

**FLAGSTAFF DOWNTOWN BUSINESS IMPROVEMENT
AND REVITALIZATION DISTRICT
OF FLAGSTAFF, ARIZONA**

RESOLUTION NO. 2014-04

A RESOLUTION OF THE DISTRICT BOARD OF THE FLAGSTAFF
DOWNTOWN BUSINESS IMPROVEMENT AND REVITALIZATION
DISTRICT OF FLAGSTAFF AUTHORIZING PROCUREMENT LIMITS,
SELECTION OF A BANKING INSTITUTION, SIGNATORIES ON DISTRICT
BANK ACCOUNTS, AND APPROVING THE INTERGOVERNMENTAL
AGREEMENT FOR SERVICES WITH THE CITY OF FLAGSTAFF

WHEREAS, on February 4, 2014, the City Council of the City of Flagstaff, Arizona (the "City"), adopted a Resolution ordering and declaring the formation of the Flagstaff Downtown Business Improvement and Revitalization District (the "District") in the City of Flagstaff, Arizona; and

WHEREAS, the District is a special purpose tax levying revitalization district as provided in Section 48-6807 of the Arizona Revised Statutes, and is considered to be a municipal corporation and political subdivision of the State of Arizona, separate and apart from the City; and

WHEREAS, certain matters relating to the organization of the District must be determined by the Board of Directors of the District (the "District Board"); and

WHEREAS, it is in the best interest of the District to enter into an intergovernmental agreement for services with the City of Flagstaff.

NOW, THEREFORE, BE IT RESOLVED BY THE DISTRICT BOARD OF THE FLAGSTAFF DOWNTOWN BUSINESS IMPROVEMENT AND REVITALIZATION DISTRICT OF FLAGSTAFF, ARIZONA as follows:

1. Procurement Limits. Procurement limits for the District will be as follows:

\$0 - \$5,000:	Board or Executive Director can select vendor directly
\$5,001 - \$25,000:	Board must obtain three written quotes, if possible
\$25,001 and over	Board must undertake a formal procurement process under State procurement statutes

2. Approve Bank for District Accounts. Since annual banking charges are estimated to be well below \$5,000 per year, the Chairman of the Board is authorized to select a banking institution within the boundaries of the District on behalf of the Board.

3. Authorized Signatories on the District's Bank Accounts. The authorized signatories for the District are as follows:

Antoinette Beiser, Director
David Stilley, Director
John Vanlandingham, Director

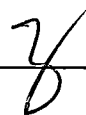
Each of the Directors above is authorized to sign checks drawn upon the Flagstaff Downtown Business Improvement and Revitalization District account at the bank selected by the Chairman of the Board in an amount up to \$5,000. For any check in excess of \$5,000, one of the authorized signatures will be required, as well as that of the District Treasurer, Barbara Goodrich.

Any check or purchase in excess of \$10,000 will require prior approval of the entire District Board at a duly noticed meeting of the Board.

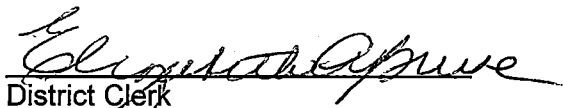
4. Approve the Intergovernmental Agreement with the City of Flagstaff. The Intergovernmental Agreement for Services with the City of Flagstaff, in the form attached as Exhibit A to this Resolution, is hereby approved. The Chairman of the Board is authorized to execute the Agreement on behalf of the District.

PASSED by the District Board of the Flagstaff Downtown Business Improvement and Revitalization District this 6th day of May, 2014.

Chairman



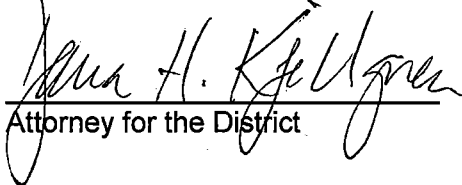
ATTEST:



District Clerk

APPROVED AS TO FORM:

Shorall McGoldrick Brinkmann



Attorney for the District

ATTACHMENT:

EXHIBIT A – Intergovernmental Agreement with the City of Flagstaff

EXHIBIT A**INTERGOVERNMENTAL AGREEMENT
FOR SERVICES**

This Intergovernmental Agreement for Services ("Agreement") is entered into this ___ day of _____, 2014 ("Effective Date"), between the City of Flagstaff ("CITY"), a political subdivision of the State of Arizona and the Flagstaff Downtown Business Improvement and Revitalization District, a special taxing district operating pursuant to A.R.S. § 48-6801 et seq. ("DISTRICT").

