

After recording, return to:

City Clerk
Flagstaff City Hall
211 W. Aspen Avenue
Flagstaff, AZ 86001

INTERGOVERNMENTAL AGREEMENT
for
FIRST MILE LAST MILE
by and between
City of Flagstaff
and
Mountain Line

This Intergovernmental Agreement (hereafter "Agreement") is entered into this _____ day of _____ 2021 by and between the City of Flagstaff, an Arizona municipal corporation, with offices at 211 West Aspen Street, Flagstaff, Arizona 86001 (hereafter the "City"), and Northern Arizona Intergovernmental Arizona Public Transit Authority, an intergovernmental public transportation authority, with offices at 3773 North Kaspar Drive, Flagstaff, Arizona 86004, (hereafter "Mountain Line"). City and Mountain Line may be referred to as a Party or, collectively, as the Parties in this Agreement.

RECITALS

WHEREAS:

- A. Mountain Line is an intergovernmental public transportation authority, created pursuant to state law and the intergovernmental agreement dated March 14, 2006, amended and restated effective July 1, 2013, and amended effective July 1, 2020, referred to collectively herein as the "Amended Master IGA", to which the City of Flagstaff is a member; and
- B. Pursuant to the terms of state law and the Amended Master IGA, Mountain Line is charged with planning and operating a public transportation system in the area that incorporates the City of Flagstaff and the Northern Arizona University campus; and
- C. On or about September 7, 2006, Mountain Line and the City of Flagstaff entered into an intergovernmental agreement (the "2006 City IGA") for the purpose of providing fixed route transit service and paratransit service in a manner that conforms to Mountain Line's 5-year transit plan and all local, state, and federal laws and regulations; an amendment to the 2006 City IGA on or about July 1, 2016, and
- D. Mountain Line has secured Federal Transit Administration (hereafter "FTA") Section 5307/5339 grant funding for up to 80% of the design and construction of the bicycle and pedestrian infrastructure connections near transit stops commonly known as First Mile Last Mile (hereafter "Project"), see attachment A: Grant Agreement for more information; and
- E. The City and Mountain Line both benefit from the use of these funds in service of the Project; and
- F. City possesses and desires to coordinate with Mountain Line for the purposes of completing

the Project utilizing the FTA Section 5307/5339 funding; and

- G. City and Mountain Line now wish to enter into this Agreement to set out the roles and responsibilities of the Parties as related to the funding, design, construction, and completion of the Project; and
- H. The Parties are authorized to enter into this Agreement by the provisions of Arizona Revised Statutes (“A.R.S.”) Title 2, Chapter 26, the Amended Master IGA, and by A.R.S. § 11-951 et seq.

NOW, THEREFORE, in consideration of the mutual covenants of the Parties contained herein and other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

- 1. **Purpose and Scope.** The Purpose of this Agreement is to set out the roles and responsibilities of the Parties as related to FTA 5307/5339 grant funds Mountain Line received for the design and construction of the Project. Implementation of the Project shall result in capital assets that shall be owned and maintained by the City per the City’s Asset Management Plan. All infrastructure improvements part of the Project shall be in the public right of way.
- 2. **Funding.** The FTA Section 5307/5339 Grant funds used for the design and construction of the Project are budgeted as follows:

Mountain Line (FTA Section 5307/5339 Grant Funds)			City (Local Match)
	<u>Pedestrian</u>	<u>Bicycle</u>	<u>Phase Subtotal</u>
<u>Design</u>	\$697,545	\$298,948	\$996,493
<u>Construction</u>	\$3,177,707	\$1,361,874	\$4,539,581
<u>Type Subtotal</u>	\$3,875,252	\$1,660,822	
<u>Project Total</u>			\$5,536,074 (80% of Project)
			\$1,384,019 (20% of Project)

These budgeted figures may be subject to change. Any budget changes needed for the completion of the Project shall be communicated between Parties. In the event Mountain Line secures additional funding for the Project, an amendment to this Agreement documenting the details shall be signed by both Parties.

- 3. **Term.** This Agreement shall be in effect from July 1, 2021 to December 31, 2025 or until completion of the Project and closure of the FTA Section 5307/5339 Grant, whichever date occurs first. In the event that grant funds are not spent and the grant is not closed by December 31, 2025, this Agreement shall automatically extend for one (1) year terms until such time that all grant funds have been spent and the grant is closed.
- 4. **Project Roles and Responsibilities.**
 - 4.1. Mountain Line Roles and Responsibilities
 - 4.1.1. Mountain Line shall provide grant administration in accordance with grant award agreement.

