

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF FLAGSTAFF AND
COCONINO COUNTY
FOR LANDFILL ROAD IMPROVEMENTS**

This Intergovernmental Agreement (hereafter “Agreement”) is made and entered into this _____ day of February 6, 2024 by and between the CITY OF FLAGSTAFF, a political subdivision of the State of Arizona (hereafter “City”) and COCONINO COUNTY, a political subdivision of the State of Arizona (hereafter “County”). The City and County may be referred to in this Agreement individually as “Party” or together as “Parties.”

RECITALS

- A. A.R.S. §11-952 provides that public agencies, including the City and County, may enter into intergovernmental agreements for the provision of services or for joint or cooperative action.
- B. Landfill Road provides the primary access to the City’s Cinder Lake Landfill and is currently maintained by the County. The road alignment is across U.S. Forest Service land and access/egress is granted by an easement agreement with the U.S. Forest Service (Exhibit A).
- C. The City and County have identified needed improvements to Landfill Road and have completed the necessary design for construction of the improvements (the “Project”) (Exhibit B).
- D. In 2019, the City and County agreed in principle to fund proportionate shares of the Project costs. The Parties have dedicated funding to complete the Project and intend to deliver the Project in the spring of 2024.
- E. In 2023, the design process was completed by the City, and through that process the City identified properties that required acquisition. Those real estate transactions have been completed and the Project is ready for delivery.
- F. The City has publicly procured a Construction Manager at Risk (“CMAR”) contractor that has agreed to deliver the Project.
- G. The Parties desire to enter into an intergovernmental agreement to allocate the responsibilities and obligations of each Party to fund, construct, and maintain the Project.

AGREEMENT

NOW, THEREFORE, pursuant to A.R.S. §11-952, authorizing agreements for joint exercise of authority among two or more public agencies, and in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. Purpose

The purpose of this Agreement is to identify the roles and responsibilities of the Parties with respect to funding, construction, and maintenance of the Project.

2. Responsibilities of the City

- A. The City shall be responsible for construction of the Project through a CMAR contractor. The Project is more specifically described and shown in the design plans attached as Exhibit B.
- B. The City shall remain responsible for contracting procurement and Project delivery.
- C. The City shall be responsible for paying the CMAR contractor the full cost of the work and will receive the County’s proportional share in two payments: (1) half when the notice to proceed is issued to the CMAR contractor, and (2) the remaining half upon Project completion.
- D. After construction of the Project, the City will assume all road maintenance responsibilities of Landfill Road, except for emergency operational maintenance, such as snow operations and storm/flood debris removal from the pavement

3. Responsibilities of the County

- A. The County shall pay the City half of its proportional share of the Project (\$1,220,000.00) no later than thirty (30) days after receiving confirmation from the City that the notice to proceed has been issued to the CMAR contractor.
- B. The County shall make final payment to the City for its remaining proportional share of the Project (\$1,220,000.00) after the project is substantially completed and no later than thirty days after receiving a final invoice from the City.
- B. After construction of the Project, the County will continue emergency operational maintenance responsibilities, such as snow operations and storm/flood debris removal from the pavement.

4. Funding; Financial Responsibilities

The City and County have agreed that each Party has a proportional responsibility for the Project, which is as follows:

Total Cost:	\$ 5,060,520.00
County Proportional Share:	\$ 2,440,000.00
City Proportional Share:	\$ 2,620,520.00

As provided above, the City shall be responsible for construction of the Project through the CMAR contractor and will be responsible for all payments to the contractor. The County will contribute funding to the Project as a direct payment to the City. If the cost of the

Project exceeds the amounts identified in the initial costing proposals, the City and County will each be responsible for the difference consistent with the proportional shares identified above. Any cost savings will be refunded to the Parties according to the same proportional shares.

