

**RESOLUTION NO. 2021-02**

**A RESOLUTION OF THE COCONINO COUNTY, ARIZONA, BOARD OF SUPERVISORS, APPROVING THE INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF FLAGSTAFF REGARDING MAINTENANCE AND MANAGEMENT OF A SEGMENT OF THE SHEEP CROSSING FLAGSTAFF URBAN TRAIL SYSTEM THAT LIES WITHIN FORT TUTHILL COUNTY PARK.**

**WHEREAS**, the Flagstaff Urban Trails System (FUTS) is a city-wide network of shared-use pathways that are used for both recreation and transportation by pedestrians, bicyclists, and other non-motorized users; and

**WHEREAS**, most of the FUTS system is maintained, managed, and operated by the City of Flagstaff, but in a few circumstances FUTS segments are maintained by other agencies; and

**WHEREAS**, the City of Flagstaff is completing a new segment of FUTS between the Ponderosa Trails neighborhood and Fort Tuthill County Park called the Sheep Crossing Trail; and

**WHEREAS**, the west end of the Sheep Crossing Trail is located within and terminates in Fort Tuthill County Park

**WHEREAS**, there is benefit to both parties and the community that this segment be maintained, managed, and operated by Coconino County; and

**WHEREAS**, upon issuance of Notice of Final Acceptance for the construction contract between the Kinney Construction Services (KCS) and the City of Flagstaff, there will be a two (2) year period of warranty between KCS and the City of Flagstaff; and

**WHEREAS**, the County through its Parks and Recreation Department will assume responsibility of maintenance and management of this segment of the Sheep Crossing FUTS after the KCS and City of Flagstaff warranty period set to conclude on December 18, 2022; and

**WHEREAS**, the County is authorized to enter into agreements pursuant to A.R.S. § 11-952 and is willing to maintain and manage the segment of the Sheep Crossing Trail in accordance with the terms and conditions of this Agreement.


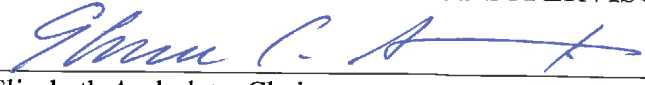
**NOW THEREFORE BE IT RESOLVED**, in consideration of the mutual covenants contained within the Intergovernmental Agreement, Coconino County hereby accepts and approves the Intergovernmental Agreement with the City of Flagstaff for the maintenance and management of trail segment described therein.

**PASSED AND ADOPTED** this 5<sup>th</sup> day of January 2021.

AYES: 5  
NOS: 0  
ABSENT: 0

(SEAL)

**COCONINO COUNTY BOARD OF SUPERVISORS**

  
  
\_\_\_\_\_  
Elizabeth Archuleta, Chairman

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Rose Winkeler, Deputy County Attorney

**ATTEST:**

  
\_\_\_\_\_  
Lindsay Daley, Clerk of the Board

**INTERGOVERNMENTAL AGREEMENT  
SHEEPS CROSSING FUTS MAINTENANCE**

**Between  
CITY OF FLAGSTAFF  
and  
Coconino County, Fort Tuthill County Park**

This Intergovernmental Agreement ("Agreement") is entered into this 5<sup>th</sup> day of January, 2021, between City of Flagstaff ("CITY"), a political subdivision of the State of Arizona, with offices at 211 W. Aspen Ave., Flagstaff, Coconino County, Arizona, and Coconino County ("COUNTY"), a political subdivision of the State of Arizona, with offices at 219 E. Cherry Avenue, Flagstaff, Coconino County, Arizona.

**RECITALS**

- A. WHEREAS**, the Flagstaff Urban Trails System ("FUTS") is a city-wide network of shared-use pathways that is used for both recreation and transportation by pedestrians, bicyclists, and other non-motorized users; and
  
- B. WHEREAS**, the majority of the FUTS system is maintained, managed, and operated by the City of Flagstaff ("City"), but in a few circumstances FUTS segments are maintained by other agencies or private parties; and
  
- C. WHEREAS**, the Sheep Crossing FUTS Trail was constructed by Kinney Construction Services ("KCS") during the summer and fall of 2020. The Sheep Crossing FUTS Trail connects the Ponderosa FUTS Trail on the east end, just south of the Ponderosa Trails Subdivision, and the Sinclair Wash FUTS Trail on the west end; and
  
- D. WHEREAS**, the Sheep Crossing FUTS Trail is a 0.74-mile trail and serves as a connecting portion of the greater 44-mile Flagstaff Loop Trail. This trail utilizes two concrete box culverts for passage under Highway 89A and Interstate 17; and
  
