

# TRANSIT SERVICE INTERGOVERNMENTAL AGREEMENT

## CITY OF FLAGSTAFF AND NORTHERN ARIZONA INTERGOVERNMENTAL PUBLIC TRANSPORTATION AUTHORITY

This Transit Service Intergovernmental Agreement (this "Service IGA") is made effective as of the 1st day of July 2016 (the "Effective Date"), by and between Northern Arizona Intergovernmental Public Transportation Authority, a corporate body and political subdivision of the State of Arizona ("NAIPTA"), and City of Flagstaff, an Arizona municipal corporation (the "City"). NAIPTA and City may be referred to in this Service IGA each individually as a "Party" and collectively as the "Parties".

### RECITALS

A. At the general election held on May 20, 2008, the City (acting through its City Council) sought and received the approval of the qualified electors to levy an additional Transaction Privilege Tax (Sales Tax) of 0.295% (\$0.00295), the actual amount of the additional tax to be determined from time to time by City Council and the proceeds of such additional tax to be used for the purpose of paying directly, or pursuant to an intergovernmental agreement with another governmental entity, the costs of acquiring, constructing, improving, operating and maintaining facilities for the transportation of passengers within the City, including passenger buses and other motor vehicles; shelters; connection centers; garages; maintenance facilities and equipment; and other transit facilities.

B. Northern Arizona Intergovernmental Public Transportation Authority ("NAIPTA") has provided public transportation service within the City since 2006 with support from the City, and has engaged in significant planning to prepare for the implementation of enhancements to these services.

C. In 2001 the Arizona legislature adopted legislation authorizing the Parties (as well as other political subdivisions that are not parties to this Service IGA) to form an intergovernmental public transportation authority ("IPTA") for the purpose of surveying public transportation needs in the authority and granting the authority so formed sole authority for designing, operating and maintaining a public transportation system in the authority.

D. NAIPTA is the IPTA formed pursuant to A.R.S. §§ 28-9101, et seq., and that certain Master Intergovernmental Agreement, originally dated March 14, 2006, as amended and restated in its entirety on July 1, 2013 (the "Restated Master IGA"), NAIPTA is governed by a Board of Directors (the "Board") which includes representatives of Coconino County, Coconino County Community College District, the City and Northern Arizona University;

E. NAIPTA will continue its statutory authority to design, operate and maintain transportation services. The Parties wish to set out the terms and conditions pursuant to which NAIPTA will provide fixed route services and paratransit services to the City, including, but not limited to, those services provided to the City pursuant to the Restated Master IGA.

F. The Parties are authorized to enter into this Service IGA by A.R.S. §§ 28-9101, et seq., and by the Restated Master IGA.

G. This Service IGA amends, restates and supersedes, in its entirety, a previous and existing Transit Service Intergovernmental Agreement by and between the Parties, originally dated July 1, 2006, which was subsequently amended on June 18, 2008, December 12<sup>th</sup> 2011 and December 5, 2013.

**NOW, THEREFORE,** for good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **1. Obligations of NAIPTA**

### 1.1 General Obligations

1.1.1 NAIPTA will provide a fixed route transit service and paratransit services in compliance with the Americans with Disabilities Act and in accordance with the NAIPTA Flagstaff Regional Five Year and Long Range Transit Plan (the "5-Year Plan"). All written amendments and annual performance measures shall be agreed upon by the City and NAIPTA.

1.1.2 NAIPTA will determine, set and amend the fare structure for transit services provided in this Service IGA. NAIPTA will provide administrative services, equipment, personnel and management services necessary to provide the City with acceptable levels of bus service in a fixed route system.

1.1.3 NAIPTA will consult with the City regularly regarding the development, evaluation and adjustment of services. To obtain the maximum benefit from the City's funding, NAIPTA agrees to consult with national transportation associations to obtain information on additional sources of funding and best practices for community transportation in use in other areas of the country. At a minimum, NAIPTA will meet with the City on these matters every six (6) months.

1.1.4 NAIPTA will cooperate with the Flagstaff Metropolitan Planning Organization in updating the federally-mandated transportation improvement program and its amendments. NAIPTA will conduct a periodic survey of transportation needs in the City (as well as in the rest of the authority) and shall produce an annual five-year transportation program that

will replace the existing 5-Year Plan (the “Transportation System”). The transportation program will provide guidance to the Parties during the term of this Service IGA.

