

**BOW AND ARROW PARK  
AGREEMENT  
BETWEEN THE ARIZONA GAME AND FISH COMMISSION  
AND THE CITY OF FLAGSTAFF**

A2010-0430.6

This Agreement ("Agreement") is entered into between the Arizona Game and Fish Commission ("Commission") or ("Seller") and the City of Flagstaff ("City") or ("Buyer") (collectively "Parties" and singularly "Party"). The terms "Department" and "Director" shall refer to the Arizona Game and Fish Department and its Director acting as administrative agents for the Commission.

WHEREAS, the Commission is authorized to enter into this Agreement pursuant to Arizona Revised Statute ("A.R.S.") § 17-241(B), and the City is authorized to enter into this Agreement pursuant to Article 1, Section 3 and Article VII, Section 5 of the Charter of the City of Flagstaff ("Charter");

WHEREAS, the Commission has statewide responsibility for managing, conserving and enhancing wildlife habitat as well as securing access to public lands;

WHEREAS, the Arizona Game and Fish Department ("Department") acts under the authority of the Commission;

WHEREAS, the City is an Arizona municipal corporation and has all necessary powers, express and implied, under state law and under its Charter to operate parks, sewer, waterworks, wastewater effluent reclamation facilities, and other facilities;

WHEREAS, the Parties recognize and encourage a continued commitment to conservation and enhancement of the riparian and wetland resources of the State of Arizona as well as the promotion of public, wildlife-based recreation opportunities; and

WHEREAS, the City has leased approximately three (3.0) acres of Commission-owned Real Property, commonly known as Bow and Arrow Park, for the past forty two (42) years, and the Parties have determined that it is in their mutual best interests for the Commission to transfer title to this Real Property to the City in exchange for the City's agreement to discharge 200 gallons per minute of wastewater effluent in the form of Class A reclaimed wastewater into the Rio de Flag and Francis Short Pond for wildlife habitat enhancement purposes as set forth in, and during the term of, this Agreement;

NOW, THEREFORE, it is the understanding of the Parties that:

1. The Commission agrees:
  - A. To transfer title of approximately 3.0 acres of Commission-owned Real Property ("Real Property") described in Exhibit "A" and illustrated in Exhibit "B" attached herein known as Bow and Arrow Park, located at 3701 Cochise Drive, Flagstaff, AZ, to the City of Flagstaff.
2. The City agrees:
  - A. To commit to, for a term of twenty (20) years beginning as of the date the Agreement is signed by the Parties, a weekly hourly average of 200 gallons per minute of reclaimed

wastewater discharge under the following terms at the following locations illustrated in Exhibit "C":

- i. Release a minimum of a weekly hourly average of 100 gallons per minute of reclaimed wastewater from the Wildcat Hill Wastewater Treatment Facility into the Rio de Flag for the purposes of wildlife habitat enhancement. The legal description for the discharge site is the SE $\frac{1}{4}$  of SW  $\frac{1}{4}$  of Section 4, T21N, R8E Gila and Salt River Base and Meridian, Coconino County, Arizona.
  - ii. Release a minimum of a weekly hourly average of 100 gallons per minute of reclaimed wastewater from the Rio de Flag Wastewater Treatment Facility into the Rio de Flag for the purposes of wildlife habitat enhancement. The legal description for the discharge site is the E $\frac{1}{2}$  of SE $\frac{1}{4}$  of Section 22, T21N, R7E Gila and Salt River Base and Meridian, Coconino County, Arizona.
  - iii. Release a weekly hourly average of 50 gallons per minute (of the 200 gallons per minute total commitment) or more of reclaimed wastewater into Francis Short Pond (SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 16, T21N, R7E Gila and Salt River Base and Meridian, Coconino County, Arizona) when available to maintain sufficient water levels during summer months.
- B. To grant public access to 3.0 acres of a 30-acre City property adjacent to the reclaimed wastewater discharge point at the Wildcat Hill Wastewater Treatment Facility (SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 4, Township 21 North, Range 8 East) for a Watchable Wildlife open space park and adjacent to the access road to the Wildcat Hill Wastewater Treatment Plant, as illustrated in Exhibit "D".
  - C. To provide the Department, upon request, with a quarterly report as evidence of discharge rates at the sites identified in Section 2.A above. A report form is attached to the Agreement as Exhibit "E".
  - D. To be responsible for obtaining Arizona Pollution Discharge Elimination System permits and any other permits required by state or federal law to discharge reclaimed the wastewater and to fulfill all monitoring requirements imposed under the terms of those permits.
  - E. The Class A reclaimed wastewater to be discharged by the City under this Agreement consists of sewage effluent that has completed its passage through a wastewater treatment process and meets the standards for the specific reuses contained in Section R18-9-703 of the Arizona Administrative Code. The City owns all of the right, title and interest in and to the reclaimed wastewater, and discharge of the reclaimed wastewater at the locations specified above does not and shall not be construed as an abandonment or relinquishment by the City of the reclaimed wastewater on any basis, and by discharging reclaimed wastewater pursuant to this Agreement, the City does not convey any ownership interest in the reclaimed wastewater to the Commission.
3. The Parties mutually agree:
- A. To evaluate the feasibility of adding future reclaimed wastewater discharge sites around the City for future stream restoration projects.
  - B. To evaluate the feasibility of redirecting reclaimed wastewater discharge from the Rio de Flag Wastewater Treatment Facility to a larger wetland area.
  - C. To evaluate the feasibility of and allow the reintroduction of native, warm water fishes into the Rio de Flag for refuge habitat as well as mosquito abatement.

4. Disposition of Real Property by State Agency. The conveyance of the Real Property is subject to A.R.S. § 37-803. By signing this Agreement, the Director has determined that the Commission may transfer the Real Property to the City without a public sale because the transfer is in the public interest and the Real Property will be used by the City for specific purposes in the public interest, including as a public playground and a bus stop. The Director has further determined that the value of the reclaimed wastewater (identified in Exhibit "F") the City shall discharge pursuant to the terms of this Agreement is commensurate with the appraised value of the Real Property as set forth in Section 7, below. During the term of this Agreement, delivery of this reclaimed wastewater will restore and enhance riparian wildlife habitat in an urban greenway and provide watchable wildlife recreation opportunities at 3 urban sites in the City of Flagstaff. In addition, during the term of this Agreement the Department's valuable urban youth fishery at Frances Short Pond will be maintained during the hot summer months when water depths are reduced and oxygen levels are depleted, and native, warm water fishes may be introduced into the Rio de Flag.
5. Termination of Permit Agreement. The Real Property is currently subject to a Permit Agreement ("Permit"), attached hereto as Exhibit "G", executed by the City and Commission on August 14, 2008 for a 10-year lease and use of the Real Property by the City as a playground and bus stop for school children. The Permit will be automatically terminated by written notice provided by the Parties at Close of Escrow to the Escrow Agent.
6. Ownership Interest of Seller. Seller presently owns the Real Property described in Exhibit A attached hereto consisting of approximately 3.0 acres, more or less, located in Coconino County, Arizona, together with all rights, privileges, easements, reversions, remainders, rents, royalties, issues, and profits which are appurtenant to or obtained from such Real Property including without limitation ditches, ditch rights appurtenant to such Real Property, and all right, title and interest of the Seller in the roads and paths adjoining or passing through such Real Property.
7. Real Property Appraised Value. The Parties acknowledge that Frank Strickler, Certified General Real Estate Appraiser, prepared an "Appraisal Report" dated August 12, 2008 for the Real Property (the "Appraisal") and agree that the Appraisal valued the Real Property at Seven Hundred Fifty Eight and no/100 Thousand Dollars (\$758,000.00) (the "Appraised Value"). The Parties agree that the value of the Real Property is now and shall be at Close of Escrow the Appraised Value.
8. Title to Real Property. Seller covenants to convey to Buyer good and marketable fee simple title to the Real Property by warranty deed, free and clear of all liens, encumbrances, easements, restrictions, conditions, defects and burdens, subject, however, to the permitted encumbrances and exceptions that the Buyer agrees to. Close of Escrow shall be conditioned upon the Title Company (as such term is hereinafter defined) issuing or committing to issue Buyer a standard coverage of title insurance in the amount of the Appraised Value insuring fee title in the Real Property vested in Buyer free and clear of all matters except the Permitted Exceptions, and any lien for current Real Property taxes not yet due and payable and those matters excluded from coverage by the standard exceptions and exclusions contained in the form of title insurance policy required hereby.
9. Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as follows:
  - A. Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code") and any related regulations.

