

RESOLUTION 2023-04

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF COCONINO,
ARIZONA; APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN
COCONINO COUNTY FLAGSTAFF UNIFIED SCHOOL DISTRICT NO. 1 FOR
MAINTENANCE OF BUS PULL-THROUGH**

WHEREAS, Coconino County (the “County”) and Flagstaff Unified School District No. 1 (the “District”) collectively known as the “Parties” desire to enter into an Agreement for maintenance of a bus pull-through off of Tovar Trail, near the entrance of Kachina Village; and

WHEREAS, this Agreement shall become effective as of the date it is approved by the County Board of Supervisors and the District Governing Board; and

WHEREAS, Coconino County shall be solely responsible for the repair, replacement and rehabilitation of the asphalt concrete, gated entrance, and sidewalks of the Project to maintain, at a minimum, ADA compliance. The County will not be responsible for sweeping, snow removal, temporary pothole repair during winter weather, or any other maintenance outside of the repair, replacement and rehabilitation of asphalt concrete, gated entrance, and sidewalks.; and

WHEREAS, the District shall provide maintenance of the Project during winter weather when such causes snow packed roads and unsafe school bus access through Kachina Village. Maintenance will include the sweeping of the project, removal of snow, temporary pothole repair during winter weather, and any other maintenance responsibilities outside of the repair, replacement and rehabilitation of the asphalt concrete, gated entrance, and sidewalks.

WHEREAS, it is expected that the bus pull-through will be used as an alternate to normal bus stop operations in Kachina Village to be used in severe winter weather conditions; and

WHEREAS, the County and District intend to promote the safety of students, families, and District staff through utilization of the bus pull-through; and

WHEREAS, it is anticipated that the primary user of the bus pull-through will be for the District bus operations, as well as activities under the discretion of County Parks and Recreation; and

WHEREAS, the District wishes to enter into an agreement with the County for the maintenance of the Bus Pull-Through subject to the terms and conditions set forth herein.

NOW, THEREFORE, BE IT RESOLVED that the Coconino County Board of Supervisors approves the Intergovernmental Agreement between Coconino County and the Flagstaff Unified School District No. 1.

PASSED AND ADOPTED this 7th day of March 2023.

AYES: 4
NOS: 0
ABSENT: 0
Abstention: 1


COCONINO COUNTY BOARD OF SUPERVISORS:

(SEAL)





Patrice Horstman, Chair

ATTEST:


Lindsay Daley, Clerk of the Board

APPROVED AS TO FORM:


for Monique Coady, Deputy County Attorney

**INTERGOVERNMENTAL AGREEMENT
BETWEEN COCONINO COUNTY AND
FLAGSTAFF UNIFIED SCHOOL DISTRICT NO. 1
FOR MAINTENANCE OF BUS PULL-THROUGH**

This Intergovernmental Agreement (“Agreement”) is entered into this 7th day of March, 2023, between Coconino County, a political subdivision of the State of Arizona (“County”), and Flagstaff Unified School District No. 1, a political subdivision of the State of Arizona (“District”). The County and the District are collectively referred to as the “Parties” and individually as a “Party”.

This Agreement shall become effective as of the date it is approved by the County Board of Supervisors and the District Governing Board.

RECITALS

- A. A.R.S. §§11-251 and 28-6701, et seq., authorize the County to layout, maintain, control, and manage public roads within the County, to acquire and condemn property necessary to achieve such purposes, and to enter into this Agreement.
- B. A.R.S. §11-251, et seq., provides that public agencies may enter into intergovernmental agreements for the provision of services or for joint or cooperative action.
- C. A.R.S. §15-342(13) authorizes the District to enter into intergovernmental agreements under A.R.S. §11-952 with another governing body such as the County with such agreement being exempt from competitive bidding under the procurement rules.
- D. The County has received certain real property generally known as 3409 Kachina Trail, Flagstaff, AZ 86005 (Coconino County APN 116-5-022G) and legally described in Exhibit A and incorporated by reference (“Property”). The County received the Property by donation from M&S Land Investment Company, L.L.P. pursuant to a deed dated December 27, 2018, and recorded on December 31, 2018 with the Coconino County Recorder’s Office (“Donation Deed”). A copy of the Donation Deed and survey of the Property is attached hereto as Exhibit A and incorporated by reference.
- E. Pursuant to the terms of the Donation Deed, the County is to:
- Develop a pull-through road from the existing Raymond Country Park parking lot at Tovar Trail, through the parcel and onto Tovar Trail near the Kachina Blvd. intersection. The road extension would be intended for use by park visitors and Flagstaff Unified School District buses when the roads in Kachina Village are snow packed.
- F. The Parties have already entered into an intergovernmental agreement dated October 6, 2020, to design, implement, and construct the improvements on the Property in accordance with

the Donation Deed (the "Project") with the County to take the lead on procurement and construction.

G. The Parties desire to enter into an additional intergovernmental agreement to allocate the responsibilities and obligations of each Party to maintain the Project after construction is completed.

AGREEMENT

NOW, THEREFORE, pursuant to A.R.S. §11-952, authorizing agreements for joint exercise of authority among two or more public agencies, and in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. Purpose

The purpose of this Agreement is to identify the roles and responsibilities of the Parties with respect to maintenance of the Project after construction is completed. The main division of labor for maintenance is based around winter weather and non-winter weather. Winter weather will be considered in parallel with the Donation Deed in that winter weather will apply when District buses use the Project "when the roads in Kachina Village are snow packed". Access to the Project shall be provided to both Parties by daisy chaining padlocks at the gated entrances of the bus pull-through and the east Raymond County Park Parking Lot. It is the responsibility of each Party to open and securely close each gated access point for when site is to be used by that Party.

2. Responsibilities of the County:

The County shall be solely responsible for the repair, replacement and rehabilitation of the asphalt concrete, gated entrance, and sidewalks of the Project to maintain, at a minimum, ADA compliance. The County will include the evaluation of the asphalt concrete and sidewalks in its review of pavement preservation needs once every other year. If repair, rehabilitation, or replacement are deemed necessary the County will plan necessary repairs for the following construction season to address the needs of the project. The County will not be responsible for sweeping, snow removal, temporary pothole repair during winter weather, or any other maintenance outside of the repair, replacement and rehabilitation of asphalt concrete, gated entrance, and sidewalks.

3. Responsibilities of the District:

A. The district shall provide maintenance of the Project during winter weather when such causes snow packed roads and unsafe school bus access through Kachina Village. Maintenance will include the sweeping of the project, removal of snow, temporary pothole repair during winter weather, and any other maintenance responsibilities outside of the repair, replacement and rehabilitation of the asphalt concrete, gated entrance, and sidewalks. A specific timeframe for the maintenance period for snow removal and temporary pothole repairs is not identified, due to how winter weather can occur anywhere from Fall through late Spring in the Flagstaff/Kachina Village area.

B. During winter snow weather, the District shall use small trucks to plow the project and keep it in an appropriate state of safety and access. Small trucks are to be used instead of larger trucks or heavy plowing vehicles to avoid damage to asphalt and concrete sidewalks

in the Project. Plows of any kind, even mounted on smaller trucks, will not be used to clear sidewalks in any situation. A skid steer and/or snow blower may be used to clear snow off the sidewalk.

4. Indemnification

By entering into this Agreement, the Parties agree that to the extent permitted by Arizona law, each Party will defend, indemnify, and save the other Party harmless, including any of the Party's departments, agencies, officers, employees, elected officials, or agents, from and against all loss, expense, damage, or claim of any nature whatsoever which is caused by any activity, condition, or event arising out of the performance or nonperformance by the indemnifying Party of any of the provisions of this Agreement, except such loss, expense, damage, or claim occasioned by the negligence of the other Party. By entering into this Agreement, each Party indemnifies the other against all liability (including but not limited to vicarious liability), losses, and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement by the indemnifying Party, except such injury or damage that is occasioned by the negligence of the other Party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Party, its departments, agencies, officers, employees, elected officials, or agents. In the event of any action, the damages which are the subject of this indemnity shall include costs, expenses of litigation, and reasonable attorney's fees.

