

**REGULAR MEETING OF THE
FLAGSTAFF DOWNTOWN BUSINESS IMPROVEMENT
AND REVITALIZATION DISTRICT**

**Tuesday, October 23, 2018 – 10:00 AM
Council Offices - Second Floor
Flagstaff City Hall – 211 West Aspen, Flagstaff, Arizona**

A G E N D A

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the FDBIRD Board of Directors and to the general public that, at this meeting, the Board may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the District's attorney on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A) (3).

1. Call to Order
2. Roll Call
3. Approval of Minutes of the Board Meeting of June 26, 2018.
4. Consideration of Authorization of Semiannual Payment to Flagstaff Downtown Business Alliance in the amount of \$79,250.
5. Consideration of Process for Contracting with New Legal Counsel for the District.
6. Approval of an Independent Contract with Stacy Saltzburg for District clerk services for calendar year 2019.
7. Discussion regarding upcoming Board Member term expirations.
8. Report by FDBA Director Terry Madeksza.
9. PUBLIC PARTICIPATION

Public Participation enables the public to address the Board about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed.

10. Adjournment

CERTIFICATE OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on _____, at _____ a.m./p.m. in accordance with the statement filed by the Board with the District Clerk.

Stacy Saltzburg, MMC, District Clerk

**SPECIAL MEETING OF THE
FLAGSTAFF DOWNTOWN BUSINESS IMPROVEMENT
AND REVITALIZATION DISTRICT**

**Tuesday, June 26, 2018 – 10:00 AM
Staff Conference Room - Second Floor
Flagstaff City Hall – 211 West Aspen, Flagstaff, Arizona**

MINUTES

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the FDBIRD Board of Directors and to the general public that, at this meeting, the Board may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the District's attorney on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A) (3).

1. Call to Order

With Chairman Stilley and Vice Chairman Kinne-Herman absent, Member VanLandingham called the meeting of June 26, 2018, to order at 10:11 a.m.

2. Roll Call

MEMBERS PRESENT:

Member VanLandingham
Member Antoinette Beiser
Member Steve Chatinsky

MEMBERS ABSENT:

Chairman David Stilley
Vice Chairman Karen Kinne-Herman

Others present: District Attorney Dana Kjellgren; District Treasurer Brandi Suda; District Clerk Elizabeth Burke; Flagstaff Downtown Business Alliance Director Terry Madeksza.

3. Approval of Minutes of the Board Meeting of June 12, 2018.

Member Beiser moved to approve the minutes of the Board Meeting of June 12, 2018; seconded; passed unanimously.

4. Approval of Monthly Financial Reports:

- A. March 2018
- B. April 2018
- C. May 2018

Ms. Suda reported that everything looked standard. They were waiting for one more large payment from June for the property tax payments.

Member Beiser moved to approve the monthly financial reports for March, April and May of 2018; seconded; passed unanimously.

5. Consideration of Resolution No. 2018-03: A resolution of the District Board of the Flagstaff Downtown Business Improvement and Revitalization District of Flagstaff adopting the Property Tax Assessments for FY2018-2019.

Ms. Suda reported that the proposed resolution adopts the assessment for 2019 at a flat rate, the same rate as last year of .6637 for all properties. She said that it will equate to approximately \$14,000 over the prior year. The property owners will pay \$150,530 and pilot payments from the City and County will total \$34,772.

Member Chatinsky moved to adopt Resolution No. 2018-03; seconded; passed unanimously.

6. Consideration and approval of Amendment One to the Agreement for Audit Services between the Flagstaff Downtown Business Improvement and Revitalization District and Hinton Burdick, PLLC in the amount of \$8,200 for 2018.

Ms. Kjellgren explained that this was the third year of the agreement for audit services between the FDBIRD and Hinton Burdick, PLLC. She said that the agreement was for three years and then three one-year extensions, but the original agreement did not have a dollar figure for the third year.

Ms. Suda added that although it states \$8,200, they would only be paying \$5,500 because a Single Audit was not required to be done since the District had not received over \$500,000 in federal grants.

Member VanLandingham said that he was under the assumption that after the first year or two of the audits that the price would go down. Ms. Suda said that they had to put in a lot more the first year, but they should assume that it will be around this amount for the future.

Ms. Suda said that they may want to consider going out for a new proposal next year, but when this first went out this was the only firm to submit. Ms. Kjellgren added that next year there would be some history for others to have a better understanding of what would be required.

Member Chatinsky moved to approve Amendment One to the Agreement for Audit Services with Hinton Burdick, PLLC; seconded; passed unanimously.

