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RESOLUTION 2020-02

**RESOLUTION APPROVING AN AGREEMENT WITH THE CITY OF FLAGSTAFF FOR
HAZARDOUS WASTE SERVICES**

WHEREAS, Coconino County and the City of Flagstaff, through prior agreements, have agreed to permit County residents and businesses within the County use of the Hazardous Products Center operated by the City;

WHEREAS, both utilization by County residents and businesses and City operating costs and County costs have increased dramatically over the last five years;

WHEREAS, the road to the City Landfill and HPC is currently maintained by the County;

WHEREAS, in exchange for the County's agreement to continue to snowplow the road to the Landfill, the City has agreed to more favorable fixed yearly terms so County residents may continue to utilize the HPC;

NOW, THEREFORE, BE IT RESOLVED by the Coconino County Board of Supervisors, approving the Agreement with the City of Flagstaff to allow for the use of the Hazardous Products Center by County residents and businesses within the County.

PASSED AND ADOPTED this 7th day of January 2020 by the Coconino County Board of Supervisors.

AYES: 5
NOES: 0
ABSENT: 0

(SEAL)

COCONINO COUNTY BOARD OF SUPERVISORS



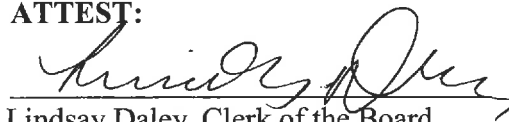
Lena Fowler, Chair

APPROVED AS TO FORM:



Rose Winkeler, Deputy County Attorney

ATTEST:



Lindsay Daley, Clerk of the Board

When recorded, mail to:
Clerk's Office
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF FLAGSTAFF
AND
COCONINO COUNTY**

This Intergovernmental Agreement ("2019 Agreement") is made as of this 7th day of January, 2020 by and between the City of Flagstaff ("City"), a political subdivision of the State of Arizona and Coconino County ("County"). The City and the County may be referred to in this 2019 Agreement collectively as the "Parties" and singularly as a "Party."

RECITALS

A. The Parties have had prior Intergovernmental Agreements wherein the Parties agreed that households and small businesses within the County were permitted to bring hazardous wastes to the City of Flagstaff's Hazardous Products Center ("Center") for safe and proper disposal; and

B. The Parties wish to enter into this 2019 Agreement terms under terms where the County agrees pay the City a flat fee of \$50,000.00 per Fiscal Year for a period of ten (10)-years for use of the Center, in addition to plowing the access road to the Center on an "as needed" basis. In return, the City shall permit households and small businesses within the County to dispose of hazardous wastes at the Center. Additionally, the City will allow small businesses to use the Center when they contribute a fifty-dollar (\$50.00) yearly registration fee and disposal fee at the time of delivery.

NOW, THEREFORE, pursuant to A.R.S. § 11-952, authorizing contracts between public agencies for services for the joint exercise of powers to both the City and the County and in consideration of the premises and the mutual covenants contained in this 2019 Agreement, the Parties agree as follows:

1. THE CITY'S ACCEPTANCE OF HAZARDOUS WASTES

The City agrees to accept hazardous wastes from County households and small businesses located within the County at the Center.

A. Hours of Operation

The County shall be responsible for informing its residents of the Center's hours of operation. Operational hours are Monday to Saturday from 8:00 AM to 3:00 PM. Hazardous wastes will not be accepted outside the Center's designated hours of operation. The City shall

have the right to modify the days and hours during which the Center will operate. The City shall immediately notify the County of any changes in the Center's hours of operation. Notwithstanding this subsection, the Center shall not operate on any official state holidays.

B. Household Residency Requirements

Residential households within the County may deposit hazardous wastes at the Center free of charge and will be required to show proof of residency within the County. Proof of residency or domicile within the County shall be shown by a valid Arizona Driver's License, state-issued identification card, or a current utility bill which reasonably substantiates current residence or domicile within the County.

C. Small Businesses

- i. Small businesses using the Center shall provide proof of business residency within the County by a verifiable business license issued by the County or a City within the County. In addition, small businesses must be qualified as a Conditionally Exempt Small Quantity Generator ("CESQG") according to the United States Environmental Protection Agency. According to the Code of Federal Regulations (40 CFR 261.5), a CESQG is a generator (business owner) that meets the following criteria:
 - 1) Generates less than 220 pounds of hazardous waste (defined by the Resources and Conservation Recovery Act ["RCRA"]) in a calendar month; and
 - 2) Accumulates at any time or generates less than 2.2 pounds of acute hazardous waste in a calendar month (acute hazardous waste begins with an Environmental Protection Code of "P" or the following "F" codes F020, F021, F022, F026, and F027); and
 - 3) Accumulates no more than 2,200 pounds of hazardous waste (defined by RCRA) at any one time.

2. EXPENDITURES AND ACCOUNTING

A. Reimbursement from the County

The County shall pay the City a fixed cost of \$50,000.00 per Fiscal Year for use of the Center. Additionally, the County shall plow the road providing access to the Center on an "as needed" basis. The City shall submit to the County reports which include, but are not limited to, the number of County households that use the Center, total number of small businesses using the Center. The City shall provide reports generated pursuant to this section to the County on a quarterly basis including total amounts of hazardous waste generated. Said reports shall be submitted quarterly.