RECITALS

WHEREAS, the parties desire to enhance and improve Downtown Flagstaff; and

WHEREAS, the parties have authority to enter into an intergovernmental agreement pursuant to A.R.S. § 11-952 and A.R.S. § 48-6808.A.2 to contract for services and jointly exercise powers related to providing enhanced municipal services and improvements within DISTRICT;

WHEREAS, CITY owns land and public rights-of-way within DISTRICT and such property directly benefits from being part of DISTRICT;

Now therefore, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1. Duration of Agreement

This Agreement shall become effective upon execution by the parties as of the Effective Date, and shall continue for a term of ten (10) years, unless sooner terminated.

2. Purpose

The purpose of this Agreement is to enhance and improve Downtown Flagstaff (DISTRICT), and to provide consideration to DISTRICT for services directly benefiting CITY property within DISTRICT.

3. Initial Services

In consideration for \$127,000.000 to be paid by CITY to DISTRICT within 30 days from the effective date of this Agreement, DISTRICT agrees to satisfactorily complete the Services set forth in Exhibit 1. The Services shall be completed by dates specified. In the event DISTRICT does not complete Services as described, DISTRICT shall reimburse CITY for the same as specified. The reimbursement obligation shall survive any expiration or termination of this Agreement.

4. Ongoing Services and Annual Assessment

4.1 During the term of this Agreement, CITY will request the Coconino County Assessor to calculate an annual amount equivalent to the ad valorem taxes CITY would pay if it were a

private property owner in DISTRICT ("Annual Payment"), based on CITY property ownership and assessed value. No Annual Payment will be assessed on public rights-of-way owned by

CITY. CITY will remit to DISTRICT the Annual Payment in consideration for the ongoing services to be rendered by DISTRICT to CITY as a property owner in DISTRICT. CITY will pay the Annual Payment consistent with payments of ad valorem taxes generally and may pass through its cost to tenants to the extent permitted by law. Nothing herein shall be construed to require or bind future CITY Councils to appropriate or remit funds annually. The parties understand CITY may acquire, improve, modify and/or dispose of CITY property within DISTRICT, resulting in an increase or decrease to the Annual Payment.

4.2 DISTRICT on an annual basis shall provide CITY with DISTRICT's adopted budget, and provide a detailed accounting describing services provided by DISTRICT which directly benefit CITY property within DISTRICT.

5. Termination

5.1 Either party shall have the right to terminate the Agreement upon one-hundred eighty (180) days written notice to the other party.

5.2 If CITY Council in its discretion determines to cease appropriating funds to pay the Annual Tax, CITY may terminate this Agreement by giving DISTRICT ninety (90) days' written notice. Termination of this Agreement will not relieve CITY of the obligation to pay DISTRICT the pro rata portion of the Annual Tax accrued before the termination date of the Agreement.

5.3 In the event DISTRICT ceases operations or fails to levy an annual ad valorem tax, CITY shall no longer have an obligation to remit the Annual Tax, and CITY may terminate this Agreement upon thirty (30) days written notice to DISTRICT.

5.3 Upon termination of this Agreement, any property acquired by DISTRICT in performance of this Agreement shall belong to DISTRICT, except as may be expressly provided for herein, and provided, however, that upon dissolution of DISTRICT all property of the DISTRICT will be conveyed to a municipality as provided for in A.R.S. § 48-6819.

6. Insurance

CITY reserves the right to require DISTRICT to obtain and maintain commercial general liability insurance of \$1 million per occurrence, \$2 million aggregate, and statutory worker's compensation insurance in performance of the Initial Services. If insurance is required, CITY will be named as an additional insured on the policy. CITY reserves the right to require DISTRICT or its contractors to obtain and maintain insurance as set forth in Exhibit 2, Insurance, before undertaking public improvement projects or providing enhanced municipal services within the DISTRICT.

