

**INTERGOVERNMENTAL AGREEMENT FOR
COCONINO COUNTY ALTERNATIVE DISPUTE RESOLUTION PROGRAM
MEDIATION SERVICES
CITY OF FLAGSTAFF
and
COCONINO COUNTY**

This Intergovernmental Agreement for Mediation Services ("Agreement") is made by and between the City of Flagstaff ("City"), a municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, and Coconino County, a political subdivision of the state of Arizona with an office at 200 N. San Francisco Street, Flagstaff, Arizona 86001 ("County"), effective as of the date written below.

RECITALS

- A. The City desires to enter into this Agreement for the Coconino County for Alternative Dispute Resolution (ADR) programs to provide Mediation Services to the City for disputes regarding civil rights violations; and
- B. County has available and offers to provide the personnel necessary to organize and provide said services in accordance with the Scope of Work, attached to this Agreement as Exhibit A;
- C. The City and County attest that each has the authority to enter into this IGA by virtue of the authorities set forth in Arizona Revised Statutes §11-951, §11-952; and the Parties further attest that the scope and purpose of this agreement does not exceed the powers inherent to each Party by virtue of their organizational statutory authorities. Arizona Revised Statutes §11-954.

For the reasons recited above, and in consideration of the mutual covenants contained in this Agreement, the City and County agree as follows:

1. SERVICES TO BE PERFORMED BY COUNTY

County, agrees to provide the services, as set forth in detail in Exhibit "A" attached hereto and hereby incorporated as part of this Agreement and adopted by reference.

2. COMPENSATION OF COUNTY

The City agrees to pay **\$540.00** for a four (4) hour mediation session. If four (4) hours is not enough time to reach a settlement of a said dispute, the mediation can be reset, at the City's discretion and if necessary, the Mediator's recommendation at the cost of \$120.00 per hour.

3. RIGHTS AND OBLIGATIONS OF COUNTY

3.1 Separation of Authorities. The parties agree that County performs specialized services and that County enters into this Agreement with the City as an independent provider of services and not as an employee, agent, or representative of the City. County has no authority to make promises, representations or other extensions of credit that bind the City in any way. County is solely responsible for all labor and expenses in connection with this Agreement and for any and all damages arising out of County's performance under this Agreement. County is not obligated to accept all requests for services, depending on circumstances with other work being performed for other clients.

3.2 County's Control of Work. All services to be provided by County shall be performed in accordance with the Scope of Services set forth in Exhibit "A. County shall furnish the qualified

personnel, materials, equipment and other items necessary to carry out the terms of this agreement. County shall be responsible for and in full control of the work of all such County personnel.

3.3 Reports to the City. Although County is responsible for control and supervision of work performed under this Agreement, the services provided shall be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision shall include, but not be limited to, all reports if requested by the City to be provided by County to the City and the right of the City, and the right of the City to audit County's records for compliance.

3.4 Compliance with All Laws. County shall comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Agreement.

4. NOTICE PROVISIONS

Notice. Any notice concerning this Agreement shall be in writing and sent by certified or registered mail as follows:

To City:

**Barbara Goodrich
City Manager
City of Flagstaff
211 W. Aspen
Flagstaff, Arizona 86001**

To County:

**Sidney Buckman
Alternative Dispute Resolution Coordinator
Coconino County
200 N. San Francisco Street
Flagstaff, Arizona 86001**

5. INDEMNIFICATION.

"Each party shall be liable for its own actions and negligence and, to the extent permitted by law, Coconino County shall indemnify, defend and hold harmless City of Flagstaff against any actions, claims or damages arising out of Coconino County's negligence in connection with this Agreement, and City of Flagstaff shall indemnify, defend and hold harmless Coconino County against any actions, claims, or damages arising out of City of Flagstaff's negligence in connection with this Agreement. The foregoing indemnification shall not be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions."

6. INSURANCE

County shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by County, its agents, representatives, or employees. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect County from liabilities that may arise out of the performance of the work under this Agreement by County, its agents, representatives, or employees and County is free to purchase additional insurance as may be determined necessary.

A. Minimum Scope and Limits of Insurance: County shall provide coverage at least as broad and with limits of liability not less than those stated below.

1. Commercial General Liability - Occurrence Form
(Form CG 0001, ed. 10/93 or any replacement thereof)

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (any one fire)	\$500,000
Medical Expense (any one person)	Optional

2. Automobile Liability - Any Auto or Owned, Hired and Non-Owned Vehicles (Form CA 0001, ed. 12/93 or any replacement thereof.)
 Combined Single Limit Per Accident \$1,000,000
 for Bodily Injury and Property Damage

3. Workers' Compensation and Employer's Liability \$1,000,000

B. SELF-INSURED RETENTIONS/DEDUCTIBLES: Any self-insured retentions and deductibles must be noted to the City. However, the Proposer shall be solely responsible for any self-insured and/or deductibles associated with the Proposer's insurance coverage.

C. OTHER INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages:

- a. The City of Flagstaff, its officers, officials, and employees are additional insureds with respect to liability arising out of: activities performed by, or on behalf of, the County; including the City's general supervision of the County; products and completed operations of the County; and automobiles owned, leased, hired or borrowed by the County.
- b. The County's insurance shall contain broad form contractual liability coverage.
- c. The County's insurance coverage shall be primary insurance with respect to the City, its officers, officials, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess to the coverage of the County's insurance and shall not contribute to it.
- d. The County's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the County for the City.

6.1 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the, required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then at least ten (10) days prior notice shall be given to the City. Such notice shall be sent directly to:

Rick Compau, C.P.M., CPPO, CPPB
Purchasing Director
City of Flagstaff, Purchasing Division
211 W. Aspen Ave.
Flagstaff, Arizona 86001.

6.2 Acceptability of Insurers. Insurance shall be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A- VII, or receiving prior approval by the City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect County from potential insurer insolvency.

6.3 Verification of Coverage. Prior to commencing work or services, County shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and any required endorsements shall be received and approved by the City before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall constitute a material breach of contract.

All certificates required by this Agreement shall be sent directly to **Rick Compau, C.P.M., CPPO, CPPB, Purchasing Director, City of Flagstaff, Purchasing Division, 211 W. Aspen Ave., Flagstaff, AZ, 86001.** The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to request and receive within ten (10) days, complete, certified copies of all insurance policies required by this Agreement at any time. The City shall not be obligated, however, to review same or to advise County of any deficiencies in such policies and endorsements, and such receipt shall not relieve County from, or be deemed .a waiver of the City's right to insist on, strict fulfillment of County's obligations under this Agreement.

6.5 Approval. Any modification or variation from the insurance requirements in this Agreement shall be made by the City Attorney's office, whose decision shall be final. Such action shall not require a formal amendment to this Agreement, but may be made by administrative action.

7. **DEFAULT AND TERMINATION**

7.1 Events of Default. Defined. The following shall be Events of Default under this Agreement:

7.1.1 Any material misrepresentation made by County to the City;

7.1.2 Any failure by County to perform its obligations under this Agreement including, but not limited to, the following:

7.1.2.1 Failure to commence work at the time(s) specified in this Agreement due to a reason or circumstance within County's reasonable control;

7.1.2.2 Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time;

7.1.2.3 Failure to perform the work in a manner reasonably satisfactory to the City;

7.1.2.4 Discontinuance of the work for reasons not beyond County's reasonable control;

7.1.2.5 Failure to comply with a material term of this Agreement, including, but not limited to, the provision of insurance; and

7.1.2.6 Any other acts specifically stated in this Agreement as constituting a default or a breach of this Agreement.

7.2 Remedies.

7.2.1 Upon the occurrence of any Event of Default, the City may declare County in default under this Agreement. The City shall provide written notification of the Event of Default and any intention of the City to terminate this Agreement. Upon the giving of notice, the City may invoke any or all of the following remedies:

7.2.1.1 The right to cancel this Agreement as to any or all of the services yet to be performed;

7.2.1.4 The right to withhold all or any part of County's compensation under this Agreement;

and

7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

7.2.2 The City may elect not to declare an Event of Default or default under this Agreement or to terminate this Agreement upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the City, and that if the City allows County to continue to provide the Services despite the occurrence of one or more Events of Default, County shall in no way be relieved of any of its responsibilities or obligations under this Agreement, nor shall the City be deemed to waive or relinquish any of its rights under this Agreement.

8. GENERAL PROVISIONS

8.1 Headings. The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

8.2 Jurisdiction and Venue. This Agreement shall be administered and interpreted under the laws of the State of Arizona. County hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

8.3 Attorney's Fees. If suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.

8.4 Severability. If any part of this Agreement is determined by a court to be in conflict with any statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.

8.5 Assignment. This Agreement is binding on the heirs, successors and assigns of the parties hereto. This Agreement may not be assigned by either the City or County without prior written consent of the other.

8.6 Conflict of Interest. County covenants that County presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. County further covenants that in the performance of this Agreement, County shall not engage any employee or apprentice having any such interest. The parties agree that this Agreement may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

8.7 Authority to Contract. Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder, and that it has taken all actions necessary to authorize entering into this Agreement.

8.8 Integration. This Agreement represents the entire understanding of City and County as to those matters contained in this Agreement, and no prior oral or written understanding shall be of any force or effect with respect to those matters. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.

8.9 Non-appropriation. In the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City or the County for payments or performance to be made under this Agreement, this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. No payments shall be made or due to County under this Agreement beyond these amounts appropriated and budgeted by the City to fund payments under this Agreement.

8.10 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 shall take place in Flagstaff, Arizona, shall be self-administered, and shall be conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org, with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties shall not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision shall not constitute a waiver of the parties' 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 the Arizona Rules of Civil Procedure.

8.11 Waiver. No failure to enforce any condition or covenant of this Agreement by the City or County shall imply or constitute a waiver of the right of the City or County to insist upon performance of the condition or covenant, or of any other provision of this Agreement, nor shall any waiver by the City or County 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.

9. DURATION

This Agreement shall become effective on and from the day and year executed by the parties, indicated below, and shall continue in force for an initial term of five years (5) year, unless sooner terminated as provided above. Upon Council approved monetary contributions and mutual written agreement between the City and County, this Agreement is effective subject to annual budget appropriation. The Purchasing Director of the City has authority to bind the City only for the purpose of renewing the term of this Agreement as described in this section.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the ____ day of _____, 2019.

CITY OF FLAGSTAFF

COCONINO COUNTY

BY: _____
Barbara Goodrich, City Manager

BY: _____
XXXXXX, President

Attest:

Attest:

Stacey Saltzburg

Executive Assistant

Approved as to form:

Approved as to form:

City Attorney

Attorney

EXHIBIT A
SCOPE OF WORK

The Coconino County Alternative Dispute Resolution (ADR) program shall provide Mediation Services to the City for disputes regarding civil rights disputes.

The ADR program will provide a Mediator(s) to mediate disputes, arising out of possible civil rights violations and shall provide such services to all persons referred or brought in by the City.

The cost to the City will be \$540 for a four (4) hour mediation session. If four (4) hours is not enough time to reach a settlement of a said dispute, the mediation can be reset at the City's discretion and if necessary, the Mediator's recommendation at the cost of \$120.00 per hour.