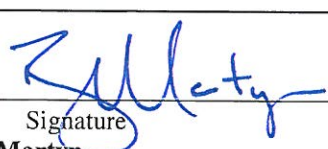

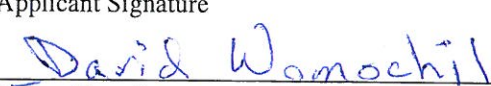


**Arizona State Parks**  
 1300 W. Washington, Phoenix Arizona 85007  
**GRANT PARTICIPANT AGREEMENT**

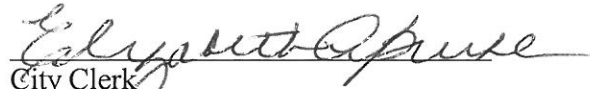
This Agreement for the Arizona State Parks Board (Board) and the City of Flagstaff and becomes effective on the date of signature by the authorized representative of Arizona State Parks.

PROJECT TITLE: <b>City of Flagstaff Picture Canyon</b>		PROJECT NUMBER:  <b>231202</b>			
THIRD PARTY PARTICIPANT'S NAME:		FY OF REVENUE: <b>2012</b>			
PROJECT PERIOD: <b>Eighteen (18) months from the date of the last authorized signature</b>					
GRANT PROGRAM: <b>Growing Smarter Land acquisition</b>	GRANT AMOUNT: Up to: <b>\$2,389,000.00</b> <small>(Amount includes 10% eligible associated costs)</small>	% <b>50</b>	PARTICIPANT MATCH: <b>\$2,389,000.00</b>	% <b>50</b>	TOTAL PROJECT COST: <b>\$4,778,000.00</b>
APPROVED SCOPE OF WORK AND SPECIAL CONDITIONS: <b>Acquisition of 477.80 Acres State Trust Land</b> Attachment A					
CONSERVATION SPECIAL CONDITIONS: Preservation Agreement <input checked="" type="checkbox"/> <b>Conservation Easement Deed</b> Attachment C Special Conditions/3 <sup>rd</sup> Party					
AUTHORITIES TO ENTER INTO THIS AGREEMENT: (statute, resolution, minutes, etc.) <b>STATUTE: A.R.S. § 41-511.23</b> <b>RESOLUTION: 2012-24</b>					
AWARDING OFFICIAL ON BEHALF OF THE ARIZONA STATE PARKS BOARD: _____ <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;">             Signature  <b>Bryan Martyn</b>            Executive Director         </div> <div style="text-align: center;">           _____            Date  <b>11/8/2012</b> </div> </div>					
ACCEPTANCE OF ALL TERMS OF THIS AGREEMENT AND ITS ATTACHMENTS IS ACKNOWLEDGED BY THE PARTICIPANT'S SIGNATURE BELOW.			PARTICIPANT ATTORNEY APPROVAL AS TO FORM AND AS BEING WITHIN THE AUTHORITY OF THE PARTICIPANT.		
 Participant's Signature Kevin Burke, City Manager <b>KEVIN BURKE</b> <b>11-2-12</b> Name (Typed)                      Date			 Applicant Signature <b>David Womochil</b> Name (Typed)                      _____ _____ Attorney <b>David Womochil for</b> Title                      Date <b>11/2/12</b>		

Attachment B – General Provisions and Special Conditions are attached and are part of this Participant

**Grant Agency: Arizona State Parks**  
**Project Title: City of Flagstaff Picture Canyon**  
**Grant Number: 231202**

Attest:

  
City Clerk

**Arizona State Parks  
GRANT PARTICIPANT AGREEMENT**

**Attachment A  
Approved Project Scope and Special Conditions**

**PARTICIPANT:** City of Flagstaff

**PROJECT TITLE:** Picture Canyon

**PROJECT NUMBER:** 231202

**APPROVED PROJECT SCOPE:**

**Acquisition of 477.80 acres Fee Title Purchase of Picture Canyon**

In addition to the Participant Agreement General Conditions contained in Attachment B, the following special conditions apply to this grant:

Administration of this grant is subject to all conditions regarding the use of the Property for open space conservation, as contained in the Deed of Conservation Easement by Arizona State Parks. These conditions run with the title to the land to ensure the conservation of the land as open space in perpetuity.

The administration of this grant participant agreement is additionally subject to the contents of the "Administrative Guidelines for Awarded Grants" published by Arizona State Parks.

Approved project work shall start no later than the specified project start-up date. Land acquisition, equipment purchase, and studies/reports/assessments must begin within 6 months of the fully executed participant agreement. Participant must provide Arizona State Parks staff access to the acquired lands, as requested and must complete annual self-certification documents in the format specified by Arizona State Parks.