7. Consideration of Process for Contracting with New Legal Counsel for the District.

Ms. Kjellgren said that her recommendation would be to go out in the future for a RSOQ (Request for Statement of Qualifications). This allows the qualifications to become the primary consideration versus price. To address this, she was recommending that she develop some Procurement Guidelines which are currently very slim. Most entities have voluminous manuals, and at this time that is not required, but going forward it would be a good idea to have more detail with regard to procurement to ensure that they are meeting state requirements.

Board members directed Ms. Kjellgren to go forward with developing such guidelines.

She said that she would send out a draft to everyone, but she reminded them to not hit "REPLY ALL." Member VanLandingham asked what process they would need to follow to fill Ms. Burke's position since she was leaving. Ms. Kjellgren said that she was comfortable with them appointing Stacy Saltzburg under a sole source process because there are not others available in Flagstaff with the specific experience.

8. Report by FDBA Director Terry Madeksza.

Ms. Madeksza said that they had been meeting quite frequently so she did not have much to report other than the following:

PARKING: The parking revenues continue to come in higher than anticipated. Over the weekends (Friday, Saturday, Sunday) they are generating about 50% of the total revenues. During the summer they are seeing anywhere from \$14,000 to \$16,000 on a weekend. They will end up somewhere over the \$1 million mark by the end of the fiscal year (October).

She said that they are now starting to see some of the expenses as well. They will get the reports showing expenses finalized and sent out to the Board as soon as she has had a chance to weigh in.

Member VanLandingham said that it appeared that the reports are similar to the templates used by other parking districts. He asked if they planned to continue with that template as it did not make sense to reinvent the wheel. Ms. Madeksza said that they would be following the same template and at the end of the year (October) they would prepare an annual report and provide a report to the Council. They will also review policy changes going in to the next year.

Member Beiser asked when the appropriate time was to talk about the need to either restripe, or possibly increase the number of, parking spaces. Ms. Madeksza said that she had conveyed her comments from the last meeting to the ParkFlag office and they will be addressing it. Currently they are focusing their time on correcting the software program used for the employee parking renewal process and once they are done with that, they will turn their attention to this effort.

Ms. Madeksza said that the revenues received are restricted to parking related issues, so it would seem possible that they could use such revenues for either restriping or perhaps increasing the number of spaces. She said that there has also been some discussion of using diagonal parking on those streets that are wide enough to accommodate them and traffic.

Ms. Madeksa noted that a customer's first interaction for a parking violation is a warning and then they would be cited. She said that in the short term, while it may not be ideal, anyone that received a ticket because they could not see the lines could contact the ParkFlag office and they could waive the citation.

MOVIES ON THE SQUARE – Ms. Madeksza said that they just had their fourth week of *Movies on the Square*; one was raised out. She said that the crowds are larger than last year at this time, but the sponsorship is down. It continues to be an event that the community comes out to enjoy. It is free, fun and family-friendly.

9. PUBLIC PARTICIPATION

Public Participation enables the public to address the Board about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed.

None

10. Report of Board of Directors.

None

11. Adjournment

The Special Meeting of the Flagstaff Downtown Business Improvement and Revitalization District Board of Directors held June 26, 2018, adjourned at 10:35 a.m.

David Stilley, Chairman

ATTEST:

Elizabeth A. Burke, District Clerk

Flagstaff Downtown Business Alliance

120 N. Beaver, Suite 120
Flagstaff, AZ 86001 US
terry@downtownflagstaff.org
www.downtownflagstaff.org

INVOICE

BILL TO
FDBIRD Customer

INVOICE # 04-1219
DATE 10/01/2018
DUE DATE 10/31/2018
TERMS Net 30

ACTIVITY	QTY	RATE	AMOUNT
Management Fee Semi-annual payment for services delivered as set forth in the Agreement for Management Services between the Flagstaff Downtown Business Improvement and Revitalization District and the Flagstaff Downtown Business Alliance amended February 2, 2016.	1	79,250.00	79,250.00

BALANCE DUE

\$79,250.00

INDEPENDENT CONTRACTOR AGREEMENT

Flagstaff Downtown Business Improvement and Revitalization District

and

Stacy Saltzburg

This Agreement ("**Agreement**") is made as of this _____ day of _____ 2018, by and between the Flagstaff Downtown Business Improvement and Revitalization District (the District), a special taxing district of the State of Arizona, Post Office Box 1546, Flagstaff, Arizona 86002, and Stacy Saltzburg, MMC (Contractor), 6650 Mariah Dr., Flagstaff, Arizona 86004, for services as the Clerk of the District.

