



FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION

CITY OF FLAGSTAFF ♦ COCONINO COUNTY ♦ ARIZONA DOT

211 West Aspen Avenue ♦ Flagstaff, Arizona 86001

Phone: (928) 213-2651

www.flagstaffmpo.org ♦ fmpo@flagstaffaz.gov

Approved Minutes

FMPO Executive Board Meeting

10:45 a.m. to 12:15 p.m.

Thursday, May 24, 2018

Flagstaff City Council Chambers

211 W. Aspen Avenue, Flagstaff, AZ 86001

Regular meetings and work sessions are open to the public. Persons with a disability may request a reasonable accommodation by contacting the City of Flagstaff City Clerk's Office at 928-779-7607. The FMPO complies with Title VI of the Civil Rights Act of 1964 to involve and assist underrepresented and underserved populations (age, gender, color, income status, race, national origin and LEP – Limited English Proficiency.) Requests should be made by contacting the FMPO at 928-213-2651 as early as possible to allow time to arrange the accommodation. ***A quorum of the TAC may be present.***

Chair Meilbeck called the meeting to order at 10:45 am.

EXECUTIVE BOARD MEMBERS

Jeff Meilbeck, Chair, NAIPTA CEO & General Manager **Present**

Jesse Thompson, Vice-Chair, Arizona State Transportation Board Member **Present**

Coral Evans, Mayor, Flagstaff City Council **Absent**

Matt Ryan, Coconino County Board of Supervisors **Present**

Celia Barotz, Flagstaff City Council **Present**

Jim McCarthy, Flagstaff City Council **Present**

Art Babbott, Coconino County Board of Supervisors **Absent**

FMPO STAFF

David Wessel, FMPO Manager **Present**

Martin Ince, Multimodal Planner **Absent**

Dusty Rhoton, Administrative Specialist **Present**

Heather Hilson, Administrative Specialist **Present**

OTHERS

Miles Begay **Present**

I. PRELIMINARY GENERAL BUSINESS

A. PUBLIC COMMENT

Chair Meilbeck moved public comment (Dark Skies) to follow that Item on the agenda which is II-H.

A. ITEMS FROM THE BOARD

Mr. McCarthy announced he will not be able to attend the June 28th, 2018 meeting.

B. APPROVAL OF MINUTES **(pages 8-13)**
Minutes of April 26, 2018

Motion: Mr. Ryan moved to approve the minutes as written. Ms. Barotz seconded the motion. Motion passed unanimously.

II. GENERAL BUSINESS

Chair Meilbeck re-ordered the agenda to move Item II.H – (ADOT Dark Skies Lighting), in first position pursuant to members of the general public looking to speak on this agenda item.

A. **Strategic Work Plan Amendment** **(pages 14-17)**

FMPO Staff: David Wessel, Manager

REQUESTED ACTION: Information only

Staff will disseminate the work plan amendments directed from last month. Councilmember McCarthy's assistance is appreciated.

Mr. Wessel noted that last month the FMPO Executive Board adopted amendments to the work plan and in working with Mr. McCarthy, the updated & final work plan and he thanked Mr. McCarthy for his assistance in redrafting it. Mr. McCarthy noted he did not change the substance of the document but merely the format to make it read better.

B. **FMPO Formation Intergovernmental Agreement** **(pages 18-33)**

FMPO Staff: David Wessel, Manager

Recommended Action: Discussion and Possible Action

Staff recommends sending a clarifying request to the City and County that the amended and restated IGA is not recognizing, but creating, a legal entity and addresses disposition of liabilities and property in the case of dissolution.

Mr. Wessel briefly said there were two copies of the IGA (a markup and clean version), and Ms. Barotz recommended tabling the Intergovernmental Agreement. Chair Meilbeck recommended that

the Agreement be entrusted to the care of the City and the County without further direct involvement by the FMPO. The Intergovernmental Agreement will be considered for approval by the City and the County at their Joint Meeting slated for June 4th. Mr. Thompson inquired if copies had been sent to Coral Evans and Art Babbott and Mr. Wessel said he would send them after today's meeting.