- 1.1.5 NAIPTA will establish functional standards and levels of service for construction and establishment of Transit Stops (defined below) and capital projects. NAIPTA will be solely responsible for maintaining all transit administrative, customer service and maintenance facilities. NAIPTA will be responsible for construction, repair and maintenance of all connection centers, Transit Stops and shelters, including litter pickup, signage, snow removal and graffiti removal. NAIPTA will restore a Transit Stop to a reasonably agree-upon condition within sixty (60) days, if such Stop is reasonably determined by the Parties to have been abandoned.
- 1.1.6 The respective staffs of the City and NAIPTA will coordinate annually prior to commencing snow operations to endeavor to ensure that NAIPTA’s fixed routes are included on the City’s snow plan priority routes.
- 1.1.7 NAIPTA will develop marketing and merchandising strategies for the Transportation System and will provide appropriate recognition of the relationship with the City embodied in this Service IGA and the role of the Parties in public transportation efforts, including, but not limited to, the City’s general transportation logo and public relations text. City staff will review the scope of services provided hereunder, together with NAIPTA’s requests for proposals which relate to the City, and will sit on the panel that reviews such proposals.

## 1.2 Financial Management Obligations

- 1.2.1 NAIPTA will issue an annual report and prepare and submit a budget, as provided in the Restated Master IGA, and a 5-Year Projection. NAIPTA will submit the annual budget in accordance with the City’s annual budget schedule and due dates. A sample annual budget is attached as Exhibit A. A sample 5-Year Projection is attached as Exhibit B.
- 1.2.2 NAIPTA will submit transit operations financial statements, including ridership, revenue collected figures and performance standards, to the City on a quarterly basis. NAIPTA will provide these statements to the City within 60 days after the close of each quarter.
- 1.2.3 NAIPTA will manage the Transportation System in compliance with all relevant Federal Transit Administration (“FTA”) requirements.
- 1.2.4 NAIPTA will use an accounting system which complies with generally accepted accounting principles applicable to governmental entities and with applicable requirements of the FTA. NAIPTA will comply with all

requirements of FTA audit guidelines and any other provisions/requirements of applicable funding agencies.

1.2.5 NAIPTA agrees to provide the City with NAIPTA's annual audit and compliance and management letter, letter on internal controls and single audit report as soon as they have been approved by the Board. Any additional reports, including, but not limited to, granting agencies' reviews, shall be forwarded to the City for review. The City shall have the right to audit NAIPTA's books and records at the City's cost and upon reasonable notice to NAIPTA from the City during the term of this Service IGA and five (5) years thereafter, to the extent that the books and records relate to the performance of this Service IGA.

1.2.6 Capital purchased through full or partial contribution from the City must meet the same requirements as for the FTA. The assets may only be used for transit services by NAIPTA, except as otherwise noted below. Any benefit accruing from the sale or transfer of the property must be reported back to the transit program as revenue.

## **2. City's Obligations**

2.1 The City will provide NAIPTA with annual updates of tax revenue projections for purposes of planning and budgeting.

2.2 The City will provide a timely review of, and response to, all budgets, route and service plans, proposed amendments and other NAIPTA submittals required by this Service IGA.

2.3 The City will evaluate, and accommodate when it deems appropriate and when adequate and appropriate funding is shown to be available, requests by NAIPTA for roadway improvements and traffic controls, including the acquisition of rights-of-way and construction of bus pull-outs by the City, all as required to endeavor to provide more efficient transit service.

2.4 NAIPTA will construct and operate public transit services at bus stops and passenger stops (collectively, "Transit Stops") as permitted by the City of Flagstaff Right of Way permit process. The Parties will consult with one another if a request for a Cooperative Use (defined below) is made.

2.4.1 With regard to future Transit Stops ("Future Stops"), NAIPTA will propose, in form and substance reasonably satisfactory to City staff, the location, dimensions, operational details, etc. of any such Future Stop. The City will not unreasonably withhold its consent to the establishment of any such Future Stop and will reasonably cooperate with NAIPTA with regard to construction, placement in service, maintenance, etc. of such Future Stop.