1. SERVICES

- 1.1 The District hereby engages Contractor, and Contractor hereby accepts such engagement, as an independent contractor to provide certain services to the District on the terms and conditions set forth in this Agreement.
- 1.2 Contractor shall provide to the District the services of a Master Municipal Clerk (the "**Services**"), including but not limited to attending District Board meetings and creating minutes for the meetings, preparing and posting notices of meetings, agendas, minute and notices as required by the Arizona Open Meeting Law, working with the District's legal counsel and County elections officials, as applicable, to organize and carry out required elections for the District, among other Services that may be required by applicable law, all at the District's expense.
- 1.3 The District shall not control the manner or means by which Contractor performs the Services.
- 1.4 Contractor shall furnish, at Contractor's own expense, the equipment, supplies and other materials used to perform the Services. The District shall provide Contractor with access to its premises and equipment to the extent necessary for the performance of the Services.
- 1.5 Contractor shall comply with all applicable policies of the District relating to business and office conduct, health and safety and use of the District's facilities, supplies, information technology, equipment, networks and other resources.

2. TERM

The term of this Agreement shall commence on October 23, 2018 and shall continue until and through December 31, 2019 (the "**Term**"), unless earlier terminated in accordance

with paragraph 10. Any extension of the term must be through a mutual written agreement between the parties.

3. FEES AND EXPENSES

- 3.1 As full compensation for the Services and the rights granted to the District in this Agreement, the District shall pay Contractor Seventy-Five Dollars (\$75.00) per hour (the "Fees") for the Services.
- 3.2 Contractor is solely responsible for any travel or other costs or expenses incurred by Contractor in connection with the performance of the Services, and in no event shall the District reimburse Contractor for any such costs or expenses.
- 3.3 The District shall pay all undisputed Fees within Thirty (30) days after the District's receipt of monthly invoices submitted by Contractor for the Services.

4. RELATIONSHIP OF THE PARTIES

- 4.1 Contractor is an independent contractor of the District, and this Agreement shall not be construed to create any association, partnership, joint venture; employee or agency relationship between Contractor and the District for any purpose. Contractor has no authority (and shall not hold herself out as having authority) to bind the District, and Contractor shall not make any agreements or representations on the District's behalf without the District's prior written consent.
- 4.2 Without limiting paragraph 4.1, Contractor will not be eligible under this Agreement to participate in any vacation, group medical or life insurance, disability, profit sharing or retirement benefits or any other fringe benefits or benefit plans offered by the District to its employees, and the District will not be responsible for withholding or paying any income, payroll, Social Security or other federal, state or local taxes, making any insurance contributions, including unemployment or disability, or obtaining worker's compensation insurance on Contractor's behalf. Contractor shall be responsible for, and shall indemnify the District against, all such taxes or contributions, including penalties and interest. Any persons employed by Contractor in connection with the performance of the Services shall be Contractor's employees and Contractor shall be fully responsible for them.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 The District is and shall be, the sole and exclusive owner of all right, title and interest in and to all the results and proceeds of the Services performed under this Agreement.

6. CONFIDENTIALITY

- 6.1 Contractor acknowledges that Contractor will have access to information that is treated as confidential by the District, including, without limitation, information subject to

executive session privilege under the Arizona Open Meeting Law and communications with legal counsel for the District. Any Confidential Information that Contractor develops in connection with the services, shall be subject to the terms and conditions of this paragraph. Contractor agrees to treat all Confidential Information as strictly confidential, not to disclose Confidential Information or permit it to be discussed, in whole or part, to any third party without the prior written consent of the District in each instance, and not to use any Confidential Information for any purpose except as required in the performance of the Services. Contractor shall notify the District immediately in the event Contractor become aware of any loss or disclosure of any Confidential Information.

6.2 Confidential Information. shall; not include information that:

6.2.1 is or becomes generally available to the public other than through Contractor's breach of this Agreement;

6.2.2 is communicated to Contractor by a third party that had no confidentiality obligations with respect to such information; or

6.2.3 is required to be disclosed by law, including without limitation, pursuant to the terms of a court order; provided that Contractor has given the District prior notice of such disclosure and an opportunity to contest such disclosure.

