

**COOPERATIVE AGREEMENT
BETWEEN
THE CITY OF FLAGSTAFF AND
THE FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION
FOR THE PURPOSE OF A CASH ADVANCE FUND**

This Cooperative Agreement ("Agreement") is entered into this 16th day of April 2024 (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 3773 N Kaspar Dr. Flagstaff, Arizona. The City and FMPO 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 the FMPO as the Metropolitan Planning Organization for the Flagstaff Urbanized Area.

E. The City, the County and the State entered into an intergovernmental agreement regarding the designation of the 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sought to clarify the nature of each Party's FMPO responsibilities, removed ADOT from the IGA at ADOT's request, and superseded the 1996 IGA.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 regarding the FMPO.

G. On September 18, 2018, the City and County adopted an amended and restated IGA to authorize the establishment of the 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 the FMPO as an Arizona nonprofit corporation.

I. On September 16, 2019, the FMPO secured independent legal services to provide representation on an ongoing basis separately from the City.

J. The FMPO seeks and has been awarded grants that provide planning services that directly benefit the City, as well as transportation infrastructure located within the City; however, in some cases, the grants pay on a reimbursement basis and the FMPO does not have the cash on hand to front the project costs and expenses while waiting on reimbursement.

L. The City and FMPO desire to create a mechanism where the City can contribute to a restricted cash advance fund to allow the FMPO to cash flow expenses or project costs related to grants awarded to the FMPO that provide planning services for the City or transportation infrastructure located within the City that are funded by federal and/or state grants that pay on a reimbursement basis.

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 the City supporting FMPO's ability to cash flow operations due to the time it takes to receive reimbursements from a Federal, State or Local agency for approved grant funded services and/or projects.

2. Duration and Termination of Agreement

This Agreement will remain effective for five (5) years from the Effective Date. This Agreement shall renew automatically, subject to the appropriation of funds, for one (1) additional five (5) year period. Either 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. Cash Advance Fund

3.1 A Cash Advance Fund may be established to assist the FMPO in cash flow management related to timing of incurred expenditure versus the time it takes to receive reimbursements from federal and/or state grants that fund planning services that directly benefit the City or transportation infrastructure in the City. It is restricted to a cash balancing use.

3.2 Establishment of Fund. The FMPO shall maintain a grant and program reimbursement cash advance fund ("Advance Fund") consisting of all monies received by FMPO from the City. The amount of the advance fund will be determined by the City. The maximum amount advanced by the City will not exceed \$300,000.

3.3 Use of Fund. Monies in the Advance Fund may be used for any expenses or project costs that are allowed expenditures eligible for later reimbursement under an already awarded and funded federal, state, or local grant that pays on a reimbursement basis. Monies in the Advance Fund are only for the purpose of paying allowable expenditures related to grants that fund planning services that directly benefit the City or transportation infrastructure within the City. Any funds used must be later transferred back to the Advance Fund when the reimbursed funds are received by FMPO. If any monies used from the Advance Fund are not later reimbursed to the FMPO for any reason, the FMPO must immediately reimburse the Advance Fund for those amounts from another FMPO funding source.

3.4 Investment of Fund. The FMPO may invest any unexpended monies in the Advance Fund as provided by state law, including local government investment pool if authorized by the state treasurer. Interest and other income from investments shall remain in the Advance Fund and the total amount will be subject to subsection 3.6 below. To be clear, under no circumstances will any monies accrued from investing be the property of the FMPO or used for any purposes outside the Advance Fund. The FMPO shall invest monies to mature at the times when the fund assets will be required for the purposes of this article. If any invested monies are lost as a result of FMPO investment, the FMPO must immediately reimburse the Advance Fund for those amounts from another FMPO funding source.

3.5 Audit Inclusion. FMPO will ensure that the Advance Fund will be included in the audit of the financials of FMPO.

3.6 Termination of Cash Advance Fund. Should the City determine at any time that the monies advanced to the FMPO are needed for its operations, the monies advanced (including monies received from investment of funds), or any portion of, can be requested to be returned to the City. If the City requests that any portion of the Advance Fund be returned, FMPO must return the funds within ninety (90) days.

4. Dispute Resolution

4.1 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.

4.2 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.

4.3 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.

5. 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:	If to the FMPO:
City Manager	Executive Director
City of Flagstaff	Metroplan
211 W Aspen Avenue	3773 N Kaspar Dr.
Flagstaff, Arizona 86001	Flagstaff, Arizona 86004

6. General Provisions

6.1 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.

6.2 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.

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

6.4 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.

[SIGNATURES ON FOLLOWING PAGE]

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

City of Flagstaff

**Flagstaff Metropolitan Planning
Organization dba Metroplan**

Becky Daggett, Mayor

Kate Morely, Executive Director

Attest:

Attest:

City Clerk

Karen Moeller, Clerk of the Board

Approved as to form:

Approved as to form:

City Attorney

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