C. Election of Officers & Operating Procedures Amendments (pages 34-35)

FMPO Staff: David Wessel, FMPO Manager

Recommended Action: Discussion and Possible Action

Staff recommends that the Board discuss and elect a Chairperson and Vice Chairperson effective June 1, 2018. Operating Procedures are for discussion only.

Mr. Wessel reviewed the need for a new Chair and Vice-Chair because of the new Intergovernmental Agreement and the removal of NAIPTA from the board (typically rotate chairs in August). Ms. Barotz asked for clarification that NAIPTA, although not part of the IGA could be a member of the board as an ex-officio non-voting member which Mr. Meilbeck confirmed. Mr. Meilbeck noted the new chair would necessitate being involved with the hiring of the new Executive Director and Mr. Meilbeck shared that Supervisor Babbitt is interested in serving as vice chair if it is the will of the board.

Motion: Mr. Ryan nominated Celia Barotz as Chair and Art Babbott as Vice-Chair of the FMPO, beginning the appointment of June 1, 2018 and also asked that the nominations be closed. Mr. Thompson seconded. Motion carried with Chair Meilbeck abstaining from the vote.

D. FY2019 Unified Planning Work Program Adoption (pages 36-39)

FMPO Staff: David Wessel, Manager

REQUESTED ACTION: Discussion and Possible Action

Staff recommends adoption of the Fiscal Year 2019 Work Program. No comments have been received to date.

Mr. Wessel stated that the Unified Planning Work Program did not receive any public comments during the public comment period, and noted the changes made as directed by the Executive Board was to add a map and contingent funding for the Butler Corridor Task (*contingency being satisfaction that administrative costs and needs are met before spending money on a corridor study*). He overviewed the tasks engaged with the Work Plan, (*several administrative efforts, as well as technical efforts – corridor plans, trip diary survey, performance management dash board*). He continued there were several on-going coordination efforts – Milton 180 Corridor Master Plans, The City's JW Powell Specific Plan, General Data Collection and Transportation Modeling & support for NAIPTA's on-going studies. Looking for approval of this federally required program.

Motion: Mr. Ryan moved to adopt the Unified Work Program for fiscal year 2019 as proposed. Mr. McCarthy seconded. The motion passed, and Mr. Meilbeck abstained from the vote.

E. Regional Strategic Transportation Safety Plan (pages 40-51)

FMPO Staff: David Wessel, Manager

REQUESTED ACTION: Discussion and Possible Action
Staff recommends adoption of the Regional Strategic Transportation Safety Plan.

Mr. Wessel announced the Strategic Transportation Safety Plan is supportive of a long history of federal and state focus on transportation safety, more explicitly, it is required in order to be eligible for highway safety improvement program funding. He continued the Executive Board approved cooperation with NACOG and CYMPO on doing this and looking at adoption of this plan which is now completed. Great tools and strong analysis came out of this effort and he noted that Flagstaff is relatively a safe place here in Arizona, which makes competing for highway safety improvement program funds more difficult. He added that one of the projects identified was the intersection of Cedar and 4th and the City has since applied for a highway safety improvement grant and should receive word on that in July.

Motion: Mr. Ryan moved to approve the Regional Strategic Transportation Safety Plan, and Mr. McCarthy seconded. The motion carried and Chair Meilbeck abstained from the vote.

F. City Transportation Tax Update (pages 52-59)

FMPO Staff: David Wessel, Manager

REQUESTED ACTION: Discussion and Possible Action
Staff recommends the Board choose to deliver a letter of finding to the City Council regarding the Regional Transportation Plan and the prospective transportation taxes.

Mr. Wessel recommended that the Board submit a letter of finding to the Mayor and Council stating that the recommendation from the Tax Commission is in compliance with the Regional Transportation Plan and supportive of the FMPO's stated priorities.

The Board recommended that Mr. Wessel send a short letter to the City Manager.