- B. Seller is the sole owner of the Real Property and has full authority to enter into this Agreement and to convey fee title to Buyer.
- C. There are no claims, actions, suits, agency proceedings, quasi-legal or administrative challenges concerning the Real Property or the operation of the Real Property, or any condition existing thereon or other proceedings including but not limited to condemnation proceedings pending, or to Seller's actual knowledge, threatened by any governmental department or agency or any other corporation, partnership, utility, entity or person whomsoever, that in any manner or to any event may adversely affect the value of the Real Property or the Buyer's right, title, use of interest in and to the Real Property.
- D. Other than the Permit described in Section 5, above, no other person is in possession of the Real Property or claims any rights in the Real Property which are adverse to the rights of the Seller.
- E. The Seller has legal access (ingress and egress) to all portions of the Real Property, and the Seller knows of no disputes or disagreements with any person with regard to access to or over the Real Property.
- F. The Seller has not severed, leased, conveyed, or otherwise transferred any interest in the mineral rights to the Real Property, including any rights to sand, gravel, and rocks.
- G. Seller represents and warrants that neither Seller, nor to Seller's actual knowledge without any duty of investigation, any other person has ever caused or permitted any Hazardous Material to be placed, held, located, released or disposed of on, under, or at the Real Property or any part thereof, or from the Real Property or any part thereof into the atmosphere or any watercourse, body of water, or wetlands, and neither the Real Property nor any part thereof nor any adjoining real property has ever been used (whether by Seller, or to the best of Seller's knowledge, by any other person) as a treatment, storage, or disposal site (whether permanent or temporary) for any Hazardous Material. For purposes of this Agreement, "Hazardous Material" means and includes any petroleum product and any hazardous substance or pollutant or contaminant defined as such in (or for the purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, the Toxic Substances Control Act, or any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material, as now or at any time hereinafter in effect, and asbestos or any substance or compound containing asbestos, PCBs, or any other hazardous, toxic, or dangerous waste, substance, or material. The Real Property does not contain and never has contained any underground tanks.
- H. To Seller's actual knowledge without any duty of investigation, the Real Property (including underlying groundwater and areas leased to tenants, if any), and the use and operation thereof, have been and are currently in compliance with all applicable Environmental Laws.
- I. To Seller's actual knowledge without any duty of investigation, the Real Property has never been used as a dump or a landfill site.

- J. All required governmental permits and licenses with respect to the ownership and operation of the Real Property are in effect, and Seller is in compliance therewith.
- K. To Seller's actual knowledge without any duty of investigation, no environmental or public health or safety hazards currently exist with respect to the Real Property or the business or operations conducted thereon.
- L. To Seller's actual knowledge without any duty of investigation, there are no underground or above ground storage tanks (including petroleum storage tanks) or oil wells on or under the Real Property.
- M. Seller is not subject to any commitment, obligation, or agreement, including but not limited to, any right of first refusal, redemption rights, option to purchase, management or leasing agreement in favor of a third party.
- N. No federal, state, or local taxing authority has asserted any tax deficiency, lien, or assessment against the Real Property or Seller which has not been paid or which is not reflected in the commitment for title insurance.
- O. All representations and warranties made in this Agreement are true as of the date hereof and shall be true at the Close of Escrow date and shall survive the Close of Escrow. Seller shall make available to Buyer copies of all due diligence materials it acquires or has acquired as a result of its own investigations into the Real Property.

10. Water Quality Representations, Disclaimer of City and Acknowledgement of Commission; Force Majeure. The City agrees to provide reclaimed wastewater that meets the quality requirements of the Reclaimed Water Reuse Permit issued by the Arizona Department of Water Quality to the City of Flagstaff, a copy of which is designated Exhibit "H" and attached hereto. The City represents that upon the effective date of this Agreement the City is in compliance and shall remain in compliance with all regulatory and health and water laws, rules and regulations applicable to the reclaimed wastewater discharge. However, the Commission acknowledges and agrees that the reclaimed wastewater to be provided by the City under this Agreement is not intended or offered for potable use or for any uses other than as expressly set forth in this Agreement.

If the reclaimed wastewater supply to the Commission is discontinued, curtailed, delayed, interrupted or apportioned as a result of a force majeure event, the City shall not be deemed to be in default for the duration of the force majeure event. As defined in this Agreement, the term "force majeure event" shall mean the following: Act of God; fire; earthquake; flood; explosion; sudden action of the elements; period of extreme drought; war; acts of terrorism; sabotage; malicious mischief; inability to supply reclaimed wastewater because of inability to obtain labor, equipment, facilities, sources of energy, materials or supplies in the open market; failure of transportation; strikes; lockouts; action of labor unions; condemnation; requisition; order of government or civil or military authorities; bankruptcy proceedings; inability to obtain government permits or approvals; or any other cause beyond the City's control, whether similar or dissimilar to the foregoing. The term "period of extreme drought" as used herein means "a period of time when Upper Lake Mary contains less than nine percent (9%) of its storage capacity and the potable water demand exceeds the safe potable water production capacity for at least five (5) days."

11. Survival of Warranties.

- A. Subject to the provisions of Section 11(B) through 11(D), Seller's representations and warranties contained in Section 9 and elsewhere in this Agreement are required to be operative after delivery of Seller's Deed to the Real Property in order to be fully effective and shall be so operative, and shall survive and be deemed not to have merged in the Deed.
- B. Either Party shall promptly notify the other in writing (a "Default Notice") if it acquires information prior to Close of Escrow that (i) any warranty of Seller in this Agreement including Exhibits is, or will on Close of Escrow be, untrue or (ii) Seller is or will on Close of Escrow be in default under any Seller's representations and warranties.
- C. Seller shall promptly notify Buyer (a "Change Notice") of any change in circumstance which would cause (a) any warranty which is made by Seller, or (b) any warranty of the status of any item given as of a date earlier than Close of Escrow, to be untrue as of Close of Escrow, which Change Notice shall specify what action, if any, Seller intends to take as a result of such change, and state specifically that it is given under this Section. Upon receipt of the Change Notice, Buyer may elect to proceed with the transaction on the terms and conditions stated in the Change Notice or terminate this Agreement. If Buyer fails by notice to Seller to elect to proceed within twenty (20) days after receipt of the Change Notice, Buyer shall be deemed to have elected to proceed with the transaction.
- D. As a condition precedent to any claim by Buyer for breach of Seller's warranties, Buyer shall give notice of such breach to Seller within one (1) year after Close of Escrow.

12. Title Company.

- A. If not previously completed, an escrow shall be opened by the Buyer with Fidelity National Title Insurance Agency, 123 W. Birch Avenue, Flagstaff, Arizona 86001 ("Title Company").
- B. This Agreement shall serve as the escrow instructions to the Title Company designated herein. Supplemental escrow instructions, if required, shall remain subordinate to the terms of this Agreement.

13. Close of Escrow. Close of Escrow shall be within one hundred eighty (180) days from the date of execution of this Agreement. Close of Escrow is contingent upon approval of the Governor of Arizona and the Arizona State Land Commissioner pursuant to A.R.S. § 17-241. In the event that the Governor of Arizona or the Arizona State Land Commissioner does not approve this transaction, this Agreement shall automatically terminate, with either Party owing no obligation to the other Party under this Agreement ("Close of Escrow").
14. Brokers. The Parties each represent and warrant to the other that they have not dealt in this transaction with any brokers.
15. Indemnification. The City shall indemnify and hold harmless the State of Arizona, the Commission, the Department, and their Commissioners, employees, agents, and volunteers from any and all claims, demands, liabilities and costs of every kind, including without limitation attorney's fees and litigation expenses arising out of the Class A reclaimed wastewater delivered by the City, including without limitation, the environmental quality of said reclaimed wastewater, or arising out of the acts or conduct of any of the City's agents, employees, or representatives or members of the general public except that the City does not indemnify and hold harmless the

State of Arizona, the Commission, the Department, and their Commissioners, employees, agents, and volunteers for claims, demands, liabilities and costs of any kind to the extent that the acts or conduct of the State's agents, employees or representatives contributed to such claims, liabilities, and costs.