Arizona State Parks and the State of Arizona, its employees, attorneys, advisory board members and contractors shall be indemnified and held harmless from its vicarious liability as a result of work performed in execution of this agreement.

The participant is in default if it fails in the performance of any portion of this agreement or any conditions of the Deed of Conservation Easement conveyed by Arizona State Parks. Notice of and a description of the nature of the default will be mailed to the participant. Failure to commence an Arizona State Parks approved cure for the defaulter to seek amendment to the approved cure, within 60 days of participant's receipt of the written notice, shall be considered a default.

# Attachment B

## PARTICIPANT AGREEMENT GENERAL PROVISIONS FOR GROWING SMARTER STATE TRUST LAND ACQUISITION PROGRAM PROJECTS

### PART I - DEFINITIONS

For purposes of this agreement,

- A. CAB means the Conservation Acquisition Board.
- B. BOARD means the Arizona State Parks BOARD, which is the governing body of Arizona State Parks.
- C. Eligible Costs mean direct costs chargeable to the project grant program such as 1) the cost of acquiring state trust land; 2) other items of expense associated with acquiring state trust land.
- D. Facilities mean capital improvements.
- E. Fund means a grant from the Land Conservation Fund.
- F. Guidelines mean program directives adopted by the BOARD.
- G. Ineligible Costs are those costs incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the cost objectives of the grant.
- H. Match means a specified percentage of the total eligible and direct project cost paid by the PARTICIPANT.
- I. PARTICIPANT means an eligible applicant that has been awarded a grant.
- J. Project means an activity, or a series of related activities, which are described in the specific project scope of work and which result in a specific product(s).
- K. Project Period means the period of time during which all approved work and related expenditures associated with an approved project are to be completed by the PARTICIPANT.
- L. Repayment means returning grant money to the Fund in the event the PARTICIPANT violates the terms of this agreement, the conservation easement, and/or the patent restriction during the Term of Public Use.
- M. Staff means employees of Arizona State Parks.
- N. Sub-contract means a direct contract between the PARTICIPANT and another contractor party whereby labor is supplied or work is performed in furtherance of the PARTICIPANT'S responsibilities under this agreement.
- O. Term of Public Use means meeting the terms of the conservation easement and/or the patent restriction in perpetuity. Pursuant to A.R.S. §41-522.23.G.1(a), nonprofit organizations must also provide public access to acquired parcels in perpetuity. The Term of Public Use shall begin on the date of completion identified in the Completion Certification Letter.

- P. Third Party PARTICIPANT means an entity sponsored by an eligible project participant. More specifically, it includes governmental, private and non-profit units through the terms of a lease, permit, cooperative agreement, or an intergovernmental agreement (ARS § 11-952).

## PART II - PERFORMANCE

### A. ADMINISTRATION

1. **Conditions** - This agreement is subject to the availability of grant funds and appropriate approvals, and shall be subject to the Constitution of the State of Arizona, the Arizona Revised Statutes, other acts of the Arizona Legislature, executive orders of the Governor, and policies of the BOARD.
2. **Incorporation of Application** - The PARTICIPANT'S approved application for grant funds is incorporated by reference as part of this agreement; however, the terms of this agreement shall take precedence in the event of conflict or ambiguity.
3. **Use of Grant Funds** - Awarded grant funds shall be used solely for eligible purposes of the funding program as defined by statute and as approved by the BOARD.
4. **Transfer of Grant Funds** - Awarded grant funds shall be transferred to the PARTICIPANT through reimbursement of approved expenditures for matching grants and through advances, on an as-needed basis.
5. **Grant Accountability** - Grant funds shall be managed separately within the PARTICIPANT'S accounting system, which identifies the name and number of the project. The funds shall be expended only as authorized under the terms of this agreement.
6. **Accomplishment of Project** - The project shall be accomplished according to the terms of this agreement and applicable State laws.
7. **Amendments** - This agreement may be amended in writing by the parties of the agreement upon written request of the PARTICIPANT and good cause shown, to adjust the project period, project costs, specific project scope items, or other specified adjustments to the agreement.
8. **Use of Project** - Project accomplishments shall be open or available to the public as specified in this agreement, and pursuant to A.R.S. §41-511.23.G.1(a).
9. **Special Conditions** - Special conditions to this agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties to this agreement. Breach of any condition shall be enforceable by specific performance or shall justify the BOARD to seek recovery of all funds granted.