- E. WHEREAS**, the west end of the Sheep Crossing FUTS Trail is located within and terminates in Fort Tuthill Park, which is owned and operated by Coconino County ("COUNTY"); and
  
- F. WHEREAS**, upon completion of the Sheep Crossing FUTS Trail, the segment that lies within Fort Tuthill Park will be maintained, managed, and operated by the COUNTY; and
  
- G. WHEREAS**, pursuant to the construction contract between KCS and the City, upon issuance of Notice of Final Acceptance of the trail improvements, by the City, there will be a two (2) year period of warranty between KCS and the City. During this two (2) year warranty period, defects in craftsmanship or defective materials will be repaired and replaced by KCS.

H. **WHEREAS**, the parties are authorized to enter into this Agreement pursuant to A.R.S. § 11-952.

NOW, THEREFORE in consideration of the mutual covenants and conditions contained in this Agreement, the parties agree as follows:

1. **Recitals**

The Recitals set forth above are incorporated into the terms and conditions of this Agreement.

2. **Purpose**

The purpose of the Agreement is to memorialize that upon Notice of Final Acceptance by the CITY, the COUNTY will be responsible for the operation, management, and maintenance of the Sheep Crossing FUTS Trail that lies within Fort Tuthill Park. Additionally, pursuant to the construction contract entered into between the CITY and KCS, KCS warrants that the Sheep Crossing Improvements will be free from construction defects for a period of two (2) years. Should the COUNTY or CITY identify defects in craftsmanship or defective materials during the two (2) year warranty period, the CITY agrees to work with KCS to complete the necessary repair work in accordance with the terms of the warranty provision.

Area of warranty is shown on the legal exhibit attached as Exhibit A.

3. **Duration and Termination of Agreement**

3.1 **Effective Date.** This Agreement shall become effective upon execution by the parties.

3.2 **Duration.** The CITY issued Notice of Final Acceptance to KCS on December 18, 2020. This date establishes the commencement of the two (2) year warranty period, which will expire on December 18, 2022. The expiration of the warranty period will also serve as the termination date of this Agreement. The COUNTY'S responsibility for operation, management, and maintenance of the Sheep Crossing FUTS Trail will survive the termination of this Agreement and remain the responsibility of the COUNTY in perpetuity.

4. **Warranty Periods**

4.1 **Contractor Warranty Period.** Pursuant to Section 108.8 Guarantee and Warranty Provisions of the construction contract entered into between the CITY and KCS, as amended, KCS warrants that the Sheep Crossing Improvements will be free from defects for a period of two (2) years from the date the CITY determines upon inspection that the Sheep Crossing Improvements have been constructed in accordance with all approved plans and regulations and accepted by the CITY ("Contractor Warranty Period"). CITY will be responsible for enforcing the Contractor Warranty Period pursuant to the terms of the construction contract.

**4.2 Road Access.** The COUNTY will cooperate with CITY in providing access to CITY and KCS, to all Fort Tuthill park roads for the purposes of this Agreement. The COUNTY will ensure that all CITY and KCS maintenance vehicles are given ready access to Fort Tuthill. If necessary, the CITY will apply for a COUNTY Temporary Construction Easement to complete the work to repair any defects in craftsmanship or defects in materials.

**5. Force Majeure and Liability for Own Employees**

**5.1 Force Majeure.** CITY, and their agents, officials and employees, shall not be liable to the COUNTY 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, strike, labor difficulty, fire, flood, windstorm, government regulation or requirement, other than those imposed by CITY.

**5.2 Liability of Own Employees.** Each party shall remain solely and exclusively responsible for the employee benefits, wage and disability payments, pensions and workers' compensation claims for its employees. In addition, each party shall be solely and exclusively responsible to pay for any damage to its equipment, personal protective equipment, and/or medical expense incurred by any of its employees in connection with this Agreement.

**6. Dispute Resolution**

**6.1 Mediation.** If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation will take place in Flagstaff, Arizona, be self-administered, and be conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 3664 Madison Avenue, New York, New York 10017, with the exception of the mediator selection provisions, unless other procedures are mutually agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators designated under the auspices of the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation.

**6.2 Legal Action.** This mediation provision is not intended to constitute a waiver of a party's right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under Arizona Statutes and/or the Arizona Rules of Civil Procedure.

**6.3 Venue and Attorney's Fees.** This Agreement shall be governed by Arizona law. Venue will be proper in Coconino County, Arizona. 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 recover its costs including reasonable attorneys' fees, reasonable associated fees including but not limited to expert witness fees, and court costs from the non-prevailing party.

## 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. Notices are effective upon receipt or if mailed, upon the sooner of confirmation of receipt or three business days following deposit, postage pre-paid, by first class, US Mail.

### **If to City of Flagstaff:**

City Manager and Grants and Contracts Office  
City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

### **If to COUNTY:**

Cynthia Nemeth, Parks and Recreation Director  
Coconino County Parks and Recreation  
2446 Fort Tuthill Loop  
Flagstaff, Arizona 86005

## 8. General Provisions

**8.1 Status of Employees.** Employees of the respective parties shall not be considered or regarded as employees or agents of the other party. CITY and the COUNTY agree that each shall retain and have exclusive control, sole responsibility, and authority over their respective employees and agents.

**8.2 Employee notice.** Each party shall comply with the notice provisions of A.R.S. § 23 - 1022(e). For purposes of A.R.S. § 23-1022, each party shall be considered the primary employer of all personnel currently or hereafter employed by that party, irrespective of the incident command protocol in place, and said party shall have the sole responsibility for the payment of Worker's Compensation benefits or other fringe benefits of said employee.

**8.3 Authorization to Contract.** 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.

**8.4 Integration; Modification.** 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. 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.

**8.5 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.

**8.6 Compliance with Applicable Legal Authorities.** Each party shall be responsible for its own compliance with all applicable federal, state, county or local ordinances, statutes, charters, codes, rules, regulations, or any other governmental requirements including, but not limited to, the rules and regulations of the Arizona Department of Health Services.

**8.7 No Partnership.** This Agreement shall not be construed to create any partnership, joint venture, or employment relationship between the parties or any employee of the parties. No party shall be responsible for any debts, obligations, accounts, or liabilities of another party based on this Agreement. This Agreement shall not be construed to release any jurisdictional responsibilities of a party.

**8.8 Interpretation.**

**8.8.1** Titles and headings of the paragraphs contained herein are solely for the purpose of convenience and are not intended to in any way affect, control, or limit the meaning or application of any such paragraph.

**8.8.2** Words and expressions used herein shall be applicable according to the context and without regard to the number or gender of such words or expressions.

**8.9 Construction.** This Agreement has been negotiated by the parties and no party has acted under compulsion or duress, economic or otherwise. The parties waive any rule of interpretation, which would construe any provision of this Agreement against any party who drafted this Agreement.

**8.10 No Third-Party Beneficiaries.** Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

**8.11 Cooperation.** The parties agree to fully cooperate and use their best efforts and good faith in carrying out the spirit and intent of this Agreement.

## **9. Miscellaneous Provisions**

**9.1** Each party warrants that prior to signing this Agreement, all of its internal procedures, rules, and regulations have been complied with. The signing of this Agreement constitutes a binding agreement.

9.2 Failure of any party to strictly enforce any provision hereunder shall not constitute a waiver of rights to demand strict performance of that or any other provisions hereof at any time hereafter.


9.3 The terms and conditions of this Agreement are separate and severable. If, for any reason, any court of law or administrative agency should deem any provision hereof invalid or inoperative, the remaining provisions of this Agreement shall remain valid and in full force and effect.

9.4 Pursuant to A.R.S. § 38-511, either party may cancel this Agreement without penalty or further obligations for conflicts of interest.


9.5 Each party represents that it shall maintain for the duration of this Agreement sufficient policies of public liability insurance covering all of its obligations undertaken in the implementation of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

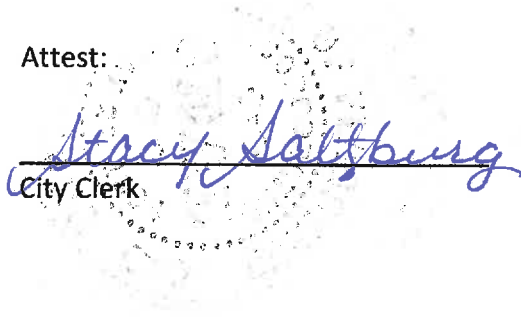

**City of Flagstaff**

  
\_\_\_\_\_  
DEASEY  
Paul Deasey, Mayor

**Coconino County**

  
\_\_\_\_\_  
Elizabeth Archuleta, Chair  
Board of Supervisors

Attest:

  
  
\_\_\_\_\_  
City Clerk

Attest:

  
\_\_\_\_\_  
Clerk of the Board



**Attorney Certificate**

The foregoing Intergovernmental Agreement has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Intergovernmental Agreement represented by the undersigned.

Christina Parry For 1/20/21  
Attorney for City of Flagstaff Date

[Signature] 1/8/21  
Attorney for Coconino County Date