- 4.1.2. Mountain Line shall designate a point of contact who will coordinate all aspects of the project with a point of contact designated by the City of Flagstaff for the design and construction of the Project.
- 4.1.3. Mountain Line shall be responsible for procurements in compliance with federal requirements following a mutually agreed upon procurement plan.
- 4.1.4. Mountain Line shall contract for services including design professional (hereafter “DP”) and other third-party vendors required to complete design and construction of the bike and pedestrian infrastructure. Mountain Line shall be responsible for procurement for both the design and construction phases with coordination with City on scoping and evaluating responses. Mountain Line shall provide contract oversight and Mountain Line will include all federal terms, requirements, and certifications in contracts in compliance with federal, state, or local requirements.
- 4.1.5. Mountain Line point of contact shall meet quarterly with City point of contact to track progress on grant milestones and grant budget. Mountain Line shall submit quarterly reports related to those topics to FTA at the end of January, April, July, and October and meetings shall be timely to accommodate on-time reporting.
- 4.1.6. Mountain Line shall be responsible for monitoring and providing oversight to ensure that pedestrian and bicycle infrastructure meet FTA requirements for the National Environmental Policy Act (hereafter “NEPA”). Any changes to the design of infrastructure improvements shall be coordinated between the City and Mountain Line to verify it is within right of way and complies with NEPA regulations.
- 4.1.7. Mountain Line shall collect from the City construction administration documents for quality assurance, including records related to federal compliance for Davis Bacon payroll, Buy America, and Disadvantage Business Enterprises (hereafter “DBE”).
- 4.1.8. Mountain Line shall be responsible for overall contract management, administration, project controls, and coordination.
- 4.1.9. Mountain Line shall provide monthly expense reports to City to communicate expenditures and balance details pertaining to the FTA Section 5307/5339 funds.
- 4.1.10. Mountain Line is responsible for payment of all invoices received within 30 days of receipt. Mountain Line will pay 100% of invoice totals.
- 4.1.11. Mountain Line is responsible for submitting reimbursement request to FTA for 80% of total project cost, no later than the 10 days after receipt of all invoices for the billing period.
- 4.1.12. Mountain Line will bill the City for the match as required for total project as reported to FTA no later than 30 days after receipt of all invoices for the billing period.

4.1.13. Mountain Line shall bill to the grant Mountain Line staff's actual time spent on the Project, not to exceed 5% of each individual contract amount for design and construction.

4.2. City Roles and Responsibilities

4.2.1. City shall provide all scoping, scoring criteria, and scoring committee information to Mountain Line for all procurements and shall recommend procurements to conduct.

4.2.2. The City shall review and recommend approval of all change orders per the process detailed in the City of Flagstaff Procurement Code Manual.

4.2.3. The City shall review and recommend to Mountain Line approval of invoicing.

4.2.4. City shall be responsible for collecting, reviewing, and providing a recommendation to Mountain Line on all construction administration procedures, including tasks related to federal compliance for Davis Bacon payroll, DBE, and Buy America. City shall provide to Mountain Line for federal compliance.

4.2.5. City shall be responsible for day-to-day project management of design and construction.

4.2.6. The City will advance \$3 million 30 days after invoicing from Mountain Line, from the Transit Tax fund, to provide cash flow for timely payment of invoices to all vendors engaged in the performance of this project. Additional cash management advances can be requested as necessary due to invoice frequency and cost as phases of the project change or escalate. Any additional funds will come from Transit Tax fund. Mountain Line will submit a request to increase the cash balance to the City Management Services Director for consideration. Upon determination by the Management Services Director, the City will advance additional funds, not to exceed \$6 million in the aggregate. Mountain Line may return cash advances during the project when the amount exceed the need to maintain. The full advance will be refunded to the City within 30 days receipt of final payment from the federal agency.

4.2.7. The City will record the advance as a receivable in the Transit Tax fund and Mountain Line will record the advance as a payable in the Mountain Line financials.

4.2.8. For the federal grant match, City is responsible for paying invoices for actual payments due within 30 days of receipt of invoice. Payments for this project will be made from non-Transit Tax funding.

4.2.9. City shall develop and provide oversight of the Project budget and provide recommendations to the Mountain Line point of contact.

4.2.10. In the event the Project exceeds federal budget, the City shall be responsible to cover 100% of the overruns and change orders if they exceed federal budget.