G. Bellemont Traffic Interchange Replacement Design (pages 60-63)

FMPO Staff: David Wessel, Manager

REQUESTED ACTION: Discussion and Possible Action
The Board may consider sending a letter to ADOT requesting inclusion of sidewalks and additional capacity to this bridge replacement project.

Mr. Wessel explained that ADOT was scheduled to rehabilitate the Bellemont traffic interchange but has now discovered it needs to be replaced. The FMPO would like to draft a letter to the director of ADOT requesting the design to adequately support pedestrian and bicycle movements across the interchange as well as be designed for future capacity needs. Mr. Ryan noted that we do have limited industrial facilities and Camp Navajo could be one of the areas within the region where we have continued expansion.

The Executive Board instructed Mr. Wessel to draft the letter to ADOT and to have it signed by the chair.

H. ADOT Dark Skies Lighting (pages 64-68)

FMPO Staff: David Wessel, Manager

REQUESTED ACTION: Discussion only

Staff will present the final recommendation of the Citizens' Transportation Tax Commission to the Board. The Board may take formal action now or direct staff to add formal action to a future agenda.

Mr. Wessel overviewed the issue of lighting of state highways and interstates by ADOT and the in-ability to move them into dark skies compliant lighting. He continued the FMPO has been involved with Dark Skies for several years now having funded a conference and funded research (*conducted by the City of Flagstaff*) in cooperation with the local observatories and it's really looking at replacing aging technology to low pressure sodium with LED lights and trying to find a satisfactory replacement. That opportunity could extend to state highways and to the interstates. Looking at possible reconstruction of the Bellemont Interchange which is in close proximity to the Naval observatory and starting to address some of the lighting concerns there. The recommendation is to urge ADOT to engage in research if necessary and dialogue with observatories to see if we can't move this item forward. Ms. Barotz asked for clarification (remember Dark Skies Lighting in the City is actually the ordinance so the ADOT Lighting is on roadways in the city, correct? And DW said the COF maintains the lighting along state highways and this will be mostly about interstate lighting as high-pressure sodium fixtures are currently still existent on state highways – as those go out they are replaced with compliant lighting so once again CB asked if the state highways in the city that the COF maintains the lighting for ADOT (those lights are hi pressure sodium and are not compliant with the COF ordinance and DW said many of them still are yes. Chair Meilbeck clarified Agenda Item H.

State lighting ADOT lightning of state interstates and the possibility of moving the lightning to align with City observatory dark skies standards. The principal issue at hand is replacing old lighting technology. ADOT should be encouraged to work with local observatories.

Public Comment: Steve Nelson, former President of Citizens for a Beautiful Flagstaff and longtime Flagstaff resident, expressed admiration for Flagstaff's dark skies and the ability to stargaze. He read an excerpt from a National Geographic article entitled the *End of Night - Why We Need Darkness*. " *It was once thought that lite pollution only affected the astronomers and the need to see the night sky and all it's glorious clarity and in fact, some of the earliest civic efforts to control lite pollution in Flagstaff AZ half a century ago were made to protect the view from Lowell Observatory which sits high above the city*" and his point is that we are a leader in Dark Skies.

Public Comment: Lance Diskin, a 25 yr. Flagstaff resident, urged the Board to carry on Flagstaff City Council's legacy of protecting the dark skies which is unsurpassed and to change it or degrade it would be extremely serious and to improve it and enhance which has been handed to us from decades of public policy - protect this resource it is part of our responsibility for the future. And as we go into the future, I hope that we set the standard for the rest of the world. This is not simply a COF issue, FMPO Boundary, or Coconino County – we set the standard for the rest of the world. He said he was interviewed about a year ago by the BBC for an article that went out to 22 million sets of eyeballs in 17 countries and because we set the standard, he urges everyone who is making policy decisions to realize that one this resource is gone – it is going to be extremely difficult to reclaim.