7. Notices

Unless otherwise specified in this Agreement, any notice or other communication required or permitted to be given 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:

If to the CITY:

Community Design & Redevelopment
Manager
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001

Copy to:
Economic Vitality Director
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001

If to District:

John VanLandingham, Chairman
P. O. Box 1546
Flagstaff, AZ 86002

Copy to:
Dana H. Kjellgren
Shorall McGoldrick Brinkmann
702 N. Beaver Street
Flagstaff, AZ 86001

8. General Provisions

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

8.2 Entire Agreement. Each party acknowledges and agrees that it has 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 in this document. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded and merged in this Agreement.

8.3 Amendment. This Agreement may be modified or amended only by written agreement, signed by or for both parties, and any modification or amendment will become effective on the date so specified.

8.4 Attorneys Fees. The parties will meet in good faith and endeavor to resolve any dispute relating to this Agreement prior to engaging in litigation. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action will be entitled to its costs, including reasonable attorneys' fees and court costs from the non-prevailing party.

8.5 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, either CITY or DISTRICT may cancel this Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of a party is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of the other party of the Agreement in any capacity or as a consultant to the other party of the Agreement with respect to the subject matter of this Agreement.

8.6 Waiver. No failure to enforce any condition or covenant of this Agreement will imply or constitute a waiver of the right of a party to insist upon performance of the condition or covenant, or of any other provision of this Agreement, nor will any waiver by either party of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach under this Agreement.

8.7 Force Majeure. A party, and its agents, officials and employees, shall not be liable to the other party for failure to comply with any of the terms and conditions of this Agreement where any failure to comply is caused by an act of God, court order, government regulation or requirement, other than those imposed by the party, strike or labor difficulty, fire, flood, storm, power failure or any other similar cause beyond the reasonable control of the party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

City of Flagstaff

**Flagstaff Downtown Business
Improvement and Revitalization
District**

Mayor

Chairman of Board

Attest:

Attest:

City Clerk

Clerk of the Board

Approved as to form:

Approved as to form:

City Attorney

Legal Counsel for Board

Attachments: Exhibits 1, 2

**EXHIBIT 1
SCOPE OF WORK**

This Scope lists the services to be provided by the District to City in consideration for \$127,000, per the completion dates below.

Services to be provided by the District to the City are listed below (Services). The City may require return of funds if Services are not timely completed. The parties agree that the assigned values for the Services are reasonable, even if they are estimates and not exact dollars. If a Service is partially achieved, a pro-rated refund will be owed, based on monthly value or other reasonable methodology.

All documents identified in this Scope of Work shall be prepared by the District and shall be submitted to the City in draft form. City will have at least 14 calendar days to review and provide comments (if any). Any responsive comments from the City shall be considered and final drafts shall be submitted to the City prior to the Completion date.

- I. The following tasks shall be performed per the fixed completion dates shown:**
 - a. Prepare work plans for the upcoming year ("Annual Work Plans").
 - i. Completion: June 15, 2014 and June 15 of every year that the City Clerk and/or Treasurer serve as the District Clerk and Treasurer respectively.
 - ii. Value: \$1,000
 - b. Prepare detailed operating budgets for the upcoming year ("Annual Budgets").
 - i. Completion: June 15, 2014 and June 15 of every year that the City Clerk and/or Treasurer serve as the District Clerk and Treasurer respectively.
 - ii. Value: \$2,500
 - c. Execute agreement to indemnify and hold harmless City and City staff in performance of their job functions as Clerk and Treasurer for the District ("Indemnification Agreement").
 - i. Completion: July 1, 2014
 - ii. Value: \$700
 - d. Assign a responsible person to serve as administrative staff for the District Board and Officers. This person will be responsible for various administrative duties as directed by the Board but specifically including administrative duties serving the needs of the Clerk and Treasurer until such time as the District appoints new officers ("District Staff").
 - i. Completion: July 1, 2014
 - ii. Value: \$9,000
 - e. Assign a responsible person to serve as the single point of contact for the District and District members. This person will be responsible for communicating individual and district needs to the City (including various agencies of the City), receiving and resolving complaints of District

members, coordinating the provision of City services, and distributing various City communications / information ("Single Point of Contact").

- i. Completion: July 1, 2014
- ii. Value: \$9,000

f. Develop District Rules of Operations ("Rules of Operations").

- i. Completion: September 1, 2014
- ii. Value: \$700

g. Prepare Handbook of Procedures for the district appointed Clerk and Treasurer ("Handbook").