- 2.4.2 As to Existing Stops or Future Stops, the Parties will meet and discuss any requests to grant co-location, co-marketing, cooperative use or other uses (collectively, herein, a “Cooperative Use”). Meetings may include other future parties that are interested in Cooperative Use including any other public, municipal, educational, county, state, federal or tribal authority, agency or body providing transit services to the public or to a certain group or groups of individuals. With regard to any proposed Cooperative Uses, the Parties will supply one another with all information reasonably available to seek an agreement upon all of the parameters of such proposed Cooperative Use, including, without limitation, termination provisions, insurance requirements, schedules, times and terms of uses, signage and facilities and responsibility for construction of same.
- 2.5 The City will apply for Local Transportation Assistance Funds (“LTAF II”) and other funds for transit assistance in every year in which they are available to the full amount to which the City is entitled, and will use these funds for capital and non-recurring expenditures in implementation of the transportation program.
- 2.6 The City recognizes the need for flexibility in the administration and management of the transit service by NAIPTA.

### **3. Compensation**

- 3.1 The City will pay to NAIPTA one-fourth (1/4<sup>th</sup>) of the annual operating budget on or before the 15<sup>th</sup> day of each July, October, January and April, during the term of this Agreement commencing July 15, 2016. NAIPTA will submit an invoice to the City, on or before the 1st day of each calendar quarter, based on 1/4<sup>th</sup> of the annual operating budget, excluding capital. NAIPTA may bill up to 3 months in advance if necessary due to delays in federal funding required for ongoing operation costs. Capital expenditures shall be billed to the City based on actual cash flow requirements of NAIPTA.
- 3.2 NAIPTA may earn interest on the monies received from the City, but all interest must accrue to the benefit of the City’s transit program.
- 3.3 End of Year funds will be handled as indicated in §3.5 of the Restated Master IGA, with the exception of advance payments of quarterly operating expenses noted in Section 3.1 above. Any advance payment made pursuant to Section 3.1 above resulting in overpayment of fiscal year amount due shall be paid back within a reasonable time after the City gives written notice to NAIPTA requiring repayment, unless otherwise agreed by the City.
- 3.4 Per the terms of §10.2.1 of the Restated Master IGA, the City will maintain a fund balance with NAIPTA equal to three (3) months’ worth of payments for the operational budgets for Mountain Line and Mountain Lift described in Exhibit B. This fund balance will be deposited to and managed by NAIPTA for the benefit of

the City's operation. At no time shall the fund balance fall below a three (3) month reserve, and if it does, the City will promptly "gross up" the reserve to that amount after written notice from NAIPTA.

#### **4. Effective Date and Term; Renewal**

4.1 This Service IGA shall be effective for an Initial Term (herein so called) of five years from the Effective Date and shall automatically renew for one (1) additional five (5) year term unless terminated as provided in Section 4.2.

4.2 If either Party to this Service IGA wishes to terminate this Service IGA at the end of the Initial Term, that Party shall give written notice as provided herein of its intent to terminate at least 180 days prior to the end of the Initial Term.

#### **5. Indemnification**

Each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "Indemnitee") from, of and against any and all claims, losses, liability, costs, damages or expenses of any kind, type or nature (including, without limitation, reasonable attorneys' fees and costs, whether or not suit is brought) (hereinafter in this Agreement collectively referred to as "Claims") arising out of bodily injury of or to any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee and are caused, in whole or in material part, by the act, omission, negligence, misconduct or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers. The term "Indemnitee" shall include the officers, officials, agents, employees, attorneys or volunteers of the relevant Party due indemnity.

#### **6. NAIPTA's Insurance Requirements**

NAIPTA shall maintain insurance as required by §16.1 of the Restated Master IGA, which shall name the City as an additional insured for any and all Claims as well as any other insurance required by law, including, but not limited to, Workers Compensation insurance.

#### **7. The City's Insurance Requirements**

The City shall maintain adequate insurance to cover any liability arising from the acts or omissions of the City's employees or agents arising out of the performance of this Service IGA. The City shall not be responsible for maintaining insurance to cover liability arising from the acts or omissions of employees or agents of NAIPTA.

NAIPTA's insurance shall be primary insurance with respect to the City and the City shall be named as an additional insured under NAIPTA's insurance for any and all Claims. Any insurance or self-insurance maintained by the City shall be in excess to the coverage provided by NAIPTA and shall not contribute to it.

