

**INTERGOVERNMENTAL AGREEMENT  
REGARDING  
THE FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION**

**Between  
City of Flagstaff  
and  
Coconino County**

This Intergovernmental Agreement ("Agreement") is entered into this 7<sup>th</sup> day of October, 2005, 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.

**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. 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").

D. Under 23 C.F.R. 450.104, a Metropolitan Planning Organization is a federal designation for a "forum for cooperative transportation decision-making for a metropolitan planning area." This designation applies to eligibility for transportation planning funds and does not create a legal entity. The Flagstaff Metropolitan Planning Organization is an association of the City and the County to carry out cooperative transportation planning activities and to qualify for federal funds for this purpose.

E. The County and the City seek to clarify the nature of their responsibilities with regard to the FMPO and each other by entering into a new intergovernmental agreement which will supersede the 1996 IGA.

F. This Agreement provides that one of the contracting entities will act as a host agency for the benefit of the FMPO. The entity acting as a host agency recognizes that it is to exercise its functions as a host agency on behalf of the FMPO and in furtherance of the goals of the FMPO.

NOW, THEREFORE, pursuant to A.R.S. §11-952, authorizing agreements for services among two or more public agencies, and 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. The FMPO planning area is described in Exhibit A, attached. The FMPO Executive Board ("Executive Board") will serve as the policy body for cooperative decision-making that will be implemented by the members of the FMPO, and will follow the Operating Procedures attached as Exhibit B. FMPO responsibilities include:

- 1.1 Determining the metropolitan planning area boundary subject to approval of the Governor;
- 1.2 Carrying out the transportation planning process, 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; and
- 1.5 Assisting in the development of a cooperative process to initiate and perform each major investment study involving the State, transit operators, environmental, resource and permit agencies, and appropriate Federal agencies.

## **2. Duration and Termination of Agreement.**

This Agreement shall become effective upon execution by the parties, at which time the 1996 IGA will cease to be effective. This Agreement will remain effective until June 30, 2008. This Agreement shall renew automatically, subject to the appropriation of funds by the parties or the federal or state government for MPO purposes, for two (2) additional one (1) year periods to June 30, 2010. This Agreement may be terminated by either party, providing that written notice of intent to terminate is provided to the other party to the Agreement sixty (60) days before the effective date of withdrawal of that party from the Agreement. Withdrawal from the Agreement shall not relieve a party from those liabilities or obligations already incurred under this Agreement.

## **3. Host Agency's Services**

- 3.1 The parties agree that the City will serve as a host organization ("Host Agency") for the FMPO. If the City is unable or unwilling to serve as the Host Agency under this Agreement, the County will serve as the Host Agency, unless otherwise agreed by the parties to this Agreement.
- 3.2 The Host Agency provides employees, office space, and office equipment for FMPO transportation planning activities. The Host Agency pays employee salaries before federal reimbursement and executes contracts on behalf of the FMPO. While the Host Agency does not direct or influence employees working for FMPO purposes ("Staff") in policy matters, it is responsible administratively for Staff. Staff are required to follow Host Agency personnel



policies and procedures and are eligible for Host Agency benefits. The Executive Board of the FMPO, in consideration of recommendations from the Management Committee, which is further described in Exhibit B, Operating Procedures, provides policy direction to Staff.

3.3 Personnel. The City in its role as Host Agency will employ the following employees to provide staffing for FMPO purposes:

3.3.1 FMPO Manager. The FMPO Manager will be an unclassified, at will, FLSA-exempt position. The Management Committee will prepare the annual performance evaluation for the FMPO Manager and shall forward it first to the Executive Board, accompanied by any recommendation for adjustment of compensation, and then to the City for action as necessary. This employee will serve at a level equivalent to a City division head position. The FMPO Manager will be the chief administrative officer of the FMPO. The duties and responsibilities of this position will include, but not be limited to the following:

3.3.1.1 Preparation and administration of the FMPO budget, as well as responsibility for the proper use of FMPO funds and grants received for FMPO purposes;

3.3.1.2 Research and presentation of technical transportation planning and engineering advice to the Executive Board and to member organizations' department heads, managers, and legislative bodies;

3.3.1.3 Coordination of development of regional transportation planning goals with the City and County Community Development Directors, County Public Works Director, ADOT District Engineer, ADOT Transportation Planning Division Director, and relevant NAU department heads;

3.3.1.4 Liaison duties regarding transportation issues among member agencies, councils of government, school and community college districts, lobbyists to state and federal legislatures, and national transportation organizations.

