

INTERGOVERNMENTAL AGREEMENT

**Between
City of Flagstaff
and
the Flagstaff Metropolitan Planning Organization DBA MetroPlan**

This 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 the Flagstaff Metropolitan Planning Organization DBA MetroPlan, an Arizona nonprofit corporation ("FMPO" or "MetroPlan"), with a legal address of 112 N Elden Street, Flagstaff, Arizona. The City and MetroPlan 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 by Resolution 2070, adopted May 21, 1996.
- B. The County authorized the establishment of a Metropolitan Planning Organization 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 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 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sought to clarify the nature of each Party's FMPO responsibilities, removed ADOT from the IGA at ADOT's request, and superseded the 1996 IGA.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 FMPO.
- G. On September 18, 2018 the City and County adopted an amended and restated IGA to authorize the establishment of FMPO as a separate legal entity pursuant to Arizona Revised Statutes § 11-952 with common powers specified in the Agreement.
- H. On May 14, 2019, the Arizona Corporation Commission approved Articles of Incorporation establishing FMPO as an Arizona nonprofit corporation.
- I. On September 16, 2019, MetroPlan secured independent legal services to provide representation on an ongoing basis separately from the City of Flagstaff.

J. On January 13, 2020, the FMPO registered with the Arizona Secretary of State to “do business as” MetroPlan having started use of the trade name on January 1, 2020.

K. In April of 2020, the Northern Arizona Intergovernmental Public Transportation Authority (“NAIPTA”) and MetroPlan entered into an intergovernmental agreement providing that NAIPTA would employ and loan employees to MetroPlan effective July 1, 2020. This date was administratively changed to June 28, 2020.

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 identify responsibilities and commitments between the Parties related to MetroPlan’s transition from being hosted by the City to operating as a separate legal entity.

2. Duration and Termination of Agreement

This Agreement will remain effective from the date it is executed by both Parties through September 30, 2020. A Party may terminate this Agreement upon at least sixty (60) 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. Responsibilities of MetroPlan

3.1 MetroPlan will develop administrative and financial management capacity sufficient to meets its legal obligations and carry out its responsibilities. These capacities will include but are not limited to payroll, procurement, budgeting, grant management, accounting, benefits administration, information technology, office space and human resources management.

3.2 MetroPlan will establish an Employee Identification Number (EIN), a DUNS number, file appropriate documents with the Internal Revenue Service (IRS), and open a bank account so that MetroPlan is positioned to receive and expend funds in its own name.

3.3 MetroPlan will file and amend documents with the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) the Arizona Department of Transportation (ADOT) and other relevant agencies to notify said agencies of changes and receive authorization of said agencies to directly receive and manage grant funds. These notifications and documents include the Work Program Agreement, the Unified Planning Work Program, the state’s Electronic Grant Management System (E-Grants), the State’s Electronic State Transportation Improvement System (E-STIP), UTRACSDBE, SAM.gov, and any other necessary or relevant documents or instruments.

3.4 MetroPlan is working to establish independent systems for personnel management and benefits, including Arizona State Retirement (“ASRS”), Social Security Insurance (SSI), and Northern Arizona Public Employee Benefit Trust (NAPEBT) health insurance. MetroPlan needs to first apply for and obtain SSI before instituting ASRS and NAPEBT coverage. In order for MetroPlan’s employees to maintain SSI and ASRS benefits during the transition period, the City will continue to provide employees on loan to MetroPlan until June 27, 2020, which is the end of the last pay period for FY2019-20. As of June 28, 2020, MetroPlan staff will become employees of NAIPTA, and NAIPTA will provide those employees

on loan to MetroPlan. This approach is consistent with the Master IGA recorded in September 2018, as further amended and restated in March 2020. MetroPlan agrees to reimburse payroll related expenses for such employees within fifteen (15) days of billing from the City. A fee for services may be determined by mutual agreement of the Parties. Metro Plan will periodically notify the City of its progress with obtaining SSI and ASRS.

3.5 MetroPlan will request an advance payment of \$114,000 of City Transportation funds that Council approved at the September 17, 2019, meeting and that are being held by the City on MetroPlan's behalf. A final reconciliation shall be addressed between the Parties on such funds as soon as possible after the close of the City's fiscal year, but in no event later than September 30, 2020.

3.6 MetroPlan will support the City in its management of existing MetroPlan funds. This support will include but is not limited to providing financial documentation, communicating with funding agencies about the transition, closing out MetroPlan grants that the City accepted responsibility for, and working to ensure that the City is reimbursed from grant funds for expenditures the City made on MetroPlan's behalf.

3.7 MetroPlan will work with City staff to determine MetroPlan's access during and after transition to City GIS data, modeling and processes that have reasonable mutual benefit, including, but not limited to, transportation and transit data.

4. Responsibilities of the City of Flagstaff

4.1 The City will continue to provide administrative and financial management services through June 30, 2020. These services will include, but are not limited to, payroll, procurement, budgeting, grant management, accounting, benefits administration, information technology, office space and human resources management.

4.1.1 The City will continue to provide staff to MetroPlan as employees on loan until June 27, 2020. Pursuant to Section 3.4 above, MetroPlan agrees to reimburse payroll related expenses for such employees within fifteen (15) days of billing from the City. A fee for services may be determined by mutual agreement of the Parties.

4.2 The City will complete reimbursement requests and other documents required to reimburse the City for expenses incurred through June 30, 2020 and close out MetroPlan related grants and contracts by September 30, 2020.

4.3 The City will advance payment to MetroPlan of \$114,000 of City Transportation funds as approved by City Council at its September 17, 2019 Council meeting and as described in Section 3.5 above. This advance from the City to MetroPlan will occur on or before May 31, 2020, with reconciliation to occur as per Section 3.5.

4.4 The City will transfer equipment and supplies to MetroPlan that were purchased by the City with MetroPlan funds. These items include computer equipment, furniture or other supplies purchased with MetroPlan funds. The City will provide a bill of sale or other similar documentation to confirm transfer of title to such items and equipment described above. Transfer of equipment and supplies will be made consistent and in compliance with federal property disposition regulations and guidelines.

4.5 The City will continue to allow MetroPlan staff access to City GIS systems and data that have reasonable mutual benefit to both Parties in accordance with City policy for use

and software licenses, as may be amended. Should the City incur additional licensing costs related to MetroPlan's access to City GIS systems, MetroPlan agrees to reimburse the City for such increases.

5. Liability and Indemnification

5.1 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.

5.2 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.

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, 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.

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 the Arizona Rules of Civil Procedure.

6.3 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.

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:

If to City:
City Manager
City of Flagstaff

If to MetroPlan:
Executive Director
MetroPlan

211 West Aspen Avenue
Flagstaff, Arizona 86001

112 N Elden Street
Flagstaff, Arizona 86001

8. General Provisions

8.1 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.

8.2 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.

8.3 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the City or MetroPlan 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.

8.4 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.

8.5 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.

8.5.1 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.

8.5.2 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 USC § 1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).

8.5.3 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 10.5, "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.

[SIGNATURES ON FOLLOWING PAGE]

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

City of Flagstaff

MetroPlan

Adam Shimoni, Vice Mayor

Coral Evans, Board Chair

Attest:

Attest:

City Clerk

Clerk of the Board

Approved as to form:

Approved as to form:

City Attorney

FMPO/MetroPlan Legal Counsel
Mangum, Wall, Stoops & Warden, PLLC