

After recording, return to:  
Compliance and Auditing Manager  
NAIPTA  
3773 N Kaspar Dr  
Flagstaff, AZ 86004

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
NORTHERN ARIZONA UNIVERSITY, THE CITY OF FLAGSTAFF  
AND NAIPTA**

This Intergovernmental Agreement (this "IGA") is entered into effective **July 2, 2014** by and between the Arizona Board of Regents acting on behalf of Northern Arizona University ("Northern Arizona University"), the City of Flagstaff, an Arizona municipal corporation ("Flagstaff"), and Northern Arizona Intergovernmental Public Transportation Authority, a corporate body and political subdivision of the State of Arizona ("NAIPTA"). Northern Arizona University, Flagstaff and NAIPTA are collectively referred to in this IGA as the Parties and each individually as a Party.

**PURPOSE**

The Purpose of this IGA is to set out the responsibilities of the Parties for the operation of a bus route connecting the greater downtown area of Flagstaff with Woodlands Village through the Northern Arizona University campus, as further described in this IGA.

**RECITALS**

A. NAIPTA is an intergovernmental public transportation authority created pursuant to state law and the Master IGA dated March 14, 2006 (the "Master IGA") as amended and restated effective July 1, 2013 (the "Restated Master IGA"). The Master IGