

**After recording, return to:
City Clerk
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001**

INTERGOVERNMENTAL AGREEMENT

City of Flagstaff and The Northern Arizona Council of Governments

This Intergovernmental Agreement (“IGA”) is made this _____ day of _____, 2013 by and between the City of Flagstaff, an Arizona municipal corporation with offices located at 211 West Aspen, Flagstaff, Arizona (the "City"), and the Northern Arizona Council of Governments, a local government political subdivision of the State of Arizona, with offices located at 121 East Aspen, Flagstaff, Arizona 86001 (the “NACOG,” and collectively with City, the “Parties”).

RECITALS

- A. NACOG and the City have in the past made arrangements regarding the use of property owned by the other which have provided benefits to the community. The Parties desire, at this time, to address several of those arrangements with one intergovernmental agreement.
- B. As governmental entities recognized under the laws of the State of Arizona, each party has the appropriate authority to enter this Intergovernmental Agreement.
- C. The City owns certain real property, described below, and is authorized by its Charter to use such property for public purposes and benefits such as providing recreational services to children .
- D. NACOG desires to use certain properties owned by the City to continue to provide recreational and other services to children in the community through the Head Start programs which NACOG offers.
- E. NACOG’s continued provision of recreation and other services is a benefit to the City and the citizens of the City of Flagstaff
- F. It is in the best interests of the citizens of Flagstaff for the City and NACOG to enter into this Intergovernmental Agreement which will continue to facilitate recreational activities and provide other services to children in the community via Head Start.
- G. The Parties wish to set forth their agreement regarding the use of certain properties and the maintenance of those certain properties in the terms and conditions contained in this Intergovernmental Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Parties agree as follows:

1. PROPERTIES

- A. Cogdill. Under the terms of this Intergovernmental Agreement between the City and NACOG, the City hereby authorizes use of that certain real property owned by the City located at 301 South Paseo Del Flag, Flagstaff, commonly known as the Cogdill property, to NACOG for the continuation of the Head Start programs offered by NACOG at the Cogdill property.

- B. Clark Homes. Under the terms of this Intergovernmental Agreement between the City and NACOG, the City hereby authorizes use of that certain real property owned by the City located at 1000 North Clark Circle, Flagstaff, commonly known as the Clark Homes property, to NACOG for the continuation of the Head Start programs offered by NACOG at the Clark Homes property.

- C. Ponderosa. Under the terms of this Intergovernmental Agreement between the City and NACOG, the City hereby authorizes use of that certain real property owned by the City located 2500 North First Street, Flagstaff, commonly known as the Ponderosa property, to NACOG for the continuation of the Head Start programs offered by NACOG at the Ponderosa property.

- D. Sunnyside. Under the terms of this Intergovernmental Agreement between the City and NACOG, the City hereby authorizes use of that certain real property owned by the City located at 1825 North Main Street, Flagstaff, commonly known as the Sunnyside property, to NACOG for the continuation of the Head Start programs offered by NACOG at the Sunnyside property.

- E. Siler Homes. Under the terms of this Intergovernmental Agreement between the City and NACOG, the City hereby authorizes use of that certain real property owned by the City located at 3581 North Fanning Drive, commonly known as the Siler Homes property to NACOG for the continuation of the Head Start programs offered by NACOG at the Siler Homes property.

2. USE OF THE PROPERTIES

2.1 Description of Space Utilized by NACOG. During the term of this Intergovernmental Agreement, NACOG may use the City properties referenced in this Intergovernmental Agreement for providing services, including recreational services to children in the community within the parameters of the Head Start program administered by NACOG. As the amount of space varies from property to property, a description of the space used for each respective property is as follows:

A. Cogdill:

1. Indoor space comprising 1,929 square feet which includes:
 - i. Two classrooms;
 - ii. One office;
 - iii. Part-time staff work space (one room);
 - iv. Exclusive use of the restrooms in the classrooms and scheduled exclusive use of restrooms in the hallway;
 - v. One storage closet adjacent to gym area;
 - vi. Two classroom bathrooms and two adult bathrooms in the hallway area (shared with City personnel);
 - vii. Kitchen and adjacent pantry areas;
2. Occasional use of large gym area for indoor play during cold weather. (Conditions of used scheduled with Boys & Girls Club).
3. Occasional use of Computer room. (Conditions of used scheduled with Boys & Girls Club).
4. Outdoor space comprising 2,500 square feet which includes:
 - i. Shared outdoor playground space which shall be used exclusively by NACOG Head Start during the Head Start hours of operation;
 - ii. Age appropriate playground equipment and supplies purchased, installed & maintained by NACOG Head Start for the portion of the playground designed for children ages 2-5;
5. Reasonably sufficient space for parking for the NACOG Head Start staff, parents and community volunteers;
6. Reasonably sufficient space for parking for the NACOG Head Start staff, parents and community volunteers.