3.3.1.5 Attendance at regular Executive Board, Management Committee and Technical Advisory Committee meetings as well as City Council, County Board of Supervisors, and Arizona State Transportation Board meetings as needed to keep those bodies apprised of transportation planning activities and to represent the FMPO with regard to regional transportation issues.

Management of the employees loaned by the City to the FMPO and coordination of, with appropriate permission, the activities of staff from other agencies in the investigation, development and implementation of a variety of transportation projects.

3.3.1.6 Preparation of reports, including the Unified Planning Work Program and the Transportation Improvement Program.



3.3.1.7 Attendance at meetings of civic and professional groups regarding the plans, policies and programs of the FMPO.

3.1.2 The City, as Host Agency, will provide employees as necessary to accomplish the FMPO work program approved through the budget process.

3.1.3 Support Staff and Human Resources Services: The City, in its role as Host Agency, will provide support staff and Human Resources services as determined necessary for the operation of the FMPO by the Executive Board during the annual budget processes described in Section 4, below.

3.2 Employment Benefits and Conditions of Employment. Personnel loaned to the FMPO will participate in the benefits accorded Host Agency employees including, but not limited to, health and other insurance coverage, leave accrual, and participation in the Arizona State Retirement System, and will be subject to the personnel ordinances, policies and procedures of the Host Agency.

3.3 Termination of Employment. During the term of this Agreement, the Host Agency agrees not to discharge employees loaned for FMPO purposes without prior consultation with the Management Committee of the FMPO. Upon a request from the Executive Board to terminate the employees loaned for FMPO purposes, the Host Agency will do so.

3.4 Purchasing. As the Host Agency, the City will provide purchasing services for FMPO purposes. Loaned employees will follow the Host Agency's purchasing procedures, including policies relative to delegation of approval limits. The FMPO Manager will have the purchasing authority of a division head. Purchases which exceed division head level authorization that are within twenty percent (20%) of the planned expenditure in the adopted work program or five-year Transportation Improvement Program ("TIP") shall be made pursuant to the City's regular procurement process. Items in excess of twenty percent (20%) of programmed expenditures shall require formal action of the Executive Board, to include amendment of the work program and TIP, when necessary.

3.4.1 The Host Agency's governing body shall not unreasonably withhold funds for FMPO purposes. The Host Agency will approve FMPO procurement requests if such requests comply with the Host Agency's procurement requirements and sufficient funds are available.

3.4.2 If the Host Agency's governing body has questions regarding FMPO purchase requests which require Host Agency action, it will seek clarification from the FMPO Manager or the Executive Board before acting on the agenda item.

3.4.3 The Host Agency's governing body may reject a procurement request for FMPO purposes only upon determining that such procurement will violate the Host Agency's charter or ordinances, or violate established policies of the Host Agency.

3.5 Financial Services. The City, in its role as Host Agency, will perform financial, grant

administration, and accounting services for FMPO purposes in the same manner as those provided to City divisions. The City shall be responsible for audit of the FMPO in compliance with federal requirements and shall forward the annual single audit report to the Management Committee. On loan employees will be responsible for formulating and managing funds for FMPO purposes in the same manner as the City to ensure auditability and use of the City's accounting and financial management programs.

3.6 Legal Services. The City, as Host Agency, will provide legal services for the FMPO unless the City Attorney's Office or the Management Committee determine that the City has a conflict of interest with the FMPO that cannot be waived with regard to a particular issue. In the event of a conflict involving the City, the County Attorney's Office will provide legal services with regard to the item which presents a conflict for the City. In the event that both the City and the County have a conflict of interest with regard to a particular item, the parties will select other legal counsel to address that item.

3.7 Offices and Site Services. Through FMPO funding, the Host Agency will provide office space, telecommunications equipment, internet services, mail, audit, and mapping facilities or services, as well as all associated furnishings, equipment, and supplies. The City, as Host Agency, will provide signage in City Hall regarding the location of the FMPO offices. Additionally, the City will provide for the hosting of a website distinct from that of the City for the FMPO. The City will provide a telephone line with a listing as the telephone number for the FMPO. The City will also provide business cards for employees loaned to the FMPO with FMPO contact information.

3.8 Legal Notices. The Host Agency will arrange for postings of legal and other notices required by law or otherwise for FMPO purposes.