5. Effective Date; Term

This Agreement shall be effective as of the date it is approved by the City Council and the Board of Supervisors and shall remain in full force and effect until December 31, 2025. Either Party may terminate this Agreement prior to the City issuing the notice to proceed to the contractor by providing written notice to the other Party to the Agreement. Terminating the Agreement shall not relieve a Party from those liabilities or obligations already incurred under this Agreement.

6. 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.

7. Indemnification

Each party (as “Indemnitor”) agrees to indemnify, defend, and hold harmless the other party (as “Indemnitee”) from and against any and all claims, losses, liability, costs, or expenses, including reasonable attorney 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 or derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

8. Agents, Employees, and Contractors

Agents, employees, and contractors hired by a Party to provide services under this Agreement shall be and remain the agents, employees, and contractors of the hiring Party solely, and shall not be considered agents, employees, or contractors of the other Party.

9. Compliance with All Laws

Each Party shall comply with all federal, state, and local laws, rules, and regulations.

10. Execution Procedure

This Agreement will be executed in counterparts by the governing body of each Party.

11. Non-Discrimination

Each Party shall comply with State Executive Order No. 2009-09 and all other applicable federal and state laws, rules, and regulations, including the Americans with Disabilities Act.

12. Legal Arizona Workers Act Compliance

As mandated by A.R.S. § 41-4401, each Party (a) warrants the Party's compliance with all federal immigration laws and regulations that relate to the Party's employees and their compliance with A.R.S. § 23-214(A); (b) acknowledges that a breach of the warranty in subsection (a) of this section shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement; and (c) retains the legal right to inspect the papers of any contractor or subcontractor employee who works pursuant to this Agreement to ensure compliance with the warranty.

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. Dispute Resolution

The Parties shall have the right to litigate any disputes which arise under this Agreement. Any litigation brought by a Party against another Party to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court. In the event any action at law or in equity is instituted between the Parties in connection with 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. To the extent required by A.R.S. § 12-1518, the Parties to this Agreement agree to resolve all disputes arising out of or relating to this contract through arbitration.

15. Integration; Amendment

All Parties acknowledge and agree that they have not relied upon any statements, representations, agreements, or warranties, except as expressed in this Agreement, and that this Agreement constitutes the Parties' entire agreement with respect to the matters addressed. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded by and merged in this Agreement. This Agreement may be amended only by the mutual written agreement of both Parties, and any such amendment will become effective on the date so specified. The City Manager and County Manager have express authority to approve amendments to this Agreement.

16. Severability

In the event that a court of competent jurisdiction shall hold any part or provision of this Agreement void or of no effect, the remaining provisions of this Agreement shall remain in full force and effect.

17. Waiver

No failure to enforce any condition or covenant of this Agreement shall imply or constitute a waiver of the right to insist upon performance of such condition or covenant, or of any other provision hereof, nor shall any waiver by either Party of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach of this Agreement.

18. Notices

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and sent to the address given below for the Party to be notified, or to such other address, notice of which is given in accordance with this Section:

CITY: City of Flagstaff
Attn: Greg Clifton, City Manager
211 W. Aspen Ave
Flagstaff, AZ 86001

With a copy to: City of Flagstaff Public Works
Attn: Scott Overton, Public Works Director
211 W. Aspen Ave
Flagstaff, AZ 86001

COUNTY: Coconino County
Attn: Steve Peru, County Manager
219 E. Cherry Ave
Flagstaff, AZ 86001

With a copy to: Coconino County Public Works
Attn: Christopher Tressler, Public Works Director
219 E. Cherry Ave
Flagstaff, AZ 86001

19. Cancellation for Conflict of Interest

This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511.

20. Authority to Contract

Each Party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder and has taken all required acts or actions necessary to authority the same.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the day and year first written above.

City of Flagstaff

Coconino County

Greg Clifton, City Manager

Steve Peru, County Manager

Attest:

Attest:

City Clerk

Clerk of the Board

Approved as to form:

Approved as to form:

City Attorney's Office

County Attorney's Office