### B. RESPONSIBILITY FOR THIRD PARTY AGREEMENTS

The PARTICIPANT sponsoring a third party to this agreement shall be responsible for compliance with provisions of this agreement in the event of third party default for the remainder of the term, or shall reimburse the Fund.

#### C. RELATIONSHIP OF PROJECT COSTS TO THE PROJECT PERIOD

Except for pre-agreement costs approved by the BOARD, only those costs associated with approved project work incurred during the project period shall be eligible for reimbursement according to the terms of this agreement. The PARTICIPANT must submit all requests for reimbursement within 30 days after the patent transfer in order to be considered for payment.

#### D. PROCUREMENT AND DEVELOPMENT

If the PARTICIPANT is a governmental entity, procurement transactions, including those involving professional services, materials, and construction, shall be accomplished according to the PARTICIPANT'S procurement standards. State procurement standards shall apply to all non-governmental entities to the fullest extent possible.

#### E. SUB-CONTRACTS

1. Sub-contracts awarded to accomplish approved project work shall incorporate, by reference, in each sub-contract the provisions of this agreement. The PARTICIPANT shall bear full responsibility for acceptable performance under each sub-contract.
2. The PARTICIPANT shall pay any claim of a sub-contractor or other employed individual performing work on this project for services pursuant to this agreement when due. If the PARTICIPANT is subject to A.R.S §34-221, payment is due when required pursuant to A.R.S. §34-221.
3. Unless the PARTICIPANT is a State agency, the PARTICIPANT shall indemnify and hold the State of Arizona and the BOARD harmless from any claim for services pursuant to this agreement, or damages relating thereto, of a sub-contractor or other employed individual performing work on this project.
4. Any sub-contract for employment by the PARTICIPANT shall be in writing and shall contain a provision whereby a person so employed or with whom a sub-contract has been entered, acknowledges that the State of Arizona and the BOARD shall not be liable for any costs, claims, damages, reimbursement, or payment of any kind relating to such sub-contract.

#### F. PROJECT REPORTING, REVIEWS, AND ON-SITE INSPECTIONS

The PARTICIPANT shall certify compliance with the Participant Agreement every year in perpetuity, on a form to be provided by the BOARD. In addition, on-site inspections shall be conducted periodically at the discretion of the BOARD. The following points shall be taken into consideration during the inspection of properties that have been acquired or developed with grant assistance: retention and use, appearance, maintenance, management, availability, environment, signing, and interim use.

G. PROJECT INCOME AND EARNED INTEREST

Income and/or interest generated from funds transferred to the PARTICIPANT during the project period shall be used to further the purposes of the approved project. Funds advanced, but not spent to complete the project, shall be returned to the BOARD at the completion of the project. Pursuant to Part II, Paragraph I of this agreement, the PARTICIPANT shall own all rights in the materials produced with project funds.

H. PRODUCT OR PUBLISHABLE MATTER OWNERSHIP

The PARTICIPANT shall have ownership of products or publishable matter produced with grant assistance with the understanding that the BOARD reserves nonexclusive license to use and reproduce, without payment, such materials. This paragraph is not applicable to architectural or engineering plans produced with grant assistance.

I. FUND SOURCE RECOGNITION

The PARTICIPANT agrees to permanently and publicly acknowledge grant program(s) that assisted project accomplishments (including, but not limited to, final documents, audio-visual recordings, photographs, plans, drawings, publications, advertisements and project plaques). At a minimum, this acknowledgment shall include the following: "This project was financed in part (or in full) by a grant from the Land Conservation Fund administered by the Arizona State Parks Board."

J. PROJECT COST VERIFICATION

The PARTICIPANT agrees to submit project expenditure documents to Staff for verification or audit purposes upon request.

K. TRANSFER OF CONTRACTUAL RESPONSIBILITY

The PARTICIPANT may transfer contracted responsibilities under the terms of this agreement to another eligible participant provided that the BOARD prior to the transfer has granted approval.

**PART III - COMPLIANCE**

A. ANTI-TRUST

Vendor and purchaser recognize that, in actual economic practice, overcharges from anti-trust violations are borne by purchaser. Therefore, the PARTICIPANT agrees to assign to BOARD any and all claims for such overcharges if requested by the BOARD.

B. ARBITRATION

To the extent required pursuant to A.R.S. § 12-1518 and any successor statute, the parties agree to use arbitration, after exhausting all applicable administrative remedies, to resolve disputes arising out of this Agreement.