4.3. Shared Roles and Responsibilities

- 4.3.1. Each Party shall have a representative to be the main points of contact and shall be responsible for coordinating all Project specific information with their individual teams.
 - 4.3.2. City and Mountain Line, along with DP, construction firm, and other vendors as applicable shall comply with NEPA regulations in accordance with the Federal Transit Administration grant requirements for the Project. Partners shall mutually agree upon projects to ensure compliance with NEPA.
 - 4.3.3. Mountain Line and the City shall meet monthly for invoicing, reviewing project progress, compiling Davis Bacon payrolls and DBE requirements.
 - 4.3.4. Both Parties shall be responsible for tracking Project budget to ensure Project does not exceed federal funding.
 - 4.3.5. Both Parties will coordinate if an asset needs to be modified or removed to ensure all federal grant requirements are met and to reduce the need to reimburse FTA if an asset has not met useful life.
5. **Indemnification.** Each Party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other Parties (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses, including reasonable attorney's fees, (hereinafter 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. **ADA.** Each Party shall comply with applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 United States Code. 12101-12213) and all applicable federal regulations under the Act, including 28 Code of Federal Regulation Parts 35 and 36.
7. **Non-Discrimination.** The Parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration (Executive Order 13465 – Employment Eligibility Verification, E-Verify; 73 FR 67704), nondiscrimination (Executive Order 11246), and affirmative action. The Parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.
8. **Compliance with Laws.** Each Party shall comply with all federal and state laws, rules, regulations, standards and Executive Orders, as applicable, without limitation to those designated within this Agreement. Any changes in the governing laws, rules and regulations during the terms of this Compact shall apply but do not require an amendment.

9. **Modification.** This Agreement may be modified or amended only by written agreement signed by or for both Parties, and any such modification or amendment shall become effective on the date so specified.
10. **Agents, Employees, And Contractors.** Agents, employees and contractors hired by a Party to provide services under this Agreement shall be and remain the agents, employees, and contractors of the hiring Party solely, and shall not be considered agents, employees, or contractors of the other Party.
11. **Workers' Compensation.** Each Party herein 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 for the purposes of this Agreement. As such, each Party shall maintain Workers' Compensation insurance coverage on all of its own employees providing services pursuant to this Agreement.
12. **Insurance.** Each Party shall bear the risk of its own actions, as it does with all its operations, 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.
13. **Non-appropriation.** Every payment obligation of the Parties under this Agreement is conditioned upon the availability of funds appropriated and allocated for the payment of such obligation. If funds are not appropriated, allocated and available or if the appropriation is changed by the legislature resulting in funds no longer being available for the continuance of this Agreement, this Agreement may be terminated by the Parties at the end of the period for which funds are available. No liability shall accrue to the Parties in the event this provision is exercised, and the Parties shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
14. **No Third-Party Beneficiaries.** Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of any Party to the Agreement by imposing any standard of care different from the standard of care imposed by law.
15. **Severability.** In the event that a court of competent jurisdiction shall hold any part or provision of this Agreement void or of no effect, the remaining provisions of this Agreement shall remain in full force and effect.
16. **Jurisdiction.** Nothing in this Agreement shall be construed as otherwise limiting or extending the legal Jurisdiction of any Party. Nothing in this Agreement is intended to confer any rights or remedies to any person or entity that is not a Party.
17. **Conflict of Interest.** The requirements of A.R.S. § 38-511 apply to this Agreement. The Parties 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 this Agreement or any extension is in effect, an employee, agent or consultant of a Party with respect to the subject matter of this Agreement.

18. **Dispute Resolution.** The Parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518 except as may be required by other applicable statutes.
19. **Construction.** This Agreement shall be construed and in accordance with its fair meaning and shall not be construed for or against either Party.
20. **Headings.** The headings used in this Agreement are for convenience only and are not intended to alter or affect the meaning of any provision of this Agreement.
21. **Entire Agreement.** This document constitutes the entire Agreement between the Parties pertaining to the subject matter hereof. This Agreement shall not be modified, amended, altered or extended except through a written amendment signed by the Parties.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date herein before indicated.

City of Flagstaff

Mountain Line

Paul Deasy
Mayor
Dated: _____

Name: _____
Title: _____
Dated: _____

Attest:

City Clerk
Dated: _____

REPRESENTING CITY OF FLAGSTAFF:

The undersigned counsel for the City of Flagstaff has reviewed the Agreement and determined that the Agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency or public procurement unit.

Signature: _____
Name: Sterling Solomon
Title: City Attorney
Date: _____

REPRESENTING MOUNTAIN LINE:

The undersigned counsel for Mountain Line has reviewed the Agreement and determined that the Agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency or public procurement unit.

Signature: _____

Name: Scott A. Holcomb

Title: General Counsel

Date: _____

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