- i. Completion: December 31, 2014
- ii. Value: \$12,000
- iii. Damages: District shall refund City \$1,000 per month for any delay beyond December 31, 2014

h. Appoint a new District Clerk and a new Treasurer (relieving City staff of financial and administrative burden), with new appointments to commence no later than December 31, 2014 ("Appoint District Clerk and Treasurer").

- i. Completion: December 31, 2014
- ii. Value: \$24,000
- iii. Damages: District shall refund City \$1,000 per month for any delay beyond December 31, 2014

i. Train the district appointed Clerk and Treasurer ("Training").

- i. Completion: December 31, 2014
- ii. Value: \$12,000
- iii. Damages: District shall refund City \$1,000 per month for any delay beyond December 31, 2014

j. Prepare written annual report at the conclusion of each calendar year that accounts for expenditures and services provided pursuant to this Agreement ("Annual Report"). If requested by City Manager, present annual report to the City Council.

- i. Completion: February 1, 2015 and February 1 of every year that the City Clerk and/or Treasurer serve as the District Clerk and Treasurer respectively.
- ii. Value: \$700

II. Develop and implement the organizational needs of the district.

a. Create District Database that includes a map of the district, property ownership, property owner contact information, assessed value, and current land-use (type retail, office, government, ROW, etc) ("District Database").

- i. Completion: Three months after Successful Election.
- ii. Value: \$1,500

b. Create a district website page that will be used for posting public meeting notices, agendas and minutes, and other information required for District operations; and that includes a brief overview of the District, District contact information, and a link to the City of Flagstaff website. ("District Website").

- i. Completion: Six months after Successful Election.
 - ii. Value: \$3,000
 - c. With City staff assistance, create an Inventory of City Services provided within the district that includes the types of service, annual budget allocation, frequency, providing agency, and providing agency contact information ("Inventory of City Services").
 - i. Completion: Nine months after Successful Election.
 - ii. Value: \$3,000
 - d. With City staff assistance, create Inventory of Public Infrastructure that exists within the district that includes types of infrastructure, condition, maintenance needs, existent capital improvement plans, and suggestions for improvements ("Public Infrastructure Inventory").
 - i. Completion: Twelve months after Successful Election.
 - ii. Value: \$6,000
- III. **Provide ongoing day-to-day district management including responding to member, public, and City concerns relative to day-to-day issues and activities within the district.**
 - a. Maintain the District Database (See II.a).
 - i. Completion: Ongoing, starting three months after Successful Election.
 - ii. Value: \$700
 - b. Maintain District Website (See II.b).
 - i. Completion: Ongoing, starting six months after Successful Election.
 - ii. Value: \$1,500
 - c. Maintain Inventory of City Services (See II.c).
 - i. Completion: Ongoing, starting nine months after Successful Election.
 - ii. Value: \$700
 - d. Maintain Inventory of Public Infrastructure (See II.d).
 - i. Completion: Ongoing, starting twelve months after Successful Election.
 - ii. Value: \$1,000
 - e. Assign a responsible person to review and provide written advisory comments regarding Special Event Permits proposed for locations in the District, identifying the concerns of the District or District members, proposing conditions that would mitigate concerns, and recommending approval or denial ("Special Event Permit Review").
 - i. Completion: Ongoing, starting six months after Successful Election.
 - ii. Value: \$5,000
 - f. Review and provide written advisory comments regarding City initiatives (programs, ordinances, plans, projects, and so forth) that affect the District or District members ("City Initiative Review").
 - i. Completion: Ongoing, starting six months after Successful Election.
 - ii. Value: \$5,000
 - g. Meet monthly with Police Department and Economic Vitality Division staff,

and as necessary with other City staff, to coordinate District and/or City initiatives (programs, ordinances, plans, projects, and so forth), to discuss District or District members concerns and solutions, and other matters as appropriate ("Coordinate with City of Flagstaff").

i. Completion: Ongoing, starting six months after Successful Election.

ii. Value: \$5,000

h. As necessary, meet with and coordinate District initiatives (programs, plans, projects, and so forth) and other matters as appropriate with Federal, State, or regional government agencies (such as the Flagstaff Metropolitan Planning Organization, Coconino County, or Tribal agencies) including upon the request of the City Manager, participating in joint meetings with such agencies ("Coordinate with Other Agencies").

i. Completion: Ongoing, starting six months after Successful Election.

ii. Value: \$3,000

IV. Provide and implement comprehensive long range planning for the district.

a. Public Infrastructure Improvement:

i. Identify and propose at least one public infrastructure improvement project as required for a Revitalization District. The total value of work proposed shall be no less than \$15,000.