#### 4. **FUNDING AND REIMBURSEMENT**

4.1 During the annual budget formulation by each of the parties, the Executive Board will determine the personnel, facilities, purchasing and other services needed for the upcoming fiscal year. The Host Agency will provide to the Executive Board the costs for providing such personnel, facilities and services for inclusion in the FMPO budget. The Host Agency will also include these costs in its own budget as necessary to provide the personnel and services described by this Agreement.

4.2 If the County provides funding to the City, as Host Agency, for the personnel, services and facilities provided for FMPO purposes, the funding shall be accounted for separately. In the event it is necessary for the City to advance monies for the purpose of conducting FMPO business without interruption, the City will be reimbursed with FMPO funds. All services provided by the City as Host Agency will be subject to its standard overhead and other charges, to be calculated as if the FMPO were a City division.

4.3 The City and the County agree that funding to be provided by ADOT not from federal MPO funds for FMPO purposes, in the amount of One Hundred Thousand Dollars (\$100,000), may be applied to the multi-modal planning position over a period of four (4) years.



5. **Federal and State Funding.** The parties 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.

5.1 The FMPO Manager's responsibilities with regard to Federal and State funding shall include, but not be limited to the following:

5.1.1 Insuring that FMPO funds are used for eligible purposes and within the approved funding areas and in the authorized amounts;

5.1.2 Providing any proposed amendments to contracts which the Host Agency enters into on behalf of the FMPO in a timely manner for the Host Agency's review and processing;

5.1.3 Providing to the Host Agency in a timely manner verifiable, signed time sheets for in-kind contributions;

5.1.4 Following State and Federal records retention policies, including but not limited to A.R.S. § 35-214 and § 35-215 requiring the FMPO to retain all books, accounts, reports, files and other records relating to the acquisition and performance of a contractor for a period of five (5) years after the completion of a contract; and

5.1.5 Insuring compliance with ADOT contract provisions regarding funding and program administration.

## 6. **Liability and Indemnification**

6.1 Force Majeure. The Host Agency and its agents, officials and employees, 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 Host Agency, strike or labor difficulty, fire, flood, windstorm, breakdown or other damage to equipment, power failure or any other cause beyond the reasonable control of the Host Agency.

6.2 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.

## 7. **Dispute Resolution**

7.1 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 party 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.

7.2 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.

7.3 Litigation and Attorneys 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.

## 8. 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:

Jeri Dustir, Deputy City Manager  
City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

If to the County:

John Holmes, County Manager  
219 E. Cherry Avenue  
Flagstaff, AZ 86001

## 9. General Provisions

9.1 Status of Employees. Employees of the respective parties shall not be considered employees or agents of the other, and the City, the County and the State agree that they shall retain sole responsibility and authority over their respective employees.

9.2 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.

9.3 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 Secretary of State.

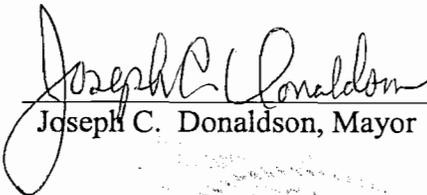
9.4 Cancellation for Conflict of Interest. Pursuant to A.R.S. §38-511, the City, the County, or the State may cancel this Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of a party is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of the other 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.

9.5 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.

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

**City of Flagstaff**

**Coconino County**

  
\_\_\_\_\_  
Joseph C. Donaldson, Mayor

  
\_\_\_\_\_  
Elizabeth C. Archuleta  
Chairman Board of Supervisors

Attest:

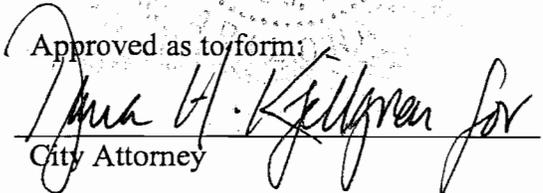
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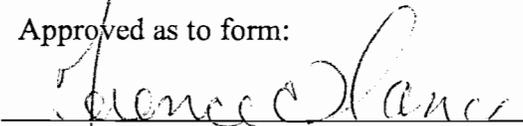
  
\_\_\_\_\_  
Margaret Braun  
City Clerk

  
\_\_\_\_\_  
Cheryl J. Cornforth  
Clerk of the Board

Approved as to form:

Approved as to form:

  
\_\_\_\_\_  
Anna H. Kellygren for  
City Attorney

  
\_\_\_\_\_  
Terence C. Vance  
County Attorney