16. Possession and Title. Possession and title shall pass from Seller to the Buyer at the Close of Escrow.
17. Form of Deed. Title to the Real Property shall be conveyed by warranty deed (the "Deed"). The title shall be in the name of the City of Flagstaff, an Arizona municipal corporation.
18. Entire Agreement. This Agreement, together with its attached exhibits, constitutes the entire agreement between the Parties and supersedes any prior written or oral agreement between the Parties.
19. Amendments. This Agreement can be modified only by a written amendment signed by both Parties.
20. Conditions Precedent. The Buyer's obligations to consummate this transaction and fulfill the obligations under this Agreement are subject to satisfaction of the following conditions precedent:
  - A. Title Insurance. Seller shall, within forty-five (45) days of execution of the Agreement by both Parties, cause Title Company to deliver to Buyer a copy of the preliminary commitment for title insurance ("Preliminary Title Commitment") covering the Real Property that it has received from the current owner of the Real Property, together with a full and complete legible copy of all recorded items or exceptions disclosed therein. Seller covenants and agrees to remove on or before Close of Escrow any (i) exceptions for real estate contracts, mortgages, deeds of trust, assignments of rents and leases, financing statements (except tenant financing statements not affecting Seller's fee title) and any other liens or encumbrances for liabilities or obligations to other persons or entities, (ii) exceptions for the payment of real estate, sales, conveyance or stamp taxes, improvement assessments and any delinquent real estate taxes, (iii) exceptions relating to Seller's fee simple title to the Real Property and/or the due authorization, execution and/or delivery of the Deed to Buyer, (iv) any standard or printed exceptions or exclusions from coverage set forth in the Preliminary Title Commitment which are not ordinarily contained in a standard owner's title insurance policy, and (v) any other exceptions to which Buyer objects. Buyer shall, within thirty (30) days of receipt of the Preliminary Title Commitment give notice to Seller of any exceptions to clear title which are disapproved by Buyer, any exceptions not so objected to being hereinafter referred to as "Permitted Exceptions." Upon receipt of Buyer's notice, Seller shall then have thirty (30) days to notify Buyer that the title issues as set forth in Buyer's notice have been cured, will be cured or will not be cured before Close of Escrow, or that Seller is unable to cure the defects. Buyer shall then have twenty (20) days to accept the status of title or terminate the Agreement. If additional exceptions to title are disclosed by Supplemental Reports to the Preliminary Title Commitment, Buyer and Seller shall proceed to review such new title exceptions in accordance with the provisions of this Section; provided however, that Buyer shall have ten (10) business days to review and comment upon such new title exception and Seller shall have five (5) days after notice from Buyer, to give Buyer notice of such exceptions removal or other disposition under this Section. From the date hereof until the Close of Escrow or termination of the Agreement, Seller shall not enter into any restriction, easement,

covenant or contract regarding the Real Property not terminable prior to Close of Escrow.

- B. Survey. Seller shall have a period of ninety (90) days after the execution of this Agreement to cause to be prepared, at Seller's cost, a current ALTA survey of the Real Property ("Survey"). Buyer shall have a period of thirty (30) days to object to any matters shown on the Survey and provide such objections to Seller and the Title Company. Upon receipt of Buyer's notice, Seller shall then have thirty (30) days to notify Buyer that the Survey matters as set forth in Buyer's notice have been cured, will be cured or will not be cured before Close of Escrow, or that Seller is unable to cure the matters. Buyer shall then have twenty (20) days to accept the Survey or terminate the Agreement.
- C. Condition of Title. Seller shall upon Close of Escrow cause Title Company to issue or commit to issue the Buyer a standard owner's policy of title insurance, or an ALTA extended coverage policy, if requested by Buyer, in the amount of the Purchase Price insuring the fee title in the Real Property vested in Buyer free and clear of all matters except the Permitted Exceptions, the lien of current Real Property taxes not yet due and payable, and those matters excluded from coverage by the standard exceptions and exclusions contained in the form of title insurance policy required hereby. In the event that Buyer requests an ALTA extended coverage policy, Buyer agrees to pay the difference between a standard owner's policy and the extended coverage policy.
- D. Inspection. Between the date of execution of this Agreement and Close of Escrow or the earlier termination of this Agreement, subject to any and all rights of current owners and/or tenants in possession of any portion of the Real Property, Buyer and its contractors and consultants shall have the right to go upon the Real Property at reasonable times for the purpose of inspecting each and every part thereof to determine its present condition and, at Buyer's sole cost and expense, to make such investigations as Buyer deems appropriate, including but not limited to surveys, soils tests, engineering studies and environmental tests. Before conducting any invasive or intrusive testing such as borings or test holes, Buyer shall give Seller at least 48 hours prior written notice, and shall coordinate the date and time of such testing to enable Seller's consultants to be present to take duplicate samples and record the methods used by Buyer's consultants.

Buyer shall not permit any lien of any type and attributable to Buyer to be placed against the Real Property or any portion thereof before Close of Escrow. If any such lien is placed against the Real Property before Close of Escrow, Buyer shall either cause the same to be released of record or post a bond equal to the amount of the lien within fifteen (15) days after notice from Seller. In the event that Buyer fails either to cause the lien to be released or post bond within said fifteen (15) day period, then Seller shall have the right to cause the lien to be removed, and Buyer shall reimburse Seller for all costs (including attorneys' fees and costs) incurred in the removal of the lien immediately upon receipt of written demand from Seller accompanied by reasonable evidence of such costs.

Buyer agrees to repair any damage to the Real Property resulting from any activities of Buyer or its agents or consultants on the Real Property before Close of Escrow. Notwithstanding the preceding, Buyer shall not be liable for any Inspection Claim resulting from Buyer's discovery of any pre-existing condition (including but not limited to the existence of any Hazardous Materials (as defined in Section 9), in, on,

under or about the Real Property or any exacerbation of a pre-existing condition, in, on, under or about the Real Property, except to the extent that the exacerbation results from the negligent act or omission of Buyer or its agents or consultants.

21. Close of Escrow and Escrow Costs. Except as otherwise provided in this Agreement, at Close of Escrow all escrow costs shall be divided equally between the Buyer and Seller. The Seller shall pay the premium for the standard owner's title insurance policy, and Buyer shall pay any additional expense associated with extended ALTA coverage.
22. Seller's Warranties and Maintenance of the Real Property. Except as otherwise provided in this Agreement, the Seller shall maintain and repair the Real Property so that, at the time possession is transferred to the Buyer, the Real Property shall be in substantially the same condition as on the date of this Agreement, except as for ordinary wear and tear.
23. Risk of Loss. If there is any loss or damage to the Real Property between the date of this Agreement and the Close of Escrow by any reason including, but not limited to, fire, vandalism, flood, earthquake, act of God, negligence, willfulness or recklessness, the risk of loss shall be on the Seller.
24. Reservations. Pursuant to A.R.S. § 17-241(C), the Commission is required to reserve all mineral rights to transferred lands. The Commission excepts and reserves from this Agreement all minerals rights that may be found in or upon the Real Property or any part thereof.
25. Effective Date and Duration. This Agreement is effective as of the last signature date. The City's commitment to discharge reclaimed wastewater in accordance with the terms of this Agreement expires twenty (20) years from that date, unless this Agreement is renewed as follows: this Agreement may be renewed for an additional twenty (20) year term upon mutual agreement of the Parties, including agreement as to fair compensation payable by the Commission to the City for discharge of the amounts of reclaimed wastewater at the locations set forth in Section 2 of this Agreement or for such amounts and such other discharge locations as mutually agreed by the Parties. Nothing in this Agreement shall be construed to obligate the City to discharge reclaimed wastewater following the expiration or termination of this Agreement or any renewal thereof.
26. Default. Except as set forth in Sections 2 and 10, should the City, before the expiration date of this Agreement, cease to discharge the full amount of reclaimed wastewater required under the terms of this Agreement, the City shall be deemed to be in default of this Agreement. In the event of default, the Department shall notify the City in writing, and the City shall have thirty (30) days between the months of April and July and ninety (90) days between the months of August and January to cure the default. If the City does not cure its default as described above, and the default has occurred within years one (1) through five (5) of this Agreement, the City agrees that the Commission, in its sole discretion, shall be entitled to either (1) require the City to specifically perform the reclaimed wastewater discharge requirements set forth in this Agreement, or (2) terminate this Agreement and require the City to return fee simple title of the Real Property to the Commission, at no cost to the Commission. If the City does not cure its default as described above, and the default has occurred during or after year six (6) of this Agreement, the Commission, in its sole discretion, shall be entitled to either (1) require the City to specifically perform the reclaimed wastewater discharge requirements set forth in this Agreement, or (2) terminate this Agreement and require the City to pay monetary damages to the Commission in the amount of Thirty Seven Thousand Nine Hundred and no/100 Dollars (\$37,900.00), which amount equals 1/20 of the Appraised Value of the Real Property, for each year remaining on the Agreement as of the date of the City's default, as adjusted by the

Consumer Price Index. Should the City be deemed to be in default of this Agreement, the Commission has no obligation to reimburse the City for the value of the water discharged prior to the City's default.