C. INDEMNIFICATIONS AND CLAIMS AGAINST THE STATE

Unless the PARTICIPANT is a State or a federal agency, the PARTICIPANT shall indemnify, save and hold harmless the BOARD, the CAB, and the State of Arizona, its agents, departments, officers and employees from all claims, losses, damages, liabilities, expenses, costs, and charges incident to or resulting in any way from any injuries or damage to any person or any damage to any property caused by or resulting from the issuance of or the performance of services rendered as a part of this Agreement, except those claims, losses, damages, liabilities, expenses, costs, and charges arising from the sole negligence of the BOARD, the CAB, or the State of Arizona, its agents, departments, officers, or employees.

D. NON-DISCRIMINATION – EMPLOYMENT

The PARTICIPANT agrees to comply with the provisions of Executive Order Number 2009-09, issued by the Governor of the State of Arizona relating to nondiscrimination in employment, which by reference is incorporated herein and becomes a part of this Agreement.

E. ARIZONANS WITH DISABILITIES ACT OF 1992 AND AMERICANS WITH DISABILITIES ACT

The PARTICIPANT shall comply with all applicable provisions of the Arizonans with Disabilities Act of 1992, A.R.S. §41-1492, et. seq. and the Americans with Disabilities Act, (Public Law 101-336, 42 U.S.C. 12101-12213 and 47 U.S.C. §225 and 611), and applicable state rules and federal regulations under the Acts (28 CFR Parts 35 and 36).

F. RECORDS RETENTION AND AUDITS

1. Complete financial records and all other documents pertinent to this Agreement shall be retained by the PARTICIPANT and made available to the Staff, if requested, for review and/or audit purposes for a period of five (5) years after project closure.
2. The PARTICIPANT may substitute microfilm copies in place of original records, but only after project costs have been verified.

G. STATE CONTRACT CANCELLATION

1. The State or its political subdivisions or any department or agency of either may cancel this contract, without penalty or further obligation pursuant to A.R.S. §38-511.
2. Every payment obligation of the BOARD under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated or appropriated for the continuance of this Agreement, the BOARD may terminate this Agreement at the end of the period for which the funds are available. No liability shall accrue to the BOARD or the State of Arizona in the event this provision is exercised, and the BOARD shall not be obligated or liable for any future payments or for any damages resulting as a result of termination under this paragraph.

## H. REMEDIES

1. The BOARD may temporarily suspend grant assistance under the project pending required corrective action by the PARTICIPANT or pending a decision to terminate the grant by the BOARD.
2. The PARTICIPANT may unilaterally terminate the Participant Agreement at any time before the first payment on the Project. After the initial payment, the Participant Agreement may be terminated, modified, or amended by the PARTICIPANT only by written mutual agreement of the parties.
3. The BOARD may terminate the Participant Agreement in whole, or in part, at any time before the date of completion, whenever it is determined that the PARTICIPANT has failed to comply with the terms or conditions of the grant. The BOARD will promptly notify the PARTICIPANT in writing of the determination and the reasons for the termination, including the effective date. All payments made to the PARTICIPANT shall be recoverable by the BOARD under a Participant Agreement terminated for cause.
4. The BOARD or PARTICIPANT may terminate the Participant Agreement in whole, or in part, at any time before the date of completion, when both parties agree that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The PARTICIPANT shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The BOARD may allow full credit to the PARTICIPANT for the grant share of obligations properly incurred before the effective termination date and which cannot be canceled.
5. Termination either for cause or for convenience requires that all funds provided by the BOARD shall be returned to the Board.
6. The BOARD may require specific performance of the terms of this agreement or take legal steps necessary to recover the funds granted if the PARTICIPANT fails to comply with the terms of the grant or breaches any condition or special condition of the Participant Agreement.
7. The remedies expressed in this Agreement are not intended to limit the rights of the BOARD. This Agreement shall not in any way abridge, defer, or limit the BOARD'S right to any right or remedy under law or equity that might otherwise be available to the BOARD.

## I. CULTURAL RESOURCES

The PARTICIPANT agrees to meet the requirements of the State Historic Preservation Act (ARS §41-861 to 41-864) before project initiation.

Acceptance of all terms and conditions of this agreement and its attachments is acknowledged by the PARTICIPANT'S signature on the cover sheet of this agreement.

## Attachment C

### DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 8<sup>th</sup> day of November, 2012 by **The City of Flagstaff**, having an address at **211 West Aspen Avenue, Flagstaff, Arizona 86002** (“Grantor”), in favor of Arizona State Parks Board, having an address at 1300 W. Washington, Phoenix, Arizona, 85007 (“Grantee”).