B. Contributions from Small Businesses

Small businesses located within Coconino County that qualify as a CESQG using the Center shall pay a yearly registration fee in the amount of fifty dollars (\$50.00) due when hazardous waste is initially brought to the Center. The fee will be valid for one year after the date of payment. In addition, small businesses using the Center shall pay a disposal fee at the time of delivery. Disposal fees shall reflect the actual cost of disposal plus related operational expenses. Disposal fees for small businesses shall be posted on the City’s website and made available at both the Center and Flagstaff City Hall.

3. AUTHORITY TO CONTRACT

Each Party represents and warrants that it has full power and authority to enter into this 2019 Agreement and perform its obligations hereunder and has taken all required acts or actions necessary to authorize the same.

4. NOTICES

Unless otherwise specified herein, any notice or other communication required or permitted to be given under this 2019 Agreement will 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 compliance with this Section:

If to the City:

Public Works Director
City of Flagstaff
211 West Aspen
Flagstaff, AZ 86001

If to Coconino County:

Solid Waste Manager
Coconino County
Public Works Department
5600 East Commerce Avenue
Flagstaff, AZ 86004

5. TERM

This 2019 Agreement shall be effective on the date first set forth above and shall continue in force and effect for a period of ten (10)-years from the date of its execution unless otherwise terminated prior to that date by either Party. This 2019 Agreement may be terminated by either Party upon sixty (60) days written notice of termination delivered to the other Party.

6. INTEGRATION; MODIFICATION

Each of the Parties acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties, except as expressed herein, and that this 2019 Agreement constitutes the parties’ entire agreement with respect to the matters addressed in the 2019 Agreement. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are hereby superseded and merged in the 2019 Agreement. This 2019 Agreement may be modified or amended only by written agreement executed by both of

the Parties and duly filed with the Coconino County Recorder. Any such modification or amendment will become effective no earlier than the date of such filing.

7. WAIVER

No failure to enforce any condition or covenant of this 2019 Agreement will imply or constitute a waiver of the right to insist upon performance of such condition or covenant, or of any other provision, nor will any waiver by either Party of any branch of any one or more conditions or covenants of this 2019 Agreement constitute a waiver of any succeeding or other breach.

8. SEVERABILITY

In the event that a court of competent jurisdiction holds any part or provision of this 2019 Agreement void or of no effect, the remaining provisions of this 2019 Agreement will remain in full force and effect to the extent that the continued enforcement of the remaining terms continue to reflect substantially the intent of the Parties.

9. GOVERNING LAW

This 2019 Agreement will be governed, interpreted and enforced in accordance with the laws of the State of Arizona. Coconino County shall be the venue for any litigation arising out of this Agreement.

10. DISPUTE RESOLUTION

The Parties may seek appropriate remedies at law or in equity. Disputes under this 2019 Agreement will be resolved pursuant to A.R.S. § 12-1518 and the use of arbitration when subject to mandatory arbitration pursuant to A.R.S. § 12-133. The cost of arbitration will be shared equally by the Parties, however, each Party shall bear its own attorney fees and costs.

11. NON-DISCRIMINATION

The Parties agree to comply with Arizona State Executive Order No. 2009-09 and all other Federal, State and City laws, rules and regulations, including the Americans with Disabilities Act.

12. CONFLICT OF INTEREST

The Parties agree that this 2019 Agreement may be cancelled for a conflict of interest in accordance with A.R.S. § 38-511.


13. INDEMINIFICATION

To the fullest extent permitted by law, each Party to this 2019 Agreement shall indemnify, defend and hold harmless the other Party, their members, directors, officers, employees, agents, attorneys and assigns from and against any and all claims, losses, liability, costs or expenses, of whatever kind and nature whatsoever, that may arise or result from any act,

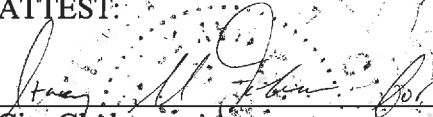
action, or omission of the other under this 2019 Agreement. This indemnification shall survive any termination of this 2019 Agreement or the termination of the participation of any of its Parties.

IN WITNESS WHEREOF, the Parties have caused this 2019 Agreement to be executed as of the day and year written below.

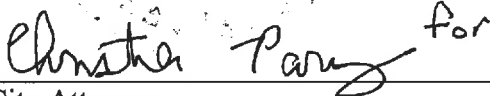
City of Flagstaff


By: CORALEVANS Mayor

ATTEST:


City Clerk

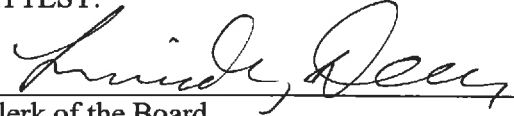
APPROVED AS TO FORM:

 for
City Attorney

Coconino County Board of Supervisors


By: Lena Fowler, Chairman

ATTEST:


Clerk of the Board

APPROVED AS TO FORM:


Deputy County Attorney