5. Worker's Compensation Claims

The Parties shall comply with the provisions of A.R.S. §23-1022 (E) by posting the public notice required. As provided for in A.R.S. §23-1022(D), an employee of a public agency who works under the jurisdiction or control of or within the jurisdictional boundaries of another public agency pursuant to a specific intergovernmental agreement or contract entered into between the public agencies is deemed to be an employee of both public agencies. However, the primary employer is solely liable for the payment of Workers' Compensation benefits. As such, each Party shall maintain Workers' Compensation insurance coverage on all of its own employees providing services pursuant to this Agreement.

6. Insurance

Each Party shall bear the risk of its own actions and shall determine for itself an appropriate level of insurance coverage and maintain such coverage. Nothing in this Agreement shall be construed as a waiver of any limitation on liability that may apply to a Party.

7. Effective Date; Term; Termination.

- A. This Agreement shall be effective as of the date in has been approved by the County Board of Supervisors and the District Governing Board and shall remain in full force and effect for five (5) years, unless terminated earlier, except that it may be amended upon written agreement of the Parties. An option shall be made available to renew this agreement for up to three (3) additional five (5) year periods.
- B. Termination. Any Party may terminate its participation in this Agreement by providing the other Party thirty (30) days written notice.

8. Cancellation for Conflict of Interest

This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511.

9. Compliance with All Laws

Each Party shall comply with all federal, state, and local laws, rules, and regulations.

10. Execution Procedure

This Agreement will be executed in counterparts by the governing body of each Party.

11. Non-Discrimination

Each Party warrants that it complies with any state and federal laws, rules and regulations which mandate that all persons, regardless of race, color, creed, religion, sex, genetic information, age, national origin, disability, familial status, or political affiliation, shall have equal access to employment opportunities, including but not limited to the Americans with Disabilities Act. Each Party shall take affirmative action to ensure that it will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, Genetic Information.

12. Legal Arizona Workers Act Compliance

Parties are required to comply with A.R.S. §41-4401, and hereby warrants that they will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to the employment of their respective employees, the requirements of A.R.S. §41-4401, and with the e-verification requirements of A.R.S. §23-214(A) (together the "state and federal immigration laws"). Parties further agree to ensure that each subcontractor that performs any work under this Agreement likewise complies with the state and federal immigration laws. A breach of a warranty regarding compliance with the state and federal immigration laws shall be deemed a material breach of the Agreement and the Party who breaches may be subject to penalties up to and including termination of the Agreement. Each Party retains the legal right to inspect the papers of any contractor or subcontract employee working under the terms of the Agreement to ensure that the other Party is complying with the warranties regarding compliance with the state and federal immigration laws.

13. Non-appropriation

This Agreement shall be subject to available funding for each Party, and nothing in this Agreement shall bind any Party to expenditures in excess of funds appropriated and allotted for the purposes outlined in this Agreement.

14. No Third-Party Beneficiaries

The Parties acknowledge and agree that the terms, provisions, conditions, and obligations of this Agreement are for the sole benefit of, and may be enforceable solely by, the Parties, and none of the terms, provisions, conditions, and obligations of this Agreement are for the benefit of, or may be enforced by, any person or entity not a party to this Agreement.

15. Signatures

Each Party represents and warrants that all necessary approvals for this Agreement have been obtained, and the persons whose signatures appear below have the authority necessary to execute this Agreement on behalf of the Parties indicated. The Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument. Faxed, copied, and scanned signatures are acceptable as original signatures.

16. Debarment/Suspension.

Each Party to this Agreement warrants that neither it nor any contractor or vendor under contract with the Party to provide goods or services towards the Project or the accomplishment of any other objectives of this Agreement is suspended or debarred by any state or federal agency which will provide funding that will be used in the Project.