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Coconino County, Arizona, more particularly described in Exhibit A attached hereto and incorporated by this reference (the “Property”); and

WHEREAS, the Property possesses ecological values (collectively, “conservation values”) of great importance to Grantors and the people of the State of Arizona; and

WHEREAS, in particular, Picture Canyon provides a scenic gateway into Flagstaff from I-40 and historic Route 66. Sheep Hill is located to the west and Turkey Hill is located to the east of the project area. The large village site of Elden Pueblo is roughly ½ mile to the northwest. The parcel contains the Rio de Flag floodway, one of the natural landmarks of the community, and is vital to the Rio de Flag greenbelt. The Rio channel, which runs through Picture Canyon, contains steep topography, a rare waterfall, pit houses, caves and petroglyph panels. The parcel reflects many of the qualities of Flagstaff’s unique scenic beauty – its high desert ponderosa pine forest, piñon and juniper vegetation, and meadows; and

WHEREAS, the specific conservation values of the Property are further documented in an inventory of relevant features of the Property, submitted by Grantor as application for matching funds from the Land Conservation Fund through the Growing Smarter Trust Land Acquisition Grant Program and incorporated by this reference (“Baseline Documentation”), which consists of reports, maps, photographs, and other documentation that the parties provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantor intends that the conservation values of the Property be preserved and maintained by permitting only those land uses on the Property that do not significantly impair or interfere with them, including, without limitation, those land uses relating to existing at the time of the grant; and

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, Grantee is an Arizona state agency whose primary purpose is to manage and conserve Arizona's natural, cultural and recreational resources for the benefit of the people;

NOW, THEREFORE, in consideration of a Grant Award in the amount not to exceed \$2,389,000 and in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of Arizona and in particular A.R.S. § 33-271 through § A.R.S. 33-276 and A.R.S. §41-511.23, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. **Purpose.** It is the purpose of this easement to assure that the Property will be retained forever in predominantly the condition reflected in the Baseline Documentation referenced in this document and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities, including, without limitation, those involving passive recreational uses compatible with the maintenance of the Property's Conservation Values, such as hiking and horseback riding, educational gatherings, periodic planting of native plant species, release of rehabilitated or displaced wildlife and other activities, as are not inconsistent with the purpose of this Easement. This Easement is intended to assure that the goals of the Growing Smarter Act, as amended, to conserve open spaces in or near urban areas and other areas experiencing high growth pressures, will be met. This Easement seeks to conserve open space, defined as land that is generally free of uses that would jeopardize the conservation values of the land or development that would obstruct the scenic beauty of the land. Conserved land remains open space if the stewards of the parcel maintain protection of both the natural and cultural assets for the long-term benefit of the land and the public and the unique resources that the area contains, such as scenic beauty, protected plants, wildlife, archaeology, passive recreation values and the absence of extensive development.
2. **Rights of Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this easement:
  - (a) To preserve and protect the conservation values of the Property;
  - (b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement in accordance with paragraph 8; provided that, except in cases

where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor; unless entry is open to the public, in which case notice to enter upon Property is assumed if it complies with the Grantor's enforced rules of public access, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and

- (c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in paragraph 8.
3. **Restricted Uses.** Regardless, no more than 10% of the acquired land, up to a limit of 20 acres total, may be eligible for alteration or development, and all such proposed work must be approved by the Grantee in advance, subject to Paragraph 6 below. No changes may be made to the parcel that would seriously or negatively affect its conservation and open space values. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are allowed only upon prior approval of the Grantee:
- (a) **Construction of Buildings and Other Structures.** The construction or reconstruction of any building or other structure or improvement, except those existing on the date of this Easement, is prohibited, except those alterations which are approved in advance by the Grantee and listed in sub-paragraphs (b) and (c).
  - (b) **Trail and Parking Lot Construction.** No trail, road, parking lot, ramada, staging area or other man made structure shall be constructed without the advance written permission of Grantee. Such permission shall not be unreasonably withheld unless Grantee determines that the proposed location of any trail, road, parking lot, ramada or staging area will substantially diminish or impair the Conservation Values of the Property or is otherwise inconsistent with this Deed.
  - (c) **Signage or Billboards.** No signs, billboards, awnings or advertisements shall be displayed or placed on the Property, except for appropriate and customary signs for interpretive and recreational purposes, such as "no trespassing" signs and trail markers, and then only with advance written permission from Grantee. Under no circumstances shall any sign or marker be erected that materially adversely affects the Conservation Values of the Property.
  - (d) **Temporary Fundraising Activity.** Grantor may request the right to perform periodic and temporary fundraising activities on the Property if

the revenues earned from those activities will be used for stewardship of the Property. Such fundraising activities shall be allowed only upon written approval of Grantee if Grantee determines that the proposed activity will not substantially diminish or impair the Conservation Values of the Property or is otherwise inconsistent with this Deed.