27. Notices. Except for notice of cancellation of the Permit under Section 5 herein, all notices, requests, demands, consents, approvals and any other communications which may or are required to be served or given hereunder (for the purposes of this provision collectively called "Notices") shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the Party or Parties to receive such notice or via facsimile as follows:

(a) If intended for the Seller to:

Arizona Game & Fish Commission  
5000 West Carefree Highway  
Phoenix, AZ 85086  
Attn: Larry D. Voyles  
Title: Director  
Phone: (602) 942-3000  
Fax: (623) 236-7366

With a copy to:

Arizona Attorney General  
1275 W. Washington  
Phoenix, AZ 85007  
Attn: Shelley D. Cutts  
Title: Assistant Attorney General  
Phone: (602) 542-8566

(b) If intended for Buyer to:

The City of Flagstaff  
211 W. Aspen Avenue  
Attn: City Manager  
Phone: (928) 779-7604  
Fax: (928) 214-2415

With a copy to:


The City of Flagstaff  
211 W. Aspen Avenue  
Attn: Utilities Director  
Phone: (928) 779-7618  
Fax: (928) 556-1223

28. Negotiated Agreement. This Agreement is the result of negotiations between the Parties and, accordingly, shall not be construed for or against either Party regardless of which Party drafted this Agreement or any portion thereof.
29. Time. Unless otherwise indicated, all periods of time referred to in this Agreement shall refer to calendar days and shall include all Saturdays, Sundays, and State or national holidays, provided that if the date or last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or State or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or State or national holiday.
30. Conflict of Interest. The Parties acknowledge that this Agreement is subject to cancellation pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein.
31. Governing Law and Venue. This Agreement shall be construed under the laws of the State of Arizona. Any arbitration or other action arising out of this Agreement, whether for the enforcement thereof or otherwise, shall be brought in Maricopa County, State of Arizona.
32. Audit. Pursuant to A.R.S. § 35-214, all books, accounts, reports, files, electronic data, and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the State of Arizona for five (5) years after completion of this Agreement.

33. Arbitration. To the extent required pursuant to A.R.S. § 12-1518, the Parties agree to use arbitration to resolve any dispute arising under this Agreement in accordance with Arizona law, with each Party to bear its own attorneys' fees and costs.
34. Compliance with Applicable Law. All work performed pursuant to this Agreement shall be in compliance with all applicable state and federal laws, regulations, and executive orders.
35. Severability. In the event that any provision of this Agreement or portion thereof is held invalid, illegal or unenforceable, such provision or portion thereof shall be severed from this Agreement and shall have no effect on the remaining provisions of this Agreement, which shall remain in full force and effect.
36. No Third Party Beneficiaries. The terms, provisions and conditions of this Agreement are for the sole benefit of, and may be enforced solely by, the Commission and/or the City; and none of any such terms, provisions or conditions are for the benefit of or may be enforced by any third party.
37. Exhibits. The following is a list of the exhibits attached hereto, all of which are incorporated herein by reference as if set forth in full:
  - A. Legal Description of the Real Property
  - B. Bow and Arrow Property Location
  - C. Location of Discharge Sites
  - D. Public Access and Watchable Wildlife Open Space Park
  - E. City Quarterly Water Discharge Report Form
  - F. Class A Reclaimed Wastewater Valuation Letter
  - G. Permit Agreement
  - H. Reclaimed Water Reuse Permit

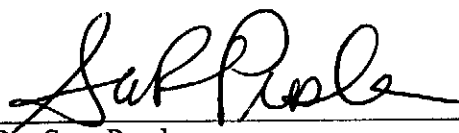
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date below:

STATE OF ARIZONA  
ARIZONA GAME AND FISH COMMISSION

  
 \_\_\_\_\_  
 Larry D. Voyles  
 Secretary to the Commission  
 Arizona Game and Fish Department Director

1-7-10  
 \_\_\_\_\_  
 Date

THE CITY OF FLAGSTAFF

  
 \_\_\_\_\_  
 By: Sara Presler  
 Its: Mayor

4/30/2010  
 \_\_\_\_\_  
 Date

Attest:

Laura Matthews for  
City Clerk

Approved as to form:

John Lane for  
City Attorney

**EXHIBIT A.**

**LEGAL DESCRIPTION OF BOW AND ARROW PARK  
(REAL PROPERTY) PARK PROPERTY**

EXHIBIT "A"

**Approximately three (3) acres located in the W½ of the E½ of the W½ of the NW¼ in Section Thirty-Three (33), Township Twenty-One (21) North, Range Seven (7) East, more particularly described as follows:**

Lying East of and adjacent of the Lake Mary Road Right-of-Way and commencing from the pin in the center of Lake Mary Road where it intersects the State's eastern boundary, thence north along the boundary line a distance of 800 feet, thence due west a distance of 328 feet to the intersection of the center of Lake Mary Road, thence in southeasterly direction parallel to the center of the road to the point of beginning, all as illustrated on Exhibit B attached hereto and by reference incorporated herein.

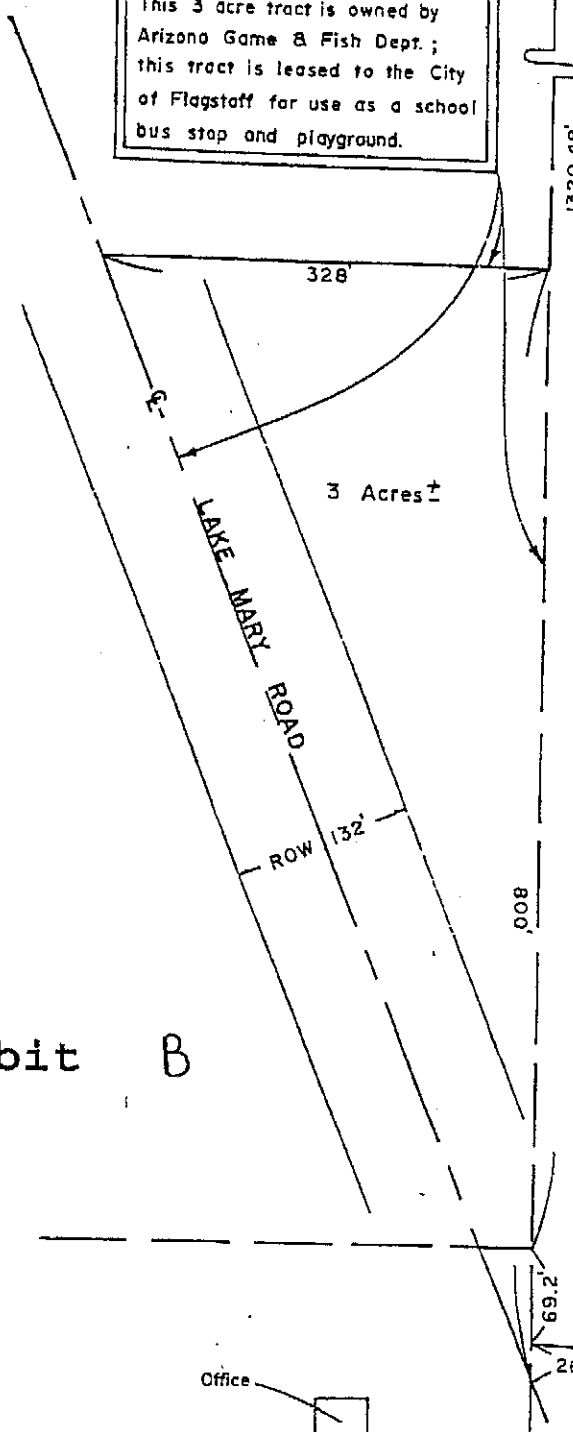
**EXHIBIT B.**

**BOW AND ARROW PARK PROPERTY LOCATION**

Exhibit B

NE COR.  
W2 E2 W2 NW4  
SEC. 33

This 3 acre tract is owned by  
Arizona Game & Fish Dept.;  
this tract is leased to the City  
of Flagstaff for use as a school  
bus stop and playground.