## **8. Mediation.**

If a dispute arises out of or relates to this Service IGA 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 shall be conducted pursuant to the procedures set out in § 14 of the Restated Master IGA.

## **9. Conflict of Interest.**

This Service IGA is subject to termination for conflict of interest pursuant to the provisions of A.R.S. § 38-511.

## **10. General Provisions.**

10.1 INCORPORATION OF RECITALS. The Recitals are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

10.2 ENTIRE AGREEMENT. This Service IGA constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Service IGA may not be modified or amended, except by a written document, signed by authorized representatives of each Party.

10.3 ARIZONA LAW. This Service IGA shall be governed and interpreted according to the laws of the State of Arizona.

### **10.4 MODIFICATION**

. Except as otherwise specifically provided in this Service IGA, any amendment, modification or variation from the terms of this Service IGA shall be in writing and shall be effective only after written approval of both Parties.

10.5 ASSIGNMENT. Neither Party may assign or delegate any of its rights or obligations under this Service IGA without first obtaining the written consent of the other. Neither Party shall unreasonably withhold consent to an Assignment request by the other Party.

10.6 ATTORNEYS' FEES. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Service IGA or on account of any breach or default of this Service IGA, the prevailing Party shall be entitled to received from the other Party reasonable attorneys' fees and reasonable costs and expenses, as determined by the arbitrator or court sitting without a jury, which shall be deemed to have accrued on the commencement of such action

and shall be enforceable, whether or not such action is prosecuted to judgment.

10.7 NOTICES. All notices or demands required to be given pursuant to the terms of this Service IGA shall be given to the other Party in writing, delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph:

If to the City of Flagstaff:

City Manager  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

If to NAIPTA:

General Manager  
NAIPTA  
3773 North Kaspar Dr  
Flagstaff, Arizona 86001

10.7.1 A notice shall be deemed received on the date delivered, if delivered by hand, on the second day after its deposit with any commercial air courier or express services or, if mailed, ten (10) days after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission

10.8 FORCE MAJEURE. Neither Party shall be responsible for delays or failures in performance resulting from acts beyond their control, financial inability excepted. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures or power failures.

10.9 COUNTERPARTS. This Service IGA may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Service IGA shall be deemed to possess the full force and effect of the original.

10.10 CAPTIONS. The captions used in this Service IGA are solely for the convenience of the Parties, do not constitute a part of this Service IGA and are not to be used to construe or interpret this Service IGA.

10.11 SEVERABILITY. In the event that a court of competent jurisdiction shall hold any part or provision of this Service IGA void or of no effect, the remaining provisions of this Service IGA shall remain in full force and effect.

10.12 WAIVER. No failure to enforce any condition or covenant of this Service IGA shall imply or constitute a waiver of the right to insist upon performance of such condition or covenant, or of any other provision hereof, nor shall any waiver by either Party of any breach of any one or more conditions or covenants of this Service IGA constitute a waiver of any succeeding or other breach of this Service IGA.

10.13 AUTHORITY. Each Party hereby warrants and represents that it has full power and authority to enter into and perform this Service IGA, and that the person signing on behalf of each has been properly authorized and empowered to enter this Service IGA. Each Party further acknowledges that it has read this Service IGA, understands it, and agrees to be bound by it.

[SIGNATURES APPEAR ON PAGE FOLLOWING]

**IN WITNESS WHEREOF**, the Parties hereto have caused these presents to be executed by their duly authorized officers. The order for obtaining the signatures is as follows: the NAIPTA General Counsel, the City of Flagstaff legal representative, the appropriate representative of NAIPTA and the appropriate representative of the City of Flagstaff.

**CITY OF FLAGSTAFF**

**NAIPTA**

\_\_\_\_\_, Mayor

\_\_\_\_\_, Board Chair

Attest:

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Clerk of the Board

**PROPER FORM AND AUTHORITY**

This Service IGA has, prior to its execution, been submitted to the attorney for each Party, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this state to such Party.

Dated this \_\_\_ day of \_\_\_\_\_, 2016

Dated this \_\_\_ day of \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Flagstaff City Attorney

By: \_\_\_\_\_  
NAIPTA General Counsel