17. Default.

Each of the following shall constitute a material breach of this Agreement and an event of default ("Default") hereunder:

A. A Party's failure to observe or perform any of the material covenants, conditions, or provisions of this Agreement to be observed or performed by that Party ("Defaulting Party"), where such failure continues for thirty (30) days after the Defaulting Party receives written notice of such failure from the non-defaulting Party; provided, however, that such failure shall not be a Default if the Defaulting Party has commenced to cure the Default within such thirty (30) day period and thereafter is diligently pursuing such cure to completion, but the total aggregate cure period shall not exceed ninety (90) days unless the Parties agree in writing that additional time is reasonably necessary under the circumstances to cure the default.

In the event a Defaulting Party fails to perform any of its material obligations under this Agreement and is in Default, the non-defaulting Party, at its option, may terminate this Agreement. Further, upon the occurrence of any Default and at any time thereafter, the non-defaulting Party may, but shall not be required to, exercise any remedies now or hereafter available to it at law or in equity.

18. Notices.

All notices required under this Agreement to be given in writing shall be sent to:

COUNTY:

Coconino County
Attn: Steve Peru
219 E. Cherry Ave.
Flagstaff, AZ 86001

With a copy to:

Coconino County Attorney's Office
Attn: Bill Ring
110 E. Cherry Ave.
Flagstaff, AZ 86001

DISTRICT: Flagstaff Unified School District No. 1
Attn: Michael Penca, Superintendent
3285 E. Sparrow Ave.
Flagstaff, AZ 86004

With a copy to: Mangum Wall Stoops & Warden, PLLC
Attn: Brandon J. Kavanagh
112 N. Elden Street
Flagstaff, AZ 86001

All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or courier) or may be sent by regular, certified, or registered mail or US Postal Service Express Mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this paragraph. Either Party by written notice to the other may specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given seventy-two (72) hours after the notice is addressed as required in this paragraph and mailed with postage prepaid. Notices delivered by US Postal Service Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the notice to the Postal Service or courier.

19. Miscellaneous.

A. This Agreement does not imply authority to perform any tasks or accept any responsibility not expressly stated in this Agreement.

B. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.

C. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assignees. Neither Party shall assign its interest in this Agreement without the prior express written consent of the other Party.

D. This Agreement and all exhibits attached, as applicable, set forth all of the covenants, promises, agreements, conditions, and understandings between the Parties and there are no covenants, promises, agreements, conditions, or understandings between the Parties other than as set forth in this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any rule or presumption requiring construction against the party drafting this Agreement. Each Party has reviewed this Agreement and has had the opportunity to have it reviewed by legal counsel.

E. This Agreement cannot be modified or changed except by a written instrument executed by all of the Parties.

F. The waiver of any Party of any right granted to it under this Agreement is not a waiver of any other right granted, nor may any waiver be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

G. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalid or prohibited under the law, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.

H. Time is of the essence concerning this Agreement. Unless otherwise specified in this Agreement, the term "day" means calendar day. If the date of performance of any obligation or the last day of any time period falls on a Saturday, Sunday, or legal holiday, then the date for performance or time period shall expire at the close of business on the first day thereafter that is not a Saturday, Sunday, or legal holiday.

I. Sections and other headings are for reference only and shall not affect in any way the meaning or interpretation of this Agreement.

J. The Parties agree to execute and/or deliver to each other any other instruments and documents that may be reasonably necessary to fulfill the covenants and obligations to be performed pursuant to this Agreement.

K. The Parties agree that the venue for any claim arising out of or in any way related to this Agreement shall be in Coconino County, Arizona. This Agreement shall be governed by the laws of the State of Arizona.

L. Unless otherwise lawfully terminated by the Parties, this Agreement expires upon completion and acceptance of the Project and fulfillment of all terms of the Agreement.

