FWPP GRANT AGREEMENT BETWEEN

CITY OF FLAGSTAFF

AND

GREATER FLAGSTAFF FORESTS PARTNERSHIP

FOR

LOWELL OBSERVATORY/OBSERVATORY MESA FUELS REDUCTION PROJECT

This FWPP Grant Agreement ("Agreement") between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and the Greater Flagstaff Forests Partnership, Inc., an Arizona nonprofit corporation ("GFFP"), shall be effective as of the date of the last signature below. The GFFP and the City may be referred to in this Agreement collectively as the "Parties" and singularly as a "Party."

RECITALS

WHEREAS, Coconino County submitted a request for Congressionally Directed Spending Community Project Grant funding to reduce forest fuels on Section 17, Lowell Observatory land, to reduce the risk of catastrophic wildfire to residents in the City of Flagstaff and surrounding communities (the "Lowell Project") and was awarded $816,779 to support the Lowell Project;

WHEREAS, Coconino County has entered into a grant agreement with GFFP, a copy of which is attached hereto as Exhibit A ("Lowell Project Grant Agreement"), to oversee the Lowell Project and discharge Lowell Project funding as a subrecipient of the Congressionally Directed Spending Community Project Grant;

WHEREAS, the County's Congressionally Directed Spending Community Project Grant request identified the City as a partnering organization and a potential source for a grant contribution to assist with Lowell Project funding;

WHEREAS, in 2012, Flagstaff voters passed Question 405, which authorized the City to sell and issue general obligation bonds in a principal amount up to $10,000,000 to support the Forest Health and Water Supply Protection Project (now referred to as the Flagstaff Watershed Protection Project "FWPP");

WHEREAS, FWPP identified Section 17 of Observatory Mesa as an area where forest restoration treatment is needed, and the City desires to leverage its FWPP funding by supporting GFFP's work on Observatory Mesa with a $100,000 grant that will serve as a grant contribution for the Lowell Project;

WHEREAS, the Parties are entering into this Agreement to establish the terms and conditions under which GFFP is receiving the grant funds.

AGREEMENT

NOW THEREFORE, in consideration for the mutual promises contained herein, the Parties agree as follows:

1. SCOPE OF WORK

1.1 Scope of Work. GFFP hereby agrees to receive this FWPP Grant and complete the project described in the Project Proposal attached as Attachment A to the Lowell Project Grant Agreement and incorporated by reference into this Agreement. The Grant Funds will be used for general operational expenditures related to the Lowell Project's goals and objectives, which are detailed in the Project Proposal.

1.2 Project Timeframe. The Lowell Project is expected to be completed by September 30, 2027. The completion period may be extended by the mutual written consent of the Parties.

1.3 Changes to Scope of Work. GFFP is being awarded this FWPP Grant to implement the Lowell Project, and the City expects GFFP to use the grant funds to achieve the Lowell Project's described goals and objectives. No amendment(s) shall be made to the Scope of Work except by mutual written consent of the Parties pursuant to the requirements of this Agreement. To obtain an amendment to the Scope of Work, GFFP must submit a revised Scope of Work with a written request for approval. If approved by City, a Scope of Work amendment will be drafted and executed by duly authorized signatories before the amendment will become effective.

2. GRANT AWARD

2.1 Grant Amount. Subject to all of the terms, covenants, and conditions of this Agreement, the City will award GFFP one hundred thousand dollars ($100,000) (the "Grant Funds") to implement the Lowell Project. GFFP agrees to be responsible for all sums in excess of this amount necessary to complete the Lowell Project. GFFP agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available. GFFP shall not use the Grant Funds received from the City in any other manner except as provided in this Agreement. Wrongful expenditure of the Grant Funds will constitute a breach of this Agreement, and the City shall have the right to terminate this Agreement under the terms and conditions specified in this Agreement.

2.2 Grant Funds Disbursement. The City will disburse 50% of the Grant Funds ($50,000) to GFFP within thirty (30) days after the effective date of the Agreement ("Initial Grant Funds Disbursement"). Disbursement of the remaining 50% of the Grant Funds will be provided on a reimbursement basis after the Initial Grant Funds Disbursement is exhausted and documentation of eligible expenses is provided pursuant to Section 2.3 below. GFFP may request reimbursement of eligible expenses on a monthly basis by submitting invoices to the City in conjunction with its monthly report. City will make reimbursement payments within thirty (30) days after receipt of invoices.

