services under this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including but not limited to withholding of income taxes and social security), workers' compensation, and disability benefits.

D. INSURANCE AND INDEMNIFICATION:

1. Mountain Line shall maintain adequate insurance to cover any liability arising from the acts and omissions of Mountain Line employees or agents participating in this Agreement. Mountain Line shall cause its contractors and subcontractors that will performing work under this Agreement to name the City of Flagstaff, its general contractor, Eagle Mountain Construction Co., Inc., an Arizona for profit corporation, and P3 Party and landowner VP Cinema, LLC, an Arizona limited liability company as "additional insureds" and provide a certificate(s) of insurance evidencing the same. Mountain Line shall not be responsible for maintaining insurance coverage for liability arising from the acts and omissions of City employees or agents.
2. City shall maintain adequate insurance (which may include a bona fide self-insurance program) to cover any liability arising from the acts and omissions of City employees or agents participating in this Agreement. City shall not be responsible for maintaining insurance coverage for liability arising from the acts and omissions of Mountain Line employees or agents.
3. Each Party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, indemnitor's officer, officials, agents, employees, or volunteers.

E. NONAPPROPRIATION:

If a Party's performance under this Agreement depends upon the appropriation of funds by its respective governing body, and funds necessary for performance are not so appropriated, then either Party may provide written notice to the other Party and immediately cancel this Agreement without further obligation of either Party.

F. RECORD INSPECTION AND RETENTION:

The Parties agree to retain all books, accounts, reports, files, and other records relating to the Agreement and to make such records available at all reasonable times for inspection and audit by the other Party or the Auditor General of the State of Arizona, or their agents, during the term of and for a period of five (5) years after completion of this Agreement.

G. CONFLICT OF INTEREST:

In accordance with A.R.S. § 38-511, this Agreement may be cancelled for conflict of interest within three (3) years after its execution, without penalty or further liability.

H. NON-DISCRIMINATION:

The Parties agree to comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, non-discrimination, including the Americans with Disabilities Act, sexual orientation, or gender identity or expression.

I. THIRD-PARTY BENEFICIARIES:

This Agreement is intended for the exclusive benefit of the Parties hereto. Nothing herein is intended to create any rights or responsibilities to third parties.

J. ASSIGNMENT:

Neither Party shall have the right to assign this Agreement without prior written consent of the other Party.

K. MANNER OF FINANCING:

Each Party to this Agreement shall be responsible for its own costs and budgeting for performance of their respective obligations.

L. DISPUTES AND ARBITRATION:

In the event of a dispute between the Parties to this Agreement, the Parties shall attempt

to resolve the disagreement on an informal, good faith basis. If that fails, pursuant to A.R.S. § 12-1518, the Parties may agree to mandatory arbitration of any legal action that is filed in the Arizona Superior Court.

M. RELATIONSHIP AND USE OF MARKS:

Except as otherwise agreed in writing, the Parties acknowledge that the relationship created by this Agreement is limited to Dirt purchase and sale. Neither Party shall make any representations stating or implying the Parties engage in broader transactions or that a Party is otherwise associated with the other without first obtaining express written permission from the other Party. In addition, neither Party shall use any trade name, trademark, service mark, logo, domain name, nor any other distinctive brand feature owned or used by the other Party without its express written authorization.

N. NOTICES:

To City:

David Pedersen, Project Manager
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001
Phone: (928) 213-2677
Email: DPedersen@flagstaffaz.gov

with a copy to:

Christina Rubalcava
Senior Assistant City Attorney
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001
Phone: (928) 213-2046
Email: CRubalcava@flagstaffaz.gov

To Mountain Line:

Anne Dunno, PMP, Capital Project Manager
Mountain Line
3773 N. Kaspar Drive
Flagstaff, AZ 86004
Phone: (928) 679-8942
Email: adunno@mountainline.az.gov

with a copy to:

Scott A. Holcomb
General Counsel
Dickinson Wright PLLC
1850 N. Central Avenue, #1400
Phoenix, AZ 85020
Phone: 602-285-5028
Email: SHolcomb@dickinsonwright.com

O. COUNTERPARTS:

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

P. AMENDMENTS AND RELATED AGREEMENTS:

This Agreement constitutes the entire agreement of the Parties relating to the subject matter hereof as of the date of execution. All amendments or modifications of this Agreement shall be in writing and approved by the Parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their undersigned authorized representatives.

[Signature page follows]

NORTHERN ARIZONA INTERGOVERNMENTAL PUBLIC TRANSPORTATION
AUTHORITY (MOUNTAIN LINE)

By:
Its:

This Agreement has, prior to its execution, been submitted to the attorney for Mountain Line, who has determined that the Agreement is in the proper form and is within the powers of and authority granted under the laws of this State to Mountain Line.

Legal Counsel for Mountain Line

CITY OF FLAGSTAFF

By:

Attest:

By: Stacy Saltzburg, City Clerk

This Agreement has, prior to its execution, been submitted to the attorney for the City of Flagstaff, who has determined that the Agreement is in the proper form and is within the powers of and authority granted under the laws of this State to the City of Flagstaff.

City Attorney