328

1320.48'

3 Acres ±

PRIVATE  
LAND

ROW 132'

008'

Exhibit B

Office

69.2'

26.3'

N 87° 27' 15" W

**EXHIBIT C.**

**LOCATION OF DISCHARGE SITES**

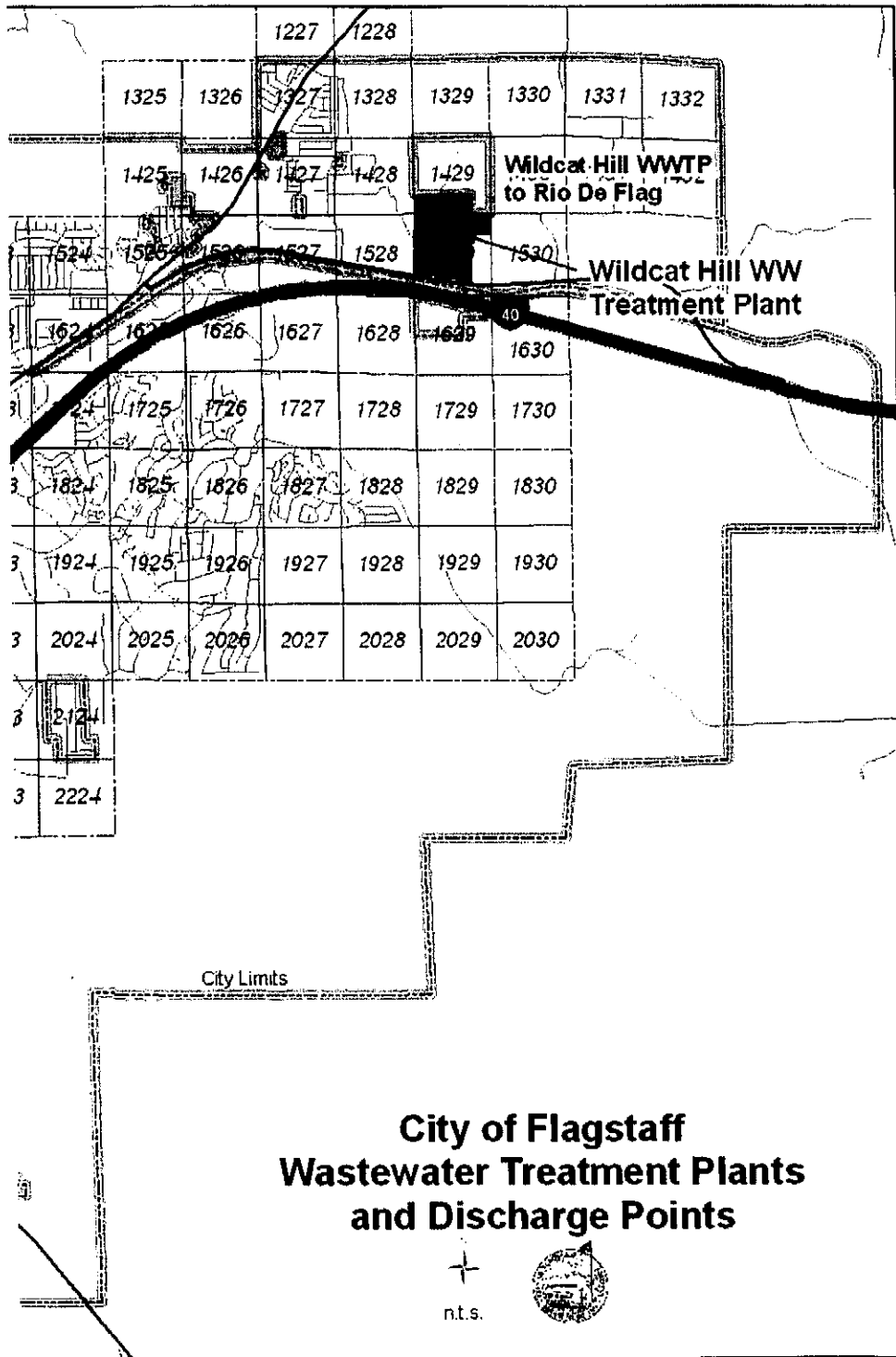




EXHIBIT D.

PUBLIC ACCESS AND WATCHABLE WILDLIFE  
OPEN SPACE PARK



**EXHIBIT E.**

**CITY QUARTERLY DISCHARGE REPORT FORM**



# SELF MONITORING REPORT FORM

## ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Facility Name: <u>FLAGSTAFF, CITY OF RIO DE FLAG WRP</u>	Latitude: <u>35 11 15.1501</u>	Facility ID: <u>5605</u>
Contact: <u>PELLATZ, RANDY</u>	Longitude: <u>111 37 57.2002</u>	LTF#: <u>37598</u> INV# _____
Address: <u>600 S. BABBITT DRIVE</u> <u>FLAGSTAFF, AZ 86001</u>	Section: <u>22</u>	Lab ID:: <u>N/A</u>
	Township: <u>21</u>	Lab Name: <u>N/A</u>
	Range: <u>7</u>	Date Prepared: <u>7/23//2009</u>
	Quarter: <u>SECOND QUARTER</u>	Reporting Period: <u>4/1/2009-6/30/2009</u>

Monitoring Point ID: 16585      Monitoring Name: RIO DE FLAG WWTP - DISCHARGE TO RIO DE FLAG

Sampling/Reporting Frequencies: Daily Monitoring/QUARTERLY

STORET: DFRDF    Permit Limit: AL: RSVD      DL: RSVD      AQL: N/A      MIN: 0.062      MAX: 1.776  
DAILY FLOW - RIO DE FLAG      Method: CONTINUOUS      UNITS: MGD

ANALYZED		RESULTS	ANALYZED		RESULTS	ANALYZED		RESULTS
1	4/1/2009	1.051	1	5/1/2009	0.952	1	6/1/2009	1.304
2	4/2/2009	0.975	2	5/2/2009	0.436	2	6/2/2009	1.465
3	4/3/2009	1.629	3	5/3/2009	0.329	3	6/3/2009	0.860
4	4/4/2009	1.776	4	5/4/2009	0.192	4	6/4/2009	0.690
5	4/5/2009	0.740	5	5/5/2009	0.158	5	6/5/2009	0.930
6	4/6/2009	1.762	6	5/6/2009	0.156	6	6/6/2009	0.892
7	4/7/2009	1.086	7	5/7/2009	0.292	7	6/7/2009	0.478
8	4/8/2009	1.342	8	5/8/2009	0.167	8	6/8/2009	0.100
9	4/9/2009	0.889	9	5/9/2009	0.167	9	6/9/2009	0.087
10	4/10/2009	1.269	10	5/10/2009	0.519	10	6/10/2009	0.332
11	4/11/2009	1.648	11	5/11/2009	0.139	11	6/11/2009	0.401
12	4/12/2009	1.663	12	5/12/2009	0.128	12	6/12/2009	0.420
13	4/13/2009	1.030	13	5/13/2009	0.133	13	6/13/2009	0.410
14	4/14/2009	0.877	14	5/14/2009	0.234	14	6/14/2009	0.419
15	4/15/2009	0.878	15	5/15/2009	0.138	15	6/15/2009	0.108
16	4/16/2009	1.372	16	5/16/2009	0.081	16	6/16/2009	0.091
17	4/17/2009	1.760	17	5/17/2009	0.105	17	6/17/2009	0.086
18	4/18/2009	1.387	18	5/18/2009	0.146	18	6/18/2009	0.122
19	4/19/2009	1.420	19	5/19/2009	0.135	19	6/19/2009	0.102
20	4/20/2009	0.644	20	5/20/2009	0.134	20	6/20/2009	0.133
21	4/21/2009	0.520	21	5/21/2009	0.155	21	6/21/2009	0.117
22	4/22/2009	0.607	22	5/22/2009	1.736	22	6/22/2009	0.092
23	4/23/2009	0.502	23	5/23/2009	1.770	23	6/23/2009	0.078
24	4/24/2009	0.732	24	5/24/2009	1.401	24	6/24/2009	0.078
25	4/25/2009	0.757	25	5/25/2009	1.503	25	6/25/2009	0.062
26	4/26/2009	0.363	26	5/26/2009	1.604	26	6/26/2009	0.768
27	4/27/2009	0.557	27	5/27/2009	1.403	27	6/27/2009	0.514
28	4/28/2009	0.557	28	5/28/2009	1.403	28	6/28/2009	0.514
29	4/29/2009	0.207	29	5/29/2009	1.393	29	6/29/2009	0.094
30	4/30/2009	0.445	30	5/30/2009	1.300	30	6/30/2009	0.098
31			31	5/31/2009	1.506	31		

I CERTIFY UNDER PENALTY OF LAW THAT I HAVE PERSONALLY EXAMINED AND AM FAMILIAR WITH THE INFORMATION SUBMITTED HEREIN AND BASED ON MY INQUIRY OF THOSE INDIVIDUALS IMMEDIATELY RESPONSIBLE FOR OBTAINING THE INFORMATION I BELIEVE THE SUBMITTED INFORMATION IS TRUE ACCURATE AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION INCLUDING THE POSSIBILITY OF FINES AND IMPRISONMENT.