7. REPRESENTATIONS AND WARRANTIES

7.1 Contractor represents and warrants to the District that:

7.1.1 Contractor has the right to enter into this Agreement and to perform fully all of Contractor's obligations in this Agreement;

7.1.2 Contractor's entering into this Agreement with the District and Contractor's performance of the Services do not and will not conflict with or result in any breach or default under any other agreement to which Contractor are subject

7.1.3 Contractor has the required skill, experience and qualifications to perform the Services, Contractor shall perform the Services in a professional and workmanlike manner in accordance with the International Institute of Municipal Clerks standards for similar services and Contractor shall devote sufficient resources to ensure that the Services are performed in a timely and reliable manner;

7.1.4 Contractor shall perform the Services in compliance with all applicable federal, state. and. local laws and regulations;

7.2 The District hereby represents and warrants to Contractor that:

7.2.1 it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder; and

7.2.2 the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary District action.

8. INDEMNIFICATION

8.1 Contractor shall defend, indemnify and hold harmless the District and its officers, directors, employees, agents, successors and permitted assigns from and against all losses, damages, liabilities, deficiencies actions judgments, interest, awards, penalties, fines, costs or expenses of whatever kind (including reasonable attorneys' fees) arising out of or resulting from:

8.1.1 bodily injury, death of any person or damage to real or tangible, personal property resulting from Contractor's acts or omissions; and

8.1.2 Contractor's breach of any representation, warranty or obligation under this Agreement.

8.2 The District may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to Contractor.

9. INSURANCE

During the Term, the District will provide insurance coverage for-Contractor, as an officer of the District, under its errors and omissions coverage for Board members and officers of the District.

10. TERMINATION

10.1 Either party may terminate this-Agreement without cause upon Thirty (30) days' written notice to the other party. In the event of termination pursuant to this paragraph 10.1, the District shall pay Contractor on a proportional basis any Fees then due and payable for any Services completed up to and including the date of such termination.

10.2 The District may terminate this Agreement, effective upon written notice to Contractor; in the event that Contractor materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, Contractor does not cure such breach within Ten (10) days after receipt of written notice of such breach;

10.3 Upon expiration or termination of this Agreement for any reason, or at any other time upon the District's written request, Contractor shall within Five (5) days after such expiration or termination:

10.3.1 deliver to the District all records created for the District (whether complete or incomplete) and all hardware, software, tools, equipment or other materials provided for Contractor's use by the District;

10.3.2 deliver to the District all tangible documents and materials (and any copies) containing, reflecting, incorporating or based on the Confidential Information;

10.3.3 permanently erase all of the Confidential Information from Contractor's computer systems; and

10.3.4 certify in writing to the District that Contractor has complied with the requirements of this paragraph.

10.4 The terms and conditions of this paragraph 10.4 and paragraph 4, paragraph 5, paragraph 6, paragraph 7, paragraph 8, paragraph 10.3, paragraph 12, and paragraph 13 shall survive the expiration or termination of this Agreement.

11. OTHER BUSINESS ACTIVITIES

Contractor may be engaged or employed in any other business, trade, profession or other activity which does not place Contractor in a conflict of interest with the District.

12. ASSIGNMENT

Contractor shall not assign any rights, or delegate or subcontract any obligations, under this Agreement without the District's prior written consent. Any assignment in violation of the foregoing shall be deemed null and void. Subject to the limits on assignment stated above, this Agreement will inure to the benefit of, be binding upon, and be enforceable against, each of the parties and their respective successors and assigns.

13. MISCELLANEOUS

13.1 Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses on the first page of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, or email of a PDF document with confirmation of transmission, or certified, or registered mail in each case, return receipt requested; postage prepaid. Except as otherwise provided in this Agreement, a Notice is effective only if (a) the receiving party has received the Notice and (b) the party giving the Notice has complied with the requirements of this Section.

13.2 Entire Agreement. This Agreement, together with any other documents incorporated by reference and related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to is subject matter, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

13.3 Amendments. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto, and any of the terms thereof may be waived, only by a written document signed by each party, in the case of waiver, by the party or parties waiving compliance.

13.4 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Arizona without giving effect to any choice or conflict of law provision rule. Each party irrevocably submits to the exclusive jurisdiction and venue of the courts located in the Coconino County in any legal suit, action or proceeding arising out of or based upon this Agreement or the Services provided under the Agreement.

13.6 Separability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

FLAGSTAFF BUSINESS IMPROVEMENT
AND REVITALIZATION DISTRICT

David Stilley, Chairman

Attest:

Approved as to form:

Dana Kjellgren
Attorney for the District

ACCEPTED AND AGREED:
INDEPENDENT CONTRACTOR

Stacy Saltzburg, MMC