Where Grantee's approval is required, as set forth above, Grantee shall grant or withhold its approval in writing within a reasonable period of time. Grantor's written request shall include a description of the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with purpose of this Easement. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. If Grantee does not respond to the request within 60 days, the request shall be deemed denied. In the event of approval, any deviation from the nature, scope, design, location, timetable or any other material aspect of the proposed activity requires that Grantor submit an additional request for approval.

4. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
  - (a) **Subdivision.** Any division or subdivision of title to the Property, whether by physical or legal process, is prohibited.
  - (b) **Commercial or Industrial Activity.** No commercial or industrial uses shall be allowed on the Property.
  - (c) **Mining.** The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance is prohibited.
  - (d) **Water Rights.** Grantor shall retain and reserve the right to use water rights sufficient to maintain and improve the Conservation Values of the Property, and shall not transfer, encumber, lease, sell, or otherwise separate water rights necessary and sufficient to maintain and improve the Conservation Values of the Property from title to the Property itself.
  - (e) **Trash and Dumping.** The dumping or uncontained accumulation of any kind of trash or refuse on the Property is prohibited.
5. **Reserved Rights.** Grantors reserve to themselves, and to their personal representatives, heirs, successors, assigns, all rights accruing from their ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of

the foregoing, and subject to the terms of paragraph 3, the following rights are expressly reserved:

- (a) To engage in and permit others to engage in recreational uses of the Property, including, without limitation, hiking, horseback riding, and other forms of passive recreation that require no surface alteration or other development of the Property.
- (b) To engage in and permit others to engage in educational and scientific study activities, without limitation, provided that no unauthorized alteration of the Property or of objects or sites addressed in paragraph 7 will occur as a result of these activities.
- (c) To remove invasive plant species and to re-vegetate portions of the Property with indigenous plants if needed after flood, fire, or other disturbance.

Grantor is required to notify Grantee prior to undertaking or permitting new activities on the Property, if not specifically listed above, in order to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are not inconsistent with the purpose of the Easement. Grantor shall provide notice to Grantee in writing not less than 60 days prior to the date Grantor intends to undertake or permit the new activity in question.

## **6. Notice of Intention to Undertake Certain Permitted Actions.**

6.1 Where Grantee's approval is required, as set forth in paragraphs 3(a) through 3(d), Grantee shall grant or withhold its approval in writing within 60 days of receipt of Grantor's written request therefore. The written request shall include a description of the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with purpose of this Easement. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. If Grantee does not respond to the request within the 60-day time frame, the request shall be deemed denied. In the event of approval, any deviation from the nature, scope, design, location, timetable or any other material aspect of the proposed activity requires that Grantor submit an additional request for approval.

6.2 Grantor is required to notify Grantee prior to undertaking permitted activities consistent with the Easement, other than those activities governed by paragraphs 3(a) through 3(d) and 6.1 to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are not inconsistent with the purpose of the Easement. Grantor shall provide notice to Grantee in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question.

## 7. **Historic Properties and Preservation of Resources.**

**7.1 Definition.** Historic Properties are defined as sites, buildings, structures and objects significant in this state's history, architecture, archaeology, engineering and culture which meet eligibility criteria which the Arizona Parks Board establishes for listing on the Arizona Register of Historic Places or which are listed on the National Register of Historic Places.

**7.2 General Preservation.** Grantor agrees to consider the use of and impact upon historic properties located on the Property and to undertake any reasonable preservation that is necessary to carry out the terms of this Easement. In addition, the Grantor agrees to avoid any demolition, substantial alteration or significant deterioration of historic properties and objects on the Property.

**7.3 Land Uses and Historic Preservation.** Grantor agrees that only those uses that are compatible with preservation of the cultural resources located on the Property shall be allowed on the Property and ensure that the pre-historical, historical, architectural or culturally significant values will be preserved or enhanced.

**7.4 Unintentional Disturbance.** The Grantor agrees to monitor the Property for the unintentional disturbance of human remains or funerary objects and historic properties on the Property and shall report any such disturbance to the Director of the Arizona State Museum, the State Historic Preservation Officer and the Grantee. The Grantor agrees to exercise any and all measures recommended by either the Director of the Arizona State Museum, or other permitting authority as established by state law, or the Grantee, to see that on further disturbance of the remains or objects occurs.