[SIGNATURES ON FOLLOWING PAGES]

COUNTY:
**Coconino County, a political subdivision of
the State of Arizona**



Patrice Horstman, Chair

Attest:



Clerk

Approved as to form:



County Attorney's Office

DISTRICT:

**Flagstaff Unified School District No. 1,
a political subdivision of the State of Arizona**



Michael Penca, Superintendent

Attest



Approval as to form:



Mangum Wall Stoops & Warden PLLC

Exhibit A

Donation Deed and Survey of the Property

[See Attached]

WHEN RECORDED MAIL TO:

MAIL ALL TAX STATEMENTS TO:

SPECIAL WARRANTY DEED

**EXEMPT UNDER
ARS 11-1134 A7**

For the sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt and sufficiency of which are herewith acknowledged, M & S Land Investment Company, L.L.P., and Arizona limited liability partnership (formerly known as M & S Company, an Arizona general partnership) organized in the State of Arizona, (hereafter "Grantor"), does hereby grant, sell and convey unto Coconino County, a political subdivision of the State of Arizona (hereafter "Grantee"), the following described real property situated in the County of Coconino, State of Arizona, to wit:

*Investment

That certain real property known as 3409 Kachina Trail, Flagstaff, AZ
, 86005 Coconino County Assessor Parcel #116-50-022G, and more
particularly described as follows:

See Attached "Legal Description" (hereafter "Property")

SUBJECT TO the following restrictive covenants:

It is the express intent of the Grantor to convey to Grantee only such rights of use and development with regard to the Property as are consistent with the following:

- Develop a trail/path through the parcel from Raymond County Park, across the parcel and a potential future pedestrian crossing at Kachina Blvd and/or other park and recreational infrastructure that is deemed appropriate that supports the mission and objectives of Coconino County.
- Develop a pull-through road from existing Raymond County Park parking lot at Tovar Trail, through the parcel and onto Tovar Trail near the Kachina Blvd. intersection. The road extension would be intended for use by park visitors and Flagstaff Unified School District buses when the roads in Kachina Village are snow packed.

The foregoing restrictions are hereby made covenants touching, concerning, and running with the land, which shall be, and are, binding upon Grantee and its successors and assigns in perpetuity from the date of execution of this Deed. By accepting this Deed, Grantee accepts, acknowledges, and agrees to these covenants. Said covenants are reserved for, and inure to, the benefit of Grantor, and may only be rescinded, waived, modified, or amended by the express

RECEIVED
2023 APR 17 PM 2:21
S.D. OF CALIF.
COCOHINO COUNTY

Old Republic National Title Insurance Company – Issued by

Pioneer Title Agency, Inc.

Order No. 70506747-006-JRK

Your No.: JTRjtr3

12/26/20183

**EXHIBIT A
LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF COCONINO, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

All that portion of LOT 15B, KACHINA COUNTRY CLUB VILLAGE, as shown on the plat thereof, recorded in Case 2, Map 63, records of Coconino County, Arizona, lying within the Northeast quarter of Section 30, Township 20 North, Range 7 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, being more particularly described as follows:

COMMENCING at the Northeast corner of said Section 30, from which the East quarter corner of said Section 30 bears South 00° 14' 50" West, a distance of 2650.42 feet;

Thence South 00° 14' 50" West, a distance of 207.63 feet;

Thence South 15° 31' 36" West, a distance of 453.66 feet;

Thence South 20° 05' 56" West, a distance of 301.96 feet;

Thence North 74° 28' 24" West, a distance of 17.66 feet to a point on the Westerly right of way line of Interstate 17, being the beginning of a non-tangent curve concave to the Northwest having a radius of 119.93 feet and a long chord of South 47° 03' 52" West, a distance of 100.29 feet, said point being the POINT OF BEGINNING;

Thence Southerly, along said Westerly right of way and the arc of said curve through a central angle of 49° 25' 55", an arc length of 103.47 feet along said Westerly right of way;

Thence South 71° 46' 50" West, a distance of 116.71 feet along said Westerly right of way to the beginning of a non-tangent curve concave Southeasterly having a radius of 179.69 feet and a long chord of South 56° 59' 31" West, a distance of 79.63 feet;

Thence North 02° 24' 57" East, a distance of 213.10 feet;

Thence South 74° 28' 24" East, a distance of 251.79 feet to the POINT OF BEGINNING.

REPORT OF TITLE & LEGAL DESCRIPTION