B. Clark Homes:

1. Reasonably sufficient space on the land for placement of the two classroom modular units comprising 2,160 square feet;
2. Reasonably sufficient space on the land (2,426 square feet) for placement of playground and playground equipment, supplied and maintained by NACOG, in a manner compliant with Head Start outdoor play requirements and standards;
3. Reasonably sufficient space on the land for the placement of three (3) storage sheds behind the classroom space;
4. Reasonably sufficient space for parking for the NACOG Head Start staff, parents and community volunteers;
5. Reasonably sufficient parking to accommodate child Drop-off and Pick-up times.

C. Ponderosa:

1. Indoor space in the former City recreation building comprising 3,252 square feet which includes:
 - i. Two classrooms;
 - ii. Kitchen;

- iii. Two bathrooms;
 - iv. Three offices;
 - v. One storage room.
2. Outdoor space comprising 7,720 square feet which includes:
 - i. Reasonably sufficient space on the land for placement of one classroom modular unit 36' X 60' (2,160 square feet);
 - ii. Reasonably sufficient space on the land (5,560 square feet) for placement of playground and playground equipment, supplied and maintained by NACOG, in a manner compliant with Head Start outdoor play requirements and standards;
 3. Reasonably sufficient space for parking for the NACOG Head Start staff, parents and community volunteers;
 4. Reasonably sufficient parking to accommodate child Drop-off and Pick-up times.

D. Sunnyside:

1. Indoor space comprising 4,100 square feet which includes:
 - i. One classroom;
 - ii. One training room
 - iii. Three offices;
 - iv. One kitchen;
 - v. Four bathrooms;
2. Outdoor space comprising 1,922 square feet which includes:
 - i. Reasonably sufficient space on the land for placement of playground and playground equipment, supplied and maintained by NACOG, in a manner compliant with Head Start outdoor play requirements and standards;
3. Reasonably sufficient space for parking for the NACOG Head Start staff, parents and community volunteers;
4. Reasonably sufficient parking to accommodate child Drop-off and Pick-up times.

E. Siler Homes:

1. Indoor space comprising 4,069 square feet which includes:
 - i. Two classrooms;
 - ii. Three offices;
 - iii. Kitchen;
 - iv. Three bathrooms;
2. Outdoor space comprising 7,127 square feet which includes:
 - i. Reasonably sufficient space on the land for placement of playground and playground equipment, supplied and maintained by NACOG, in a manner compliant with Head Start outdoor play requirements and standards;
3. Reasonably sufficient space for parking for the NACOG Head Start staff, parents and community volunteers;

4. Reasonably sufficient parking to accommodate child Drop-off and Pick-up times.

2.2 Term. The use of each individual City property under this Intergovernmental Agreement shall be for a term of one (1) year; however, such term shall automatically renew each year upon the date of expiration of this Intergovernmental Agreement until either party gives a sixty (60) day written notice of intent to terminate this Intergovernmental Agreement which states, for the other party, the specific City property for which the Intergovernmental Agreement shall be terminated.

2.3 Maintenance and Repairs.

- A. Cogdill: NACOG shall be responsible to perform (or cause to be performed) all routine maintenance to the classrooms, kitchen and kitchen equipment on the City property including but not limited to trash and debris removal which shall be performed in all respects in accordance with applicable health and safety laws and rules. Both Parties shall be responsible for routine maintenance and upkeep of the playground space. The City shall be responsible for the maintenance of the heating/cooling, plumbing and all other facility issues.
- B. Clark Homes: NACOG shall be responsible to perform (or cause to be performed) all routine maintenance (interior and exterior) on the City property including but not limited to trash, debris and snow removal which shall be performed in all respects in accordance with applicable health and safety laws and rules. NACOG shall be responsible for repairs of paved surfaces on the City property.
- C. Ponderosa: NACOG shall be responsible to perform (or cause to be performed) all routine maintenance (interior and exterior) of the City property including but not limited to trash, debris and snow removal which shall be performed in all respects in accordance with applicable health and safety laws and rules. NACOG shall be responsible for repairs of paved surfaces on the City property.
- D. Sunnyside: NACOG shall be responsible to perform (or cause to be performed) all routine maintenance (interior and exterior) of the City property including but not limited to trash, debris and snow removal which shall be performed in all respects in accordance with applicable health and safety laws and rules. NACOG shall be responsible for repairs of paved surfaces on the City property.
- E. Siler Homes: NACOG shall be responsible to perform (or cause to be performed) all routine maintenance (interior and exterior) of the City Property including but not limited to trash, debris and snow removal which shall be performed in all respects in accordance with applicable health and safety laws and rules. NACOG shall be responsible for repairs of paved surfaces on the City property.