**7.5 Prohibition on Excavation.** The Grantor agrees that it will not disturb or excavate or grant any other person permission to disturb or excavate in or upon any historic property, or any historic or prehistoric ruin, burial ground, archaeological or vertebrate pale ontological specimen. For the purpose of this provision, archaeological specimen means any item resulting from past human life or activities which is at least 50 years old including petroglyphs, pictographs, paintings, pottery, tools, ornaments, jewelry, textiles, ceremonial objects, weapons, armaments, vessels, vehicles and human skeletal remains. Archaeological specimen does not include arrowheads, coins or bottles. Notwithstanding the applicability of these prohibitions, the Grantee, in consultation with the State Historic Preservation Officer, may consider and allow for the excavation in or upon a historic property, provided that the Conservation Values of the Property are not adversely affected. In addition, any excavation of disturbance that is allowed by the Grantee is still subject to approval by and the permitting requirements of the Director of the Arizona State Museum, or other permitting authority established in law.

**7.6 Prohibition on Defacing Property.** The Grantor agrees not to deface or otherwise alter any site or object on the Property and embraced within the terms stated in provisions 7.1 through 7.5. The Grantor further agrees to make reasonable efforts to avoid the potential that persons and entities entering upon the site for approved purposes

may deface or otherwise alter any site or object embraced within the terms stated in provisions 7.1 through 7.5.

**7.7 Reporting Discoveries.** The Grantor agrees that during the course of acting as steward of the Property and especially during any work to prepare the Property for public access, such as a survey, excavation, construction or other like activity, that it shall report promptly to the Director the Arizona State Museum, or other permitting authority as established by state law, the State Historic Preservation Officer and the Grantee, the existence of any archaeological, pale ontological or historical site or object that is at least 50 years old and that is discovered in the course of such survey, excavation, construction, other like activity, or other activities undertaken as the steward of the Property. All such discoveries are subject to the provisions of the Arizona Antiquities Act. Any discoveries may require treatment such as remediation or restoration if the site or object was adversely impacted as a result of the survey, excavation, construction or other like activity, which the cost of any such remediation or restoration shall be borne by Grantor.

## **8. Grantee's Remedies.**

**8.1 Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee at Grantor's expense.

**8.2 Injunctive Relief.** If Grantor fails to cure the violation within 20 days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a 20 day period, fail to begin curing the violation within the 20 day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

**8.3 Damages.** Grantee shall be entitled to recover damages up to, but not in excess of the grant amount, directly resulting from violation of the terms of this Easement or injury to any conservation values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting the Grantors' liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

**8.4 Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this

paragraph 8 without prior notice to Grantor or without waiting for the period provided for cure to expire.

**8.5 Scope of Relief.** Grantee's rights under this section 8 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in paragraph 8.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Paragraph 8 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

**8.6 Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantor.

**8.7 Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

**8.8 Waiver of Certain Defenses.** Grantors hereby waive any defense of laches, estoppel, or prescription.

**8.9 Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, nothing herein shall preclude Grantor's and Grantee's rights to pursue any third party for damages to the Property from vandalism, trespass or any other violation of the terms of this Easement.

**9. Arbitration.** Notwithstanding the remedies available to the parties pursuant to Paragraph 8 above, the parties agree to resolve all disputes arising out of or relating to this Easement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. §12-1518 except as may be required by other applicable statutes.

**10. Access.** Grantor agrees to provide reasonable public access to the Property and agrees to impose no restrictions that would limit reasonable public access.

11. **Records Retention.** Grantor agrees to retain all data, books and other records (“Records”) relating to the grant for a period of five years. All records shall be open to inspection and audit by the grantee at reasonable times. Upon request, the Grantor will provide a legible copy of any or all such records within a reasonable time.

12. **Annual Reports and Certification.** Grantor agrees to report annually on the condition of the Property and to report any change in the Property from the Baseline Documentation to the Grantee in a format of the Grantee’s choosing. The Grantor shall certify compliance with the obligations of the Deed of Conservation Easement every year in perpetuity, on a form to be provided by the BOARD. In addition, on-site inspections shall be conducted periodically at the discretion of the BOARD. The following point shall be taken into consideration during the inspection of properties that have been acquired or developed with grant assistance: retention and use appearance, maintenance, management, availability, environment, signing, and interim use.

13. **Costs, Liabilities, Taxes, and Environmental Compliance.**

13.1 **Costs, Legal Requirements, and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability self-insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by the Grantors.

13.2 **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively “taxes”), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

13.3 **Representations and Warranties.** Grantors represent and warrant that, after reasonable investigation and to the best of their knowledge:

- (a) No substance defined, listed or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used disposed of, deposited, abandoned, or transported in, on, from or across the Property;
- (b) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed

from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;

- (c) Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
- (d) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and
- (e) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, local law, regulation, or requirement applicable to the Property and its use, nor do there exist any facts or circumstances that the Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

**13.4 Remediation.** If, during Grantor's ownership of the Property, there occurs, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agree to take all steps reasonably necessary to assure its containment and remediation, including any cleanup that may be legally required, unless the releases were caused by the Grantee, in which case Grantee shall be responsible therefore.

**13.5 Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

#### **14. Extinguishment and Condemnation.**

**14.1 Extinguishment.** If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement may be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction or by mutual written agreement of the parties. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and after the satisfaction of prior claims and net of any costs or expenses association with such sale, Grantor and Grantee shall divide the proceeds from such sale (minus any amount attributable to the value of improvements made by Grantor after the effective date of this Easement, which amount is reserved to Grantor) in accordance with their respective percentage interests in the fair market value of the Property, adjusted, if necessary, to reflect a partial termination or

extinguishment of this Easement. Grantor shall use all such proceeds received by Grantor in a manner consistent with Grantor's conservation purposes.

**14.2 Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interests in the Property, including Grantee's interest in the amount of the Grant Award, subject to the taking or in lieu of purchase and all direct or incidental damages resulting there from. All expenses reasonable incurred shall be paid out of the amount recovered.

**15. Amendment.** Notwithstanding the provisions related to extinguishment of this Easement, if circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Grantor and Grantee are free to jointly amend this Easement, provided that no amendment shall be allowed that will affect the qualifications of this document as an Easement under the laws of Arizona, and any amendment shall be consistent with the purpose of this Easement and shall not have a material negative affect on the Conservation Values. Such amendments shall be in writing and executed by both Grantor and Grantee.

**16. Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least 30 days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

**17. Estoppel Certificates.** Upon request by Grantor, Grantee shall within 30 days of receiving the request, execute and deliver to Grantor, or to any party designated by Grantors, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement or otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within 30 days of receipt of Grantor's written request therefore.

**18. Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantors:  
City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

To Grantee:  
Arizona State Parks  
1300 West Washington Street  
Phoenix, Arizona 85007

or to such other address as either party from time to time shall designate by written notice to the other.

**19. Recordation.** Grantee shall record this instrument in timely fashion in the official records of Maricopa County, Arizona, and may re-record it at any time as may be required to preserve its rights in this Easement.

**20. General Provisions.**

**20.1 Controlling Law.** The laws of the State of Arizona shall govern the interpretation and performance of this Easement. Proper venue for any dispute relating to the Easement shall be the Superior Court of Maricopa County.

**20.2 Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of A.R.S. §33-271 through §33-276 and A.R.S. §41-511.23. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

**20.3 Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

**20.4 Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

**20.5 No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.

**20.6 Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties, hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its successors, and assigns, and the above-named Grantee and its successors and assigns.

**20.7 Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

**20.8 Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

**20.9 Non-discrimination.** The Parties hereby acknowledge that they are bound by Executive Order 99-4 concerning non-discrimination in employment.

**20.10 Non-Availability of Funds.** Every payment obligation of the Grantee and Grantor under this Easement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Easement, this Easement may be terminated by the Grantee at the end of the period for which funds are available. No liability shall accrue to the Grantee in the event this provision is exercised, and the Grantee shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

**20.11 Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed this Deed of Conservation Easement, which shall become effective immediately upon signature by both parties.

GRANTOR: CITY OF FLAGSTAFF

Kevin Burke  
Signature

Kevin Burke  
Print Name

City Manager  
Title

10/25/12  
Date

ACKNOWLEDGMENT BY GRANTOR

State of Arizona )  
County of Coconino )

The foregoing instrument was acknowledged before me this 25th day of October, 2012

By Kevin Burke  
GRANTOR

Stacy L. Saltzburg  
Notary Public

(Seal)



GRANTEE: ARIZONA STATE PARKS BOARD

Bryan Martyn  
Signature

BRYAN MARTYN  
Print Name

DIRECTOR  
Title

11/8/2012  
Date

ACKNOWLEDGMENT BY GRANTEE

State of Arizona )  
County of Maricopa )

The foregoing instrument was acknowledged before me this 8th day of November, 2012

By BRYAN MARTYN  
GRANTEE

Vivia Strang  
Notary Public

(Seal)