2.3 Documentation of Expenses. Full documentation of eligible expenses must be provided as part of GFFP's monthly reporting (see Section 3 below). Copies of all eligible expense receipts must be submitted in PDF format. If at the time of Lowell Project completion, the total documented eligible expenses are less than the grant award amount, the unused funds must be returned to the City.

2.4 Limitations on Use of Funds. The Grant Funds may only be used to pay for expenses related to Lowell Project administration. Grant funding CANNOT be used for any of the following:

a. To purchase or lease land or buildings;

b. To match or augment other City-funded projects;

c. Personal expenses of individuals employed by GFFP;

d. GFFP expenses not related to the Lowell Project.

Any Grant Funds spent on expenses unrelated to the Lowell Project will be deemed ineligible expenses and may require that GFFP return Grant Funds to the City pursuant to Section 2.3 above.

3. REPORTING

3.1 Monthly Reporting. GFFP will provide monthly reports within five (5) working days of the last day of the month. Each monthly report must include a summary of progress on the Lowell Project and accounting of Grant Funds expended.

3.2 Final Report. A final report must be provided by the GFFP within thirty (30) days following completion of the Lowell Project or termination of this Agreement. The final report must include aggregate calculations of the information provided in prior monthly reports and photo or video documentation of the Lowell Project.

3.3 City Council Presentation. GFFP commits to appear before City Council to present its final report and participate in public outreach opportunities related to the grant award.

4. EFFECTIVE DATE AND TERM

This Agreement shall become effective on the date of the last signature below and will terminate upon the City's acceptance of GFFP's final report, unless terminated earlier as provided herein.

5. ADMINISTRATIVE REQUIREMENTS

5.1 Documentation and Record-Keeping. GFFP shall maintain all records required by federal and state law that are pertinent to the activities to be funded under this Agreement.

5.2 Audits and Inspections. All GFFP records with respect to any matters covered by this Agreement shall be made available to the City at any time during normal business hours, as often as the City deems necessary, unless otherwise protected by law. Failure of GFFP to comply with the above audit requirements will constitute a violation of this Agreement.

6. INDEPENDENT ENTITY STATUS

GFFP takes full responsibility for the Lowell Project and Lowell Project participants. GFFP is an independent entity in the performance of its activities and functions. GFFP and City are not and

shall not be considered partners or agents of each other and neither shall have the power to bind or obligate the other. Under no circumstances will the Lowell Project be considered a joint venture between the City and GFFP. GFFP's officers, employees, agents, and subcontractors shall not be considered as officers, employees, agents, or subcontractors of the City. GFFP shall be responsible for all Lowell Project participant claims for Workers' Compensation benefits, or other claims by participants arising as a result of activities funded in whole or in part from the proceeds of this Agreement, and GFFP shall hold the City harmless for all such claims.

7. UNFORESEEN DELAY IN PERFORMANCE

GFFP shall not be considered in breach or default of its obligations to make satisfactory progress toward the completion of the Lowell Project if delay in the performance of such obligations is due to unforeseeable circumstances beyond its control. The time for performance may be extended for any period of the unforeseen delay, as determined by the City.

8. INSURANCE

8.1 Minimum Scope and Limits of Insurance. GFFP shall procure and maintain insurance in compliance with Section XII of the Lowell Project Grant Agreement, and the City shall be identified as an additional insured on all required policies.

8.2 Minimum Requirements. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect GFFP from liabilities that might arise out of the performance of the Lowell Project, and GFFP is free to purchase additional insurance as may be determined necessary.

8.3 Verification of Coverage. GFFP shall furnish the City with Certificates of Insurance as required by this Agreement. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the Certificate of Insurance. The Lowell Project name/description and City contract number shall be noted on the certificates of insurance. The City must receive and approve all certificates of insurance and endorsements before GFFP commences work under this Agreement.

8.4 Failure to Maintain. Each insurance policy required by this Agreement shall be in effect at or prior to execution of this Agreement and remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall be a material breach of Agreement.

9. INDEMNIFICATION AND HOLD HARMLESS PROVISIONS

To the fullest extent permitted by law, GFFP agrees to defend, indemnify, save, and hold harmless the City, its officers, officials, agents, and employees from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses, including court costs, attorney’s fees, and costs of claim processing, investigation, and litigation (hereinafter collectively referred to as “Claims”) that arise out of any actual or alleged bodily injury to any person (including death) or property damage caused or alleged to have been caused, in whole or in part, by the acts, errors, omissions, or negligence of GFFP or any of GFFP’s directors, officers, agents, employees, or volunteers in

connection with or incident to this Agreement. This indemnity provision shall survive the termination, cancellation, or revocation, whether in whole or in part, of this Agreement.