2.4 Utilities. Utilities shall be paid with respect to each of the parcels of real property as follows:

- A. Cogdill: NACOG shall be responsible for the Internet/Phone and Trash/Sanitation Services. The City shall be responsible for Electric, Gas, Water & Sewer Services.
- B. Clark Homes: NACOG shall be responsible all utilities.
- C. Ponderosa: NACOG shall be responsible all utilities.
- D. Sunnyside: NACOG shall be responsible all utilities.
- E. Siler Homes: NACOG shall be responsible for the Internet/Phone and Trash/Sanitation Services. The City shall be responsible for Electric, Gas, Water & Sewer Services.

2.5 Periods of Use. NACOG shall only have the exclusive right and privilege to use the City properties during the time NACOG Head Start is in session, typically the ten (10) months from August – May.

3. INSURANCE

NACOG shall procure and maintain throughout the term of the Intergovernmental Agreement, and any extension or renewal hereof, commercial general liability insurance with a combined single limit of liability coverage not less than One Million Dollars (\$1,000,000 per occurrence; \$3,000,000 aggregate).

4. AGENTS, EMPLOYEES, AND CONTRACTORS

4.1 Agents, employees and contractors hired by a Party to provide services under this Intergovernmental Agreement shall be and remain the agents, employees, and contractors of the hiring Party solely, and shall not be considered agents, employees, or contractors of the other Party.

4.2 NACOG agrees to perform background checks on every agent and employee hired by NACOG to render any services, or perform any duties on any and all five parcels referred to in this Intergovernmental Agreement.

5. INDEMNIFICATION

5.1 The City agrees to indemnify, defend, and hold harmless NACOG from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims that result in vicarious/derivative liability to NACOG are caused by the act, omission, negligence, misconduct or other fault of the City, its officers, officials, agents, employees, invitees or volunteers.

5.2 NACOG agrees to indemnify, defend, and hold harmless the City from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims that result in vicarious/derivative liability to the City are caused by the act, omission, negligence, misconduct or other fault of NACOG, its officers, officials, agents, employees, invitees or volunteers.

6. AMENDMENTS

This Intergovernmental Agreement may be modified only by written agreement signed by authorized representatives of both Parties.

7. NO ASSIGNMENT; BINDING EFFECT

This Agreement is not assignable by either party. Any attempt to do so shall render the assignment null and void and the Agreement may be terminated immediately by the non-assigning party.

8. SEVERABILITY

In the event that a court of competent jurisdiction shall hold any part of provision of this Intergovernmental Agreement void or of no effect, the remaining provisions of this Intergovernmental Agreement shall remain in full force and effect, to the extent that the continued enforcement of such remaining terms shall continue to reflect substantially the intent of the parties hereto.

9. WAIVER

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

10. MERGER

Each Party acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties, except as expressed herein, and that this Intergovernmental Agreement constitutes the entire agreement of the Parties with respect to the matters addressed herein. All prior and contemporaneous agreements, representations, and understandings, whether oral or written, are superseded by and merged in this Intergovernmental Agreement.

11. CONFLICT OF INTEREST

This Intergovernmental Agreement is subject to the provisions of A.R.S. §38-511, which permits either Party within three years after the execution of this Intergovernmental Agreement, to cancel this Intergovernmental Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Intergovernmental Agreement on behalf of the Party, is, at any time while the Intergovernmental Agreement or any extension of the Intergovernmental Agreement is in effect, an employee or agent of the other Party in any capacity or a consultant to the other Party with respect to the subject matter of the Intergovernmental Agreement.

12. GOVERNING LAW

12.1 This Agreement shall be construed under the laws of the State of Arizona and shall incorporate by reference all laws governing intergovernmental agreements and mandatory contract provisions of state agencies required by statute or executive order.

12.2 All statutes and regulations referenced in this Agreement are incorporated herein as if fully stated in their entirety in the Agreement. Each Party agrees to comply with and be responsible for the provisions, the statutes, and the regulations set out in this Agreement.

13. LEGAL WORKERS

As mandated by Arizona Revised Statutes § 41-4401, each party (a) warrants the party's compliance with all federal immigration laws and regulations that relate to the party's employees and their compliance with Arizona Revised Statutes § 23-214(A); (b) acknowledges that a breach of the warranty in subsection (a) of this section shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement; and (c) retains the legal right to inspect the papers of any contractor or subcontractor employee who works pursuant to this Agreement to ensure compliance with the warranty.

14. CONSTRUCTION

This Agreement shall be construed as a whole and in accordance with its fair meaning. This Agreement shall not be construed for or against either Party. Headings are for convenience only and shall not affect the meaning or construction of any provision of this Agreement.

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

City of Flagstaff, City

Northern Arizona Council of Governments, NACOG

Gerald W. Nabours, Mayor

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Attest:

Attest:

City Clerk

Approved as to form:

Approved as to form: