

**AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT
REGARDING
THE FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION**

**Between
City of Flagstaff
and
Coconino County**

This Amended and Restated Intergovernmental Agreement ("Agreement") is entered into this ____ day of _____, 2020 (the "Effective Date"), among the City of Flagstaff (the "City"), an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona and Coconino County (the "County"), a political subdivision of the State of Arizona, with offices at 219 E. Cherry Avenue, Flagstaff, Arizona. The City and the County may each be referred to in this Agreement individually as a Party, and collectively as the Parties.

RECITALS

- A. The City authorized the establishment of a Metropolitan Planning Organization (the "FMPO") by Resolution 2070, adopted May 21, 1996.
- B. The County authorized the establishment of an FMPO by Resolution 96-32, adopted May 20, 1996.
- C. Under 23 C.F.R. § 450.104, a Metropolitan Planning Organization is a federal designation for "the policy board of an organization created and designated to carry out the metropolitan transportation planning process."
- D. On or about June 24, 1996, Fife Symington, then Governor of the State of Arizona, in accordance with 23 CFR § 450.306, designated the FMPO as the Metropolitan Planning Organization for the Flagstaff Urbanized Area.
- D. The City, the County and the State entered into an intergovernmental agreement regarding the designation of the Flagstaff Metropolitan Planning Organization (FMPO) on September 12, 1996 (the "1996 IGA").
- E. On October 7, 2005, the County and the City entered into an intergovernmental agreement (the "2005 IGA") that sought to clarify the nature of each Party's FMPO responsibilities, removed ADOT from the IGA at ADOT's request, and superseded the 1996 IGA.
- F. On January 9, 2012, the County and the City entered into an intergovernmental agreement (the "2012 IGA") that extended and further clarified the nature of each Party's responsibilities with regard to the FMPO.
- G. On September 18, 2018, the County and City entered into an intergovernmental agreement ("2018 IGA") to establish the FMPO as a separate legal entity, and the FMPO was created as a separate Arizona nonprofit corporation on May 14, 2019.
- H. The County and City desire to amend and restate the 2018 IGA in order to recognize the FMPO as a separate legal entity and to add a representative of the Northern Arizona

Intergovernmental Public Transportation Authority (NAIPTA) to the FMPO Executive Board.

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

1. Purpose of the Agreement

The purpose of this Agreement is to carry out metropolitan transportation planning for the FMPO planning area, and such other functions as may be determined by the FMPO Executive Board (the "Executive Board") that are within the FMPO's authority and consistent with its designation as an MPO. The FMPO planning area is described in the attached Exhibit A, the boundaries of which are unchanged by this Agreement. The Executive Board will serve as the policy-making body for cooperative decision-making regarding the use of federal transportation funds and other transportation related policies. In addition to this Agreement, the FMPO Board will adopt Operating Procedures. FMPO responsibilities include:

- 1.1 Determining the metropolitan planning area boundary subject to approval of the Governor;
- 1.2 Carrying out its federal and state required regional transportation planning processes, including corridor and sub-area studies, in cooperation with the State and transit operators;
- 1.3 Developing the metropolitan transportation plan and transportation improvement program (TIP) in coordination with other providers of transportation such as regional airports, rail and truck companies, and the unified planning work program (UPWP) in cooperation with the State and transit operators;
- 1.4 Approving the metropolitan transportation plan, updates, the TIP, and amendments;
- 1.5 Assisting in the development of a cooperative process to initiate and perform each major investment study involving the State, transit operators, environmental interests, resource and permitting agencies, and appropriate federal agencies;
- 1.6 Satisfying such other requirements or mandates from the state or federal government; and
- 1.7 Leveraging resources, identifying projects, and working to secure funding in collaboration with member agencies and other partners.

2. Duration and Termination of Agreement

Upon execution by the Parties, all previous agreements and understandings between the City and the County regarding the FMPO will cease to be effective. This Agreement will remain effective for five (5) years from the Effective Date. This Agreement shall renew automatically, subject to the appropriation of funds by the Parties or the federal or state government for MPO purposes, for one (1) additional five (5) year period. A Party may terminate this Agreement upon at least sixty days prior written notice to the other Party to the Agreement. Terminating the Agreement shall not relieve a Party from those liabilities or obligations already incurred under this Agreement.

3. Form and Common Powers of the FMPO

3.1 The FMPO is a separate legal entity formed pursuant to A.R.S. § 11-952. More specifically, the FMPO is a domestic nonprofit corporation organized pursuant to Title 10, Chapter 25 of the Arizona Revised Statutes.

3.2 The FMPO is governed by an Executive Board that consists of the following voting members:

- Three (3) members of the Flagstaff City Council
- Two (2) members of the Coconino County Board of Supervisors
- One (1) representative from the Arizona Department of Transportation or Arizona State Transportation Board.
- One (1) representative of NAIPTA appointed by the NAIPTA Board of Directors who is not a member of the Flagstaff City Council or County Board of Supervisors.

3.3 As a separate legal entity formed pursuant to A.R.S. § 11-952, the FMPO, subject to existing applicable law, may:

- a. Make and enter into contracts, including contracts, leases or other transactions with one or more of the parties to the agreement forming the separate legal entity.
- b. Employ agents and employees.
- c. Acquire, hold or dispose of property.
- d. Acquire, construct, manage, maintain and operate buildings, works, infrastructure and improvements.
- e. Incur debts, liabilities and obligations.
- f. Sue and be sued.

4. Administrative and Financial Responsibilities

4.1 The Parties agree that the FMPO will procure administrative and financial services (collectively “Services”) as required to meet its legal and regulatory responsibilities in a manner that best serves the needs of the FMPO as determined by the FMPO Executive Board, and include, but are not limited to:

4.1.1 Administrative services including human resources, personnel policies, legal services, information technology, office space, payroll processing, and other services needed to carry out the business of the FMPO.

4.1.2 Fiscal services including procurement, grant acceptance, auditing, budgeting, and budget adoption.

4.2 Services may be provided by FMPO staff, procured from the public or private sector, or from a Party that is interested in providing the services, and will be memorialized in a separate IGA or contract.

4.3 The City of Flagstaff will continue to provide Services to the FMPO until the FMPO makes different arrangements or until June 30, 2021, whichever is sooner.

5. Executive Leadership and Staffing

5.1. The FMPO is led by an Executive Director, who is hired by the Executive Board, which sets the compensation and conducts an annual review of the Executive Director.

5.2 The Executive Director hires and supervises FMPO staff.

5.3 The FMPO Board may request that the Executive Director be considered a City of Flagstaff employee for FMPO purposes during the transition period, enter into a contract with the Executive Director, or employ the Executive Director as an employee of the FMPO, selecting the method that best meets the needs of the FMPO.

6. Funding and Reimbursement

For FMPO annual operating support, including grant-related match requirements and non-federal aid eligible expenses, the Parties will make an annual contribution to the FMPO to be determined through the Parties' respective annual budget processes.

For FMPO projects, the Parties will provide the local match to be determined on a project-by-project basis. Factors to be considered to determine which Party will be responsible for the amount and type of match include: (i) grant requirements; (ii) jurisdictional location or authority of a project (e.g., within the City limits, state highway); and (iii) funding allocated through the annual budget process.

7. Federal and State Funding

On FMPO projects, the Parties and the FMPO agree to follow all applicable provisions of federal or state law pertaining to procurement and accounting procedures with regard to the acceptance of federal or state funding.

8. Liability and Indemnification

8.1 Force Majeure. A Party shall not be liable 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 that fails to perform, strike or labor difficulty, fire, flood, windstorm, breakdown or other damage to equipment, power failure or any other cause beyond the reasonable control of said Party.

8.2 Indemnification. Each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

9. Dispute Resolution

9.1 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, 366 Madison Avenue, New York, New York 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

auspices of the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each 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.

9.2 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 the Arizona Rules of Civil Procedure.

9.3 Litigation and Attorney's Fees. 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.

10. 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 City:
City Manager
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

If to the County:
County Manager
Coconino County
219 E. Cherry Avenue
Flagstaff, Arizona 86001

11. General Provisions

11.1 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.

11.2 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 recorded by the County Recorder, and any modification or amendment will become effective on the date so specified, but no earlier than the date of the recording by the County Recorder.

11.3 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the City or the County 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 another 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.

11.4 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.

11.5 Compliance with Immigration Laws and Regulations. Pursuant to the provisions of A.R.S. § 41-4401, each Party warrants to the other Parties that the warranting Party and its subconsultants, if any, are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. § 23-214(A). The Parties acknowledge that a breach of this warranty by a Party or any of its subconsultants is a material breach of this IGA subject to penalties up to and including termination of this IGA or any subcontract. Each Party retains the legal right to inspect the papers of any employee of the other or any subconsultant who works on this IGA to ensure compliance with this warranty.

11.5.1 A Party may conduct random verification of the employment records of the other Parties, and any of its subconsultants, to ensure compliance with this warranty.

11.5.2 A Party will not consider the other Parties or any of their subconsultants in material breach of the foregoing warranty if the other Party and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).

11.5.3 The provisions of this Article must be included in any contract a Party enters into with any and all of its subconsultants who provide services under this IGA or any subcontract. As used in this Section 11.5, "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility, or improvement to real property.

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

City of Flagstaff

Coconino County

Coral Evans, Mayor

Lena Fowler, Chair
Board of Supervisors

Attest:

Attest:

City Clerk

Clerk of the Board

Approved as to form:

Approved as to form:

City Attorney

County Attorney

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

ACKNOWLEDGED AND AGREED:

Flagstaff Metropolitan Planning Organization, an
Arizona nonprofit corporation

Jeff Meilbeck, Executive Director

Approved as to form:

Mangum, Wall, Stoops & Warden, PLLC
Legal Counsel for FMPO