SIGNATURE OF PRINCIPLE EXECUTIVE OFFICER OR AUTHORIZED AGENT..... DATE.....

# SELF MONITORING REPORT FORM

## ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Facility Name: FLAGSTAFF, CITY OF - WILDCAT HILL WWTP Latitude: 35 12 25.9999 Place ID: 1092  
 Contact: Lisa Adams Longitude: 111 34 32.9999 LTF#: 37603 Inv.#: \_\_\_\_\_  
 Address: \_\_\_\_\_ Section: 17 Lab ID: \_\_\_\_\_  
 \_\_\_\_\_ Range: 8 Date Prepared: 7/9/2009  
 \_\_\_\_\_ Quarter: b b c Reporting Period: 2nd Quarter 2009

Monitoring Point ID: 11599 Monitoring Name: FLAGSTAFF, CITY OF - WILDCAT HILL WWTP - DISCH RIO DE FLAG

Sampling/Reporting Frequencies: Daily Monitoring/QUARTERLY

STORET: FLOW3 Permit Limit: AL: \_\_\_\_\_ DL: \_\_\_\_\_ AQL: N/A MIN: 0.010 MAX: 3.719  
FLOW AZPDES Method: continuous meter UNITS: MGD

	ANALYZED	RESULTS		ANALYZED	RESULTS		ANALYZED	RESULTS
1	4/1/2009	1.743	1	5/1/2009	1.235	1	6/1/2009	1.628
2	4/2/2009	1.551	2	5/2/2009	1.446	2	6/2/2009	2.118
3	4/3/2009	2.469	3	5/3/2009	1.563	3	6/3/2009	1.975
4	4/4/2009	2.979	4	5/4/2009	1.309	4	6/4/2009	2.017
5	4/5/2009	2.899	5	5/5/2009	1.263	5	6/5/2009	1.397
6	4/6/2009	2.985	6	5/6/2009	3.106	6	6/6/2009	1.530
7	4/7/2009	2.531	7	5/7/2009	2.174	7	6/7/2009	2.185
8	4/8/2009	2.673	8	5/8/2009	0.598	8	6/8/2009	1.948
9	4/9/2009	2.599	9	5/9/2009	1.098	9	6/9/2009	1.299
10	4/10/2009	3.165	10	5/10/2009	0.886	10	6/10/2009	0.960
11	4/11/2009	3.565	11	5/11/2009	0.909	11	6/11/2009	0.703
12	4/12/2009	3.365	12	5/12/2009	0.096	12	6/12/2009	0.690
13	4/13/2009	3.011	13	5/13/2009	0.310	13	6/13/2009	0.675
14	4/14/2009	2.470	14	5/14/2009	0.522	14	6/14/2009	0.982
15	4/15/2009	2.799	15	5/15/2009	0.047	15	6/15/2009	0.837
16	4/16/2009	2.597	16	5/16/2009	0.131	16	6/16/2009	0.719
17	4/17/2009	2.554	17	5/17/2009	0.737	17	6/17/2009	1.249
18	4/18/2009	2.575	18	5/18/2009	0.383	18	6/18/2009	1.016
19	4/19/2009	2.781	19	5/19/2009	0.010	19	6/19/2009	1.272
20	4/20/2009	1.787	20	5/20/2009	0.809	20	6/20/2009	1.392
21	4/21/2009	1.715	21	5/21/2009	0.838	21	6/21/2009	1.380
22	4/22/2009	1.722	22	5/22/2009	3.540	22	6/22/2009	0.857
23	4/23/2009	1.721	23	5/23/2009	3.397	23	6/23/2009	1.059
24	4/24/2009	2.305	24	5/24/2009	3.031	24	6/24/2009	0.866
25	4/25/2009	1.389	25	5/25/2009	3.409	25	6/25/2009	0.876
26	4/26/2009	1.638	26	5/26/2009	2.346	26	6/26/2009	1.444
27	4/27/2009	1.293	27	5/27/2009	1.810	27	6/27/2009	1.077
28	4/28/2009	1.679	28	5/28/2009	1.791	28	6/28/2009	1.297
29	4/29/2009	1.489	29	5/29/2009	1.751	29	6/29/2009	1.210
30	4/30/2009	1.184	30	5/30/2009	3.719	30	6/30/2009	1.248
31			31	5/31/2009	2.542	31		

I CERTIFY UNDER PENALTY OF LAW THAT I HAVE PERSONALLY EXAMINED AND AM FAMILIAR WITH THE INFORMATION SUBMITTED HEREIN AND BASED ON MY INQUIRY OF THOSE INDIVIDUALS IMMEDIATELY RESPONSIBLE FOR OBTAINING THE INFORMATION I BELIEVE THE SUBMITTED INFORMATION IS TRUE ACCURATE AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION INCLUDING THE POSSIBILITY OF FINES AND IMPRISONMENT.

SIGNATURE OF PRINCIPLE EXECUTIVE OFFICER OR AUTHORIZED AGENT Lisa Adams DATE 7.27.09

EXHIBIT F.

CLASS A RECLAIMED WATER VALUATION  
LETTER





EXHIBIT G.

PERMIT AGREEMENT (BOW AND ARROW PARK)  
CITY OF FLAGSTAFF AND ARIZONA STATE GAME  
AND FISH DEPARTMENT AUTHORIZING USE OF  
LAND AS PARK



THE STATE OF ARIZONA  
**GAME AND FISH DEPARTMENT**

5000 W. CAREFREE HIGHWAY  
PHOENIX, AZ 85086-5000  
(602) 942-3000 • WWW.AZGFD.GOV

GOVERNOR  
JANET NAPOLITANO  
COMMISSIONER'S  
CHAIRMAN: WILLIAM H. MCLEAN, GOLD CANYON  
BOB HERNBRODE, TUCSON  
JENNIFER L. MARTIN, PHOENIX  
ROBERT R. WOODHOUSE, ROLL  
NORMAN W. FREEMAN, CHINO VALLEY  
DIRECTOR  
LARRY D. VOYLES  
DEPUTY DIRECTOR  
VACANT  
CHIEF OF STAFF  
GARY R. HOVATTER



August 26, 2008

Mr. Erik Solberg  
City of Flagstaff  
Asst. Director, Public Works  
211 West Aspen  
Flagstaff, Arizona 86001

Re: Bow and Arrow Permit Agreement

Dear Mr. Solberg:

Pursuant to Arizona Revised Statute (A.R.S.) § 17.241.B, please find enclosed for your files, a fully executed Permit Agreement (Agreement) between the Arizona Game and Fish Commission (Commission) and the City of Flagstaff. This Agreement commences on August 14, 2008 and remains effective through August 13, 2018. The Agreement re-authorizes the City of Flagstaff to use the Commission-owned 3-acre Bow and Arrow Park property, south of the Commission's Flagstaff Regional Office, for the purposes of a playground for children and bus stop.

The Agreement states that the lease fee will be \$3,790.00 per annum for rental of the leasehold premises with the first installment due and payable as of the 14<sup>th</sup> day of August, 2008. Each subsequent annual rental payment is due and payable on each anniversary of the commencement date. An invoice for the current year's rental lease period will follow this letter.

For further coordination regarding this Permit Agreement please contact me at (623) 236-7570 or email at [jeanaca@azgfd.gov](mailto:jeanaca@azgfd.gov).

Sincerely,

Jorge S. Canaca  
Land Resource Program Manager

:jsc

Enclosure: Bow and Arrow Permit Agreement (one original)

cc: Bob Broscheid, Assistant Director, Wildlife Management Division  
Ron Sieg, Regional Supervisor, Flagstaff  
Josh Avey, Chief, Habitat Branch  
Gene Sturla, Land and Water Program Manager, Habitat Branch  
Sarah Lantz, Urban Wildlife Planner, Region II, Flagstaff

When Recorded, Send Copy To: Land Resources Program Manager Arizona Game and Fish Commission 5000 West Carefree Highway Phoenix, Arizona 85086	Permit Agreement between State of Arizona, Arizona Game and Fish Commission And The City of Flagstaff
FOR: Flagstaff Regional Office - Bow and Arrow Park/Playground for Children and Bus Stop	

HAB-08-0604JSC1 (08/04/08)

3321N07E

**Permit Agreement**  
**between**  
**The State of Arizona,**  
**Arizona Game and Fish Commission**  
**and**  
**The City of Flagstaff**

**THIS PERMIT AGREEMENT** (Agreement) is entered into between the Arizona Game and Fish Commission, a state agency, hereafter "Commission," and the City of Flagstaff, an Arizona municipal corporation of the State of Arizona, hereinafter referred to as "City". The terms "Department" and "Director" shall mean the Arizona Game and Fish Department and its Director, acting as administrative agents for the Commission.

**WHEREAS** the City maintains a portion of Commission property at the Arizona Game and Fish Department's Flagstaff Regional Office, described in Exhibit "A" and illustrated in Exhibit "B" attached hereto, for the purposes of a playground for children and bus stop ("Subject Property");

**WHEREAS** it is in the best interest of the Commission and the City that the subject property continue to be used for the purposes as stated herein;

**WHEREAS** this Agreement will authorize the City to continue their occupancy of the subject property as described below for the continuous and sole use as a playground for children and bus stop; and

**WHEREAS**, the Commission may enter into this Agreement pursuant to Arizona Revised Statutes (A.R.S.) § 17-231(B)(7), and the City may enter into this Agreement in accordance with Article 1, Section 3, of the Flagstaff City Charter.

**NOW THEREFORE**, under the terms and conditions described herein, and in consideration of fees as determined through a current appraisal of market value, the Commission hereby grants a permit to the City for the use of the Subject Property.

**1. Terms and Conditions.**

A. Purpose: The City may use the Subject Property as a playground for children and bus stop only. As stated below, the City may construct temporary improvements, at City's expense, appropriate for these approved uses, provided it shall first obtain written approval from the Department. The City agrees to conduct all construction and maintenance activities in a manner that will minimize disturbance to all land values including, but not limited to vegetation,

drainage channels, and streambanks. Construction methods shall be designed to prevent degradation of soil conditions in areas where such degradation would result in detrimental erosion or subsidence. The City shall take such other soil and resource conservation and protection measures on the subject property as determined necessary by the Commission.

B. Compliance with Applicable Laws: The City agrees that in its use of the Subject Property, the City shall comply with all applicable laws, rules, regulations, and ordinances of every governmental body or agency whose authority extends to the premises or to any activities conducted upon the subject easement whether or not said laws, rules, regulations and ordinances are mentioned herein. The City further acknowledges and agrees that the City bears sole responsibility for determining which laws, rules, regulations, and ordinances apply to its activities with respect to the Subject Property.

C. Term of Agreement: The term of this Agreement will be for a period often (10) years commencing August 14, 2008 and terminating August 13, 2018

D. Amendment: This Agreement may be modified only by written amendment signed by all parties. Upon termination of the initial term of this Agreement, the Agreement may be renewed for additional periods often (10) years at the option of the Commission. Any such renewal is subject to any additional terms and conditions as may be required by the Commission.

E. Rental Rate: The City shall pay the Department the sum of THREE THOUSAND AND SEVEN HUNDRED AND NINETY DOLLARS (\$3,790.00) per annum for rental of the premises. Annual rental payment shall be due and payable on each anniversary of the effective date (August 14, 2008) of this Agreement. If an annual payment is tendered to the Department and, thereafter, the City terminates this Agreement, the Department will reimburse the City a prorated amount based upon the months the City leased the property and the per annum rental rate. If the City terminates this Agreement pursuant to Section 5, prior to tendering an annual payment, monthly payments shall be prorated from the agreed per annum rental rate and shall be due to the Department thirty (30) days after the City receives an invoice from the Department.

3. Indemnification. The City shall indemnify and hold harmless the State of Arizona, the Commission, the Department, and their Commissioners, employees, agents, and volunteers from any and all claims, demands, liabilities and costs of every kind, including without limitation attorney's fees and litigation expenses arising out of the use, maintenance and occupancy of the Subject Property by the City or arising out of the acts or conduct of any of the City's agents, employees, or representatives or members of the general public except that the City does not indemnify and hold harmless the State of Arizona and its employees and agents for claims, demands, liabilities and costs of any kind arising out of the acts or conduct of the State's agents, employees or representatives.

4. Notices. That any notices to or demand upon either party hereto by the other party pursuant to this Agreement shall be in writing and shall be delivered in person to the other party or forwarded by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

(a) If intended for Commission, to:  
Larry D. Voyles, Director  
Arizona Game and Fish Department  
5000 West Carefree Highway

(b) If intended for City, to:  
Erik Solberg, Asst. Director  
Public Works  
City of Flagstaff

Phoenix, Arizona 85086

211 West Aspen

Flagstaff, Arizona 86001

Or to such other address as either party may from time to time furnish in writing to the other party by notice hereunder. Any notice so mailed shall be deemed to have been given as of the date such notice is received as shown on the return receipt.

**5. Termination.** It is understood and agreed that if the Commission's interest or right to the Subject Property is involuntarily terminated prior to the expiration of this Agreement, then this Agreement is automatically terminated along with any and all of the Commission's liabilities or obligations hereunder provided, however, that a voluntary sale or disposition of the Subject Property to a third party by the Commission shall be subject to this Agreement and the provisions contained herein. In addition to the foregoing, the Commission or the City may terminate this agreement at any time upon 30 days written notice to the other party, at which time the parties will agree upon the termination date.

**6. National Environmental Policy Act.** The City agrees to comply with the National Environmental Policy Act of 1969 and obtain all necessary federal, state, or local approvals/permits for construction and management of the projects contemplated herein before any improvements or other lawful development begins.

**7. Cultural Resources.** Pursuant to A.R.S. § 41-844, the City, or its guests or invitees, shall report to the Department and to the Arizona State Museum any archaeological or paleontological site or object that is discovered on the Subject Property whose use by the City, or its guests or invitees, is authorized under this Agreement and immediately cease land-disturbing activities.

**8. Native Plants.** If the removal of plants protected under the Arizona Native Plant Law is necessary to enjoy the privilege of this Agreement, the City must previously acquire the written permission of the Arizona Commission of Agriculture and Horticulture to remove such plants.

**9. Enforcement of Conditions.** The failure of the Commission to require strict performance of the terms, covenants, agreements, and conditions of this Agreement shall not constitute a waiver or relinquishment of the right of the Commission to thereafter strictly enforce such terms, covenants, agreements, or conditions, which shall at all times continue in full force and effect.

**10. State Nondiscrimination Orders.** In the event that it applies, the parties agree to comply with the Governor's Executive Order No. 99-4; amending 75-5, entitled "Prohibition of discrimination in State Contracts - Non-Discrimination in Employment by Government Contractors and Subcontractors," the terms of which are incorporated herein by reference.

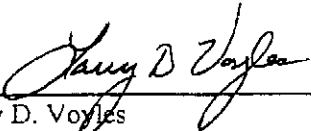
**11. Arbitration.** To the extent required pursuant to A.R.S. § 12-1518, and any successor statutes, the parties agree to use arbitration, after exhausting all applicable administrative remedies, to resolve any dispute arising out of this Agreement, with each party to bear its own attorneys' fees and costs.

**12. Cancellation Due to Conflict of Interest.** All parties are hereby put on notice that, in the event of an illegal conflict of interest, this Agreement is subject to cancellation pursuant to A.R.S. § 38-511, the terms of which are incorporated herein by reference.

**13. Clause Numbers and Headings.** Clause numbers and headings are for convenience only

14. **Authorization.** IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names as of the date first above written.

STATE OF ARIZONA  
ARIZONA GAME AND FISH COMMISSION

By:   
Larry D. Voyles  
Secretary to the Commission and Director  
Arizona Game and Fish Department

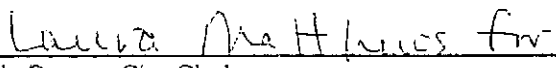
Date: 8/25/08

THE CITY OF FLAGSTAFF

By:   
Kevin Burke, City of Flagstaff City Manager

Date: 8/14/08

ATTEST:

By:   
Margie Brown, City Clerk

Date: 8/14/08

APPROVED AS TO FORM:

for By:   
Patricia J. Boomsma, City Attorney

Date: 8/13/08

EXHIBIT "A"

**Approximately three (3) acres located in the  $W\frac{1}{2}$  of the  $E\frac{1}{2}$  of the  $W\frac{1}{2}$  of the  $NW\frac{1}{4}$  in Section Thirty-Three (33), Township Twenty-One (21) North, Range Seven (7) East, more particularly described as follows:**

Lying East of and adjacent of the Lake Mary Road Right-of-Way and commencing from the pin in the center of Lake Mary Road where it intersects the State's eastern boundary, thence north along the boundary line a distance of 800 feet, thence due west a distance of 328 feet to the intersection of the center of Lake Mary Road, thence in southeasterly direction parallel to the center of the road to the point of beginning, all as illustrated on Exhibit B attached hereto and by reference incorporated herein.

EXHIBIT "B"

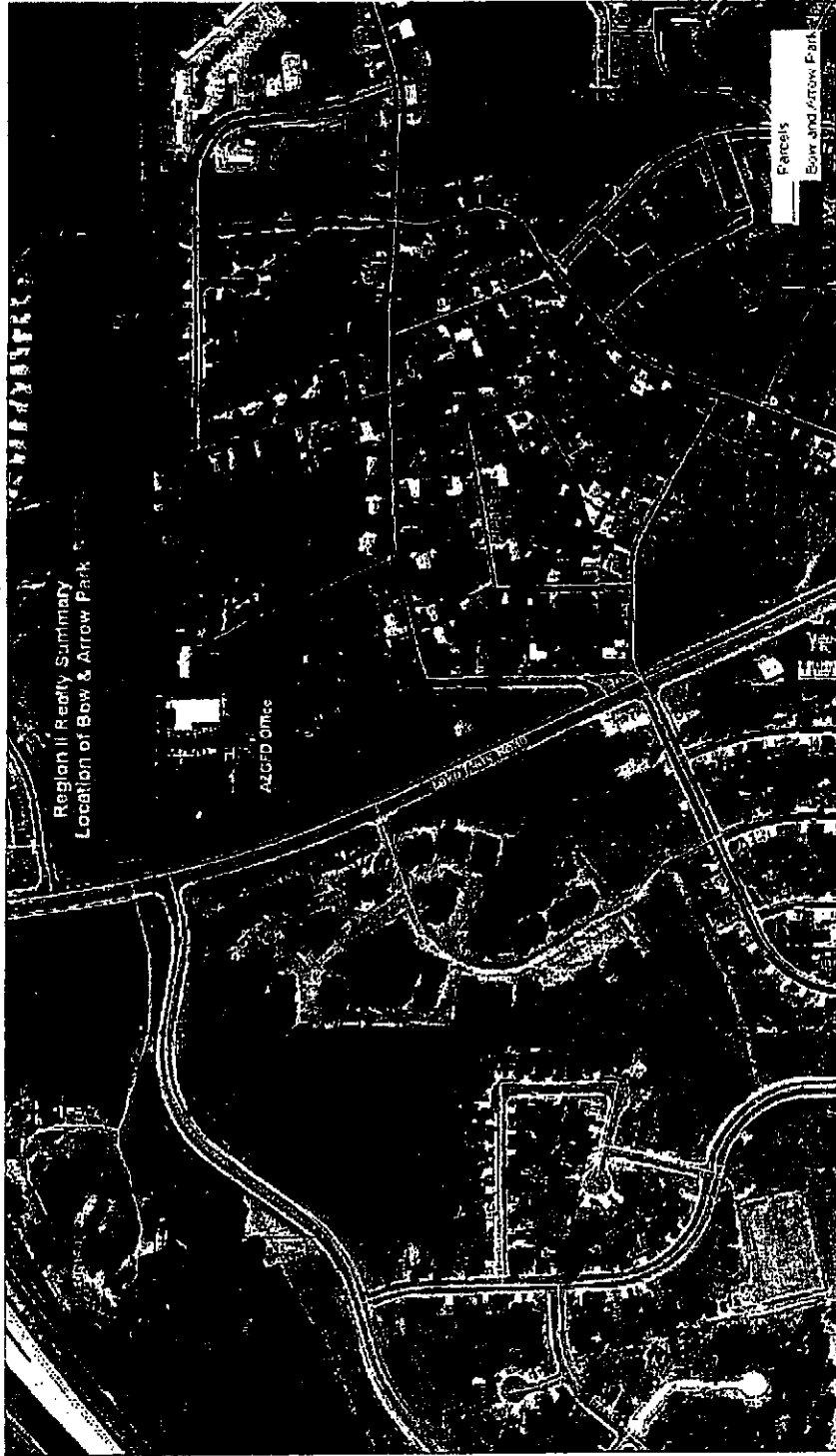


EXHIBIT H.

RECLAIMED WATER USE PERMIT



Janice K. Brewer  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street Phoenix, Arizona 85007  
(602) 771-2300 www.azdeq.gov



Benjamin H. Grumbles  
Director

July 30, 2009

City of Flagstaff  
Attn: Kevin Burke, City Manager  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

**Re: Flagstaff, City of  
Type 3 Agent Reclaimed Water General Permit - Issued on July 30, 2009  
ADEQ Inventory No. R106143, LTF No. 50538**

Dear Mr. Burke:

The Arizona Department of Environmental Quality has processed your application for a Type 3 Agent Reclaimed Water General Permit for allowable beneficial uses for Class A+ reclaimed water as supplied by the City of Flagstaff Rio de Flag and Wildcat Hill wastewater treatment facilities. Enclosed please find the letter of Verification of Conformance, which was signed on July 30, 2009. This authorization to operate under the reclaimed water rules will expire on July 29, 2014. If you wish to continue to use reclaimed water under this authorization beyond this date, you must submit a Notice of Intent at least 90 days prior to expiration (by April 29, 2014).

If you have any questions regarding this general permit authorization, please feel free to contact me at (602) 771-4464.

Sincerely,

Marcy Mullins, Reclaimed Water Program Coordinator  
APP and Reuse Unit, ADEQ

- Enclosures: 1. Letter of Verification of Conformance  
2. Reclaimed Water Rules (A.A.C. R18-9 Articles 6 and 7)

cc: Lynne Dekarske, Environmental Program Specialist - Groundwater Section, ADEQ  
Robert E. Olberding, Manager - Field Services, Southern Regional Office, ADEQ  
John Davison, Program Assistant - Utilities Department, City of Flagstaff  
Larry Lemke, Plants Manager - Utilities Department, City of Flagstaff

WWR09:367

Northern Regional Office  
1801 West Route 66, Suite 117, Flagstaff, AZ 86001  
(928) 779-0313

Southern Regional Office  
400 West Congress Street, Suite 433, Tucson, AZ 85701  
(520) 628-6733



ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

VERIFICATION OF GENERAL PERMIT CONFORMANCE AND AUTHORIZATION TO OPERATE UNDER A TYPE 3 AGENT

RECLAIMED WATER GENERAL PERMIT

ADEQ Inventory No. R106143, LTF No. 50538

Permittee: City of Flagstaff

Attention: Kevin Burke, City Manager

Address: 211 West Aspen Avenue, Flagstaff, Arizona 86001

Reclaimed Water Sources:

- 1. City of Flagstaff Rio de Flag Water Reclamation Plant (Class A+), APP No. 102421
Address: 600 S. Babbitt Way, Flagstaff, Arizona 86001 (Coconino County)
2. City of Flagstaff Wildcat Hill Wastewater Treatment Plant (Class A+), APP No. 100760
Address: 2800 N. El Paso Flagstaff Road, Flagstaff, Arizona 86004 (Coconino County)

Determination based on:

Notice of Intent (NOI) to Operate and attachments received by ADEQ on July 29, 2009

Verification of Conformance. Your NOI and supplemental documentation satisfy the requirements in Arizona Administrative Code (A.A.C.) R18-9 Article 7. This Verification of General Permit Conformance is being recorded as number R106143. Permittee must comply with all operation requirements specified in A.A.C. R18-9-718. The renewal date for this authorization is FIVE YEARS from the date of activation, or July 29, 2014. If you wish to renew this authorization prior to the expiration date, an NOI must be submitted at least 90 days before this Verification of General Permit Conformance expires (see A.A.C. R18-9-709).

Permittee is responsible for the direct reuse of Class A+ reclaimed water by end-users as included in the Notice of Intent and supplemental documentation. Permittee shall maintain a contractual agreement with each end-user stipulating any end-user responsibilities for the use of reclaimed water.

Pursuant to A.A.C. R18-9-718(E), Permittee shall record and annually report the following information to the ADEQ Water Quality Compliance Section (1110 W. Washington Street, Mail Code 5415B-1, Phoenix, Arizona, 85007), on or before each anniversary date of this verification approval:

- 1. The total volume of reclaimed water delivered by the Permittee for beneficial use;
2. Any change in the information submitted under A.A.C. R18-9-718(C).

This authorization may be revoked and an individual permit required in the event the permittee fails to comply with the terms of the general permit described in the Arizona Administrative Code or if the reuse activities cause or contribute to, or have the potential to cause or contribute to the violation of an Aquifer Water Quality Standard.

Authorizing Signature

Michele Robertson, Manager
Groundwater Section
Water Quality Division

7-30-09
Date

WWR09:366