Public Comment: Barry Malpas, Vice-President of Coconino Astronomical Society who meet at Lowell Observatory, moving over 11 yrs. ago from New Jersey – the dark skies were very important to him as an astronomer and noted there is not many places to go to see the skies. There are people in the US who really don't know what is out there and spoke of the outage in CA and residents were

calling in reports to the police of their sightings of an unknown object which was the Milky Way. not long ago Flagstaff and the County over the past 11 years.

Public Comment: Anne Wittkie, Flagstaff resident since 1990, raised the tourism appeal of stargazing in Flagstaff, as well as Williams, and suggested the City consider using LED streetlights that may be dimmable. Has noticed the LED lights are blinding when driving.

Mr. McCarthy said he and Ms. Barotz were involved in a tour of proposed lighting about a week ago, and said in Cheshire some of the lights were turned down, so it appeared they have the capability to be dimmable. Ms. Barotz noted it wasn't clear what option the City may take, stated that dimmable lights are an option done remotely but would require additional funds to implement. Ms. Wittkie returned to the mike and said she had heard some cities would utilize the LED lighting which are set on a timer to dim after 10 pm at night.

Mr. Thompson noted that in addressing that ADOT is not subject to complying with local regulations the memorandum with ADOT that FMPO has the responsibility? Which Mr. Wessel confirmed applied to streets within the City limits but not on the interstates.

Mr. Wessel noted that working on Dark Skies is not part of the FMPO Strategic Work Plan but it is part of FMPO's history, so the recommendation is to that ADOT present on their current work on lighting in compliance with dark skies, referencing some work they have done previously in Tucson, and to submit a letter to ADOT concerning engagement with the City to work on dark skies lighting, especially since ADOT will have to approve LED lighting decisions made.

Mr. Ryan agreed to the recommendation to appeal to ADOT & noted our relationship with our local military bases coupled with the brighter the lights, the higher safety elements evident.

Chair Meilbeck clarified directed FMPO staff to arrange a presentation by ADOT and subsequently to draft a letter to ADOT to encourage cooperation after the presentation. Mr. McCarthy concurred with Ms. Barotz's decision. Member Barotz suggested that the members of the public who spoke be invited for the ADOT presentation. Administrative Specialist Rhoton garnered the public email contact information.

I. Legislative Update

(page 68-72)

FMPO Staff: David Wessel, FMPO Manager

REQUESTED ACTION: Discussion Only

Staff will present the latest report from the Rural Transportation Advocacy Council. Board members may wish to provide updates on the legislative activities of their respective organizations and direct staff to prepare support material on behalf of the Board.

Mr. Wessel stated the State Vehicle License Tax and a County 1 cent sales tax have been passed and should help better fund transportation in the State. Mr. Wessel recommended that the Northern Arizona group reconvene to discuss a legislative agenda as it was effective in passing two bills.

III. Closing Business

A. Staff Reports

(pages 73-74)

Mr. Wessel stated that ADOT's two corridor master plan open houses were well-attended, but the lack of presence of business owners at the Milton open house should be addressed. ITS grant

opportunities include dimmable/programmable street lights. The FMPO is advocating for improvements for I-17, and the design for substantial improvements along with substantial funding should make I-17 safer and more reliable.

Member Ryan thanked Chair Meilbeck for serving. Member Barotz thanked Dusty for her service.

IV. ADJOURN

Chair Meilbeck and Member Barotz jointly adjourned the meeting at 12:45 pm.

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on May 17, 2018 at 11:45 am in accordance with the statement filed by the Recording Secretary with the City Clerk.

Dated this 18th Day of May 2018.

Heather Hilson, Administrative Specialist

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

**Between
City of Flagstaff
and
Coconino County**

This Intergovernmental Agreement ("Agreement") is entered into this _ day of _____ 2018 (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.

8. 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 a "forum for cooperative transportation decision-making for a metropolitan planning area."

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. The County and the City desire to establish the FMPO as a separate legal entity pursuant to Arizona Revised Statutes § 11-952 that will have the common powers specified in this Agreement.