1. Completion: Nine months after Successful Election.

2. Value: \$1,000

ii. Secure funding for the proposed public infrastructure improvement project(s).

1. Completion: Twelve months after Successful Election.

2. Value: \$1,000

iii. Cause and manage the preparation of project plans for the proposed public infrastructure improvement project(s). Obtain and pay for all required approvals and permits. Procure professional services if required by Arizona law and procure all services as required by Arizona law.

1. Completion: Fifteen months after Successful Election.

2. Value: \$5,000

iv. Contract for and manage the construction of the proposed public infrastructure improvement project(s). Procure licensed contractor and all services as required by Arizona law.

1. Completion: Twenty-four months after Successful Election.

2. Value: \$5,000

b. Identify, prioritize, and estimate revenues and expenses for "enhanced municipal services" that the District may seek to provide in the foreseeable future.

i. Completion: Nine months after Successful Election.

ii. Value: \$5,000

c. With legal counsel retained by the District, review all documents

related to Heritage Square Plaza (including but not limited to Disposition and Development Agreement; Rules & Regulations; Declaration of Public Plaza Easement dated May 20, 1997; Declaration of Public Plaza Easement dated June 4, 1996) and evaluate whether or not the District may, and desires to assume any Responsibilities for operations and maintenance.

- i. Completion; Nine months after Successful Election.
- ii. Value: \$5,000

**EXHIBIT 2
INSURANCE**

1 In General. Contractor shall procure and maintain insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Contract by the Contractor, Contractor's agents, representatives, employees or contractors until all of their obligations under this Contract have been discharged, including any warranty periods. The insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Contractor from liabilities that might arise out of this Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

2 Minimum Scope and Limits of Insurance. Contractor shall provide coverage at least as broad and with limits not less than those stated below.

2.1 Commercial General Liability - Occurrence Form	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
2.2 Automobile Liability - Any Automobile or Owned, Hired and Non-owned Vehicles	
Combined Single Limit Per Accident	
for Bodily Injury and Property Damage	\$1,000,000
2.3 Workers' Compensation and Employer's Liability	
Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$500,000
Disease - Each Employee	\$500,000
Disease - Policy Limit	\$500,000
2.4 Professional Liability	\$2,000,000

3. Self-insured Retention/Deductibles. Any self-insured retentions and deductibles must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and volunteers.

4. Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:

4.1 Commercial General Liability and Automobile Liability Coverages. The City of Flagstaff, its officers, officials, agents and employees shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Contract and activities performed by or on behalf of the Contractor,

including products and completed operations of the Contractor; and automobiles owned, leased, hired or borrowed by the Contractor.

4.2 The Contractor's insurance shall contain broad form contractual liability coverage.

4.3 The City of Flagstaff, its officers, officials, agents and employees volunteers shall be named as additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

4.4 The Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents and employees, shall be in excess of the coverage of the Contractor's insurance and shall not contribute to it.

4.5 The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4.6 Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

4.7 The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Contractor for the City.

5. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage. When the policy is suspended, voided, cancelled, reduced in coverage or in limits, notice thereof shall be sent to City thirty (30) days. When cancellation is for non-payment of premium, then at least ten (10) days' prior notice shall be given to the City. Notices required by this section shall be sent directly to: Attention: Purchasing Department, City of Flagstaff, 211 W. Aspen Avenue, Flagstaff, Arizona 86001.

6. Acceptability of Insurers. Contractor shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to provide the Contractor from potential insurer insolvency.

7. Verification of Coverage. The Contractor shall furnish the City with certificates of insurance (ACORD form) as required by this Contract. 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.

7.1 The City must receive and approve all certificates of insurance before the Contractor commences work. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Contractor's and its subcontractors' obligations under this Contract have been met. The Contractor's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.

7.2 All certificates of insurance shall be sent directly to: Attention: Purchasing Department, 211 West Aspen Avenue, Flagstaff, Arizona 86001. The City project/contract number and project description shall be noted on the certificates of insurance. The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Contract at any time. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City's receipt of Contractor's policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.

8. Approval. Any modification or variation from the insurance requirements in this Contract must have the prior approval of the City's Attorney's Office, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by administrative action.