10. NOTICES

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

To City:

Neil Chapman
Wildland Fire Captain
City of Flagstaff
211 West Aspen
Flagstaff, AZ 86001
(928) 213-2512 office
(928) 606-9840 mobile
neil.chapman@flagstaffaz.gov

To GFFP:

Anne Mottek
Director, Greater Flagstaff Forests Partnership
119 E. Terrace Ave.
Suite D
Flagstaff, AZ 86001
(928) 213-0413 office
(928) 310-8102 mobile
mottekconsulting@gmail.com

11. DEFAULT/REMEDIES

In the event of any default or breach of this Agreement or any of its terms or conditions by either Party, such Party shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach. Any established breach or default shall be remedied within fourteen (14) days after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach is not cured or remedied within fourteen (14) days, the aggrieved Party may terminate this Agreement or institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the Party in default or breach of its obligations. Notwithstanding the foregoing, in the event of a breach of any term of this Agreement by GFFP, the City, at its sole election and in addition to any other remedy, may immediately seek reimbursement of unused funds previously disbursed.

12. TERMINATION

Either Party may terminate this Agreement by providing the other Party thirty (30) days' written notice of its intent to terminate. In the event this Agreement is terminated pursuant to this provision, GFFP shall immediately reimburse the City any unused funds previously disbursed.

13. AMENDMENTS

Any change in this Agreement, including but not limited to the Scope of Work and Grant Funds, whether by modification or supplementation, must be accomplished by a formal Agreement amendment signed and approved by the duly authorized representatives of GFFP and the City (the authorized representative for the City is the City Manager). Any such amendment shall specify: 1) an effective date; 2) any increases or decreases in the amount of GFFP's Grant Funds if applicable; 3) be titled as an "Amendment," and 4) be signed by the Parties identified in the preceding sentence. GFFP understands and agrees that no other method of communication, including any other document, correspondence, act, or oral communication by or from any person,

shall be used or construed as an amendment or modification or supplementation to this Agreement.

14. NON-DISCRIMINATION

GFFP shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, and/or familial status, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment.

15. COMPLIANCE WITH ALL LAWS

GFFP shall comply with all city, state, and federal laws and regulations, including the City of Flagstaff's Minimum Wage Ordinance (City Code Chapter 15-01).

16. GOVERNING LAW

This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Arizona.

17. DISPUTE RESOLUTION

The Parties shall have the right to litigate any disputes that arise under this Agreement. Any litigation brought by a Party against another Party to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court. In the event any action at law or inequity is instituted between the Parties in connection with this Agreement, the prevailing Party in the action will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing Party.

18. CANCELLATION FOR CONFLICT OF INTEREST

This Agreement may be terminated pursuant to the provisions of A.R.S. 38-511.

19. NO ASSIGNMENT

This Agreement is not assignable by any of the Parties. Any attempt to do so shall render the assignment null and void and the Agreement may be terminated immediately by the non-assigning Party.

20. HEADINGS

The headings used in this Agreement are for convenience only and are not intended to alter or affect the meaning of any provision of this Agreement.

21. INTEGRATION; MODIFICATION

The Parties acknowledge and agree that they have not relied upon any statements, representations, agreements, or warranties, except as expressed in this Agreement, and that this Agreement constitutes the Parties' entire agreement with respect to the matters addressed. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded by and merged in this Agreement. This Agreement may be modified or

amended only by written agreement signed by both Parties, and any such modification or amendment will become effective on the date so specified.

22. PUBLIC RECORDS

The Parties acknowledge that the City is a public entity subject to the provisions of the Arizona Public Records Laws, A.R.S. § 39-121. et seq. In the event that a public records request is received by the City requesting records described as confidential, which the City determines must be disclosed, the City shall notify the other Party prior to disclosure.

23. AUTHORITY TO CONTRACT

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

Signature page to follow

IN WITNESS WHEREOF, the undersigned have read, understand, approve, and accept all of the provisions of this Agreement and the attached Exhibits and, as duly authorized signatories of their respective entities, hereby agree to be bound by its requirements, terms and conditions.

GFFP

_____

Print name:_____

Title:_____

Date:_____

CITY OF FLAGSTAFF

_____

Print name:_____

Title:_____

Date:_____

Attest:

_____

City Clerk

Approved as to form:

_____

City Attorney's Office

Exhibit A

Coconino County grant agreement with the Greater Flagstaff Forests Partnership