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. Upon termination of this Agreement, property of the FMPO will be apportioned to the Parties by the Executive Board.

3. Form and Common Powers of the FMPO

3.1 The FMPO will be a separate legal entity formed pursuant to A.R.S. § 11-952. More specifically, the FMPO will be a domestic nonprofit corporation organized pursuant to Title 10,

Chapter 25 of the Arizona Revised Statutes.

3.2 The FMPO will be governed by an Executive Board that will consist 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

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 hired as a City of Flagstaff employee for FMPO purposes, 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 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.

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

Matt Ryan, Chairman
Board of Supervisors

Attest:

Attest:

City Clerk

Clerk of the Board

Approved as to form:

Approved as to form:

City Attorney

County Attorney

**AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT
REGARDING
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- 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. The County and the City desire to clarify and re-affirm the powers and authority of the FMPO as a separate legal entity pursuant to Arizona Revised Statutes § 11-952 that will have the common powers specified in this Agreement, and as set forth in this state having the governmental powers that are the core of the powers specified in the Agreement at the rights and immunities of the Parties as granted by the Constitution and statutes of this state and as specified therein and in this

Commented [KF1]: After some additional thought, I think we just need to say that we are forming a separate legal entity (SLE) pursuant to 11-952. Section 11-952.02 was not adopted until 2010 and prior to that cities and counties could still form a SLE under an IGA. I think 11-952.02 just added a little clarity to that process. While I still think whatever you form under Subsection B is a different animal, I am now thinking 11-952.02(A) merely states what had already been the case prior to 2010 - any SLE entity formed under 11-952 (first sentence in 11-952.02(A)) says SLE formed pursuant to 11-952) has the powers listed under A, unless constrained by the terms of the IGA. So, if we are not going the route of 11-952.02(8), then I think we just need to say formed pursuant to 11-952. Please correct me if you think I am crazy or just dead wrong.

Agreement, including but not limited to the eligibility for participation in the State Retirement System and the Northern Arizona Public Employees Benefit Trust. It is the intention of the County and the City that this intergovernmental agreement will supersede all us agreements and understandings between the County and the City regarding the FMPO.

Pursuant to the provisions of A.R.S. § 11-952-02 A)(1), the FMPO may enter into contracts, including service contracts or IGAs with FMPO member agencies and utilities, public and private.

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. Upon termination of this Agreement, property of the FMPO will be apportioned to the Parties by the Executive Board.

Commented [KF2]: Disposal of pro perty is required by 11-952(8)(4) . Pleaseedit as you see fit.

3. Form and Common Powers of the FMPO

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

3.2 The FMPO will be governed by an Executive Board that will consist 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

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

1a.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:

9 .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.

9 .1.2 Fiscal services including procurement, grant acceptance, auditing, budgeting, and budget adoption.

1J .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.

1J .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.

4. Executive Leadership and Staffing

4.1. 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.

4.2 The Executive Director hires and supervises FMPO staff.

4.3 The FMPO Board may request that the Executive Director be hired as a City of Flagstaff employee for FMPO purposes, 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.

Commented [KF3]: Understanding that staff will likely not immediately become employees of the FMPO, do we need to build back in the personnel provisions that were in the 2012 IGA. We could save something like, until FMPO staff become employees of the FMPO. FMPO staff will be City employees on loan to the FMPO and then add back in the relevant provisions from section 3.3 in the 2012 IGA. Thoughts?

§5. 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.

Z6. 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.

- Liability and Indemnification

Q+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.

.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.

8. Dispute Resolution

8.1 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.

8.2 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.

8.3 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.

109. **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
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119- General Provisions

11Q.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.

11Q.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.

11Q.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 initialing, 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.

11G.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.

11G.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.

11G.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.

11G.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).

11G.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.

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

Matt Ryan, Chairman
Board of Supervisors

Attest:

Attest:

City Clerk

Clerk of the Board

Approved as to form:

City Attorney

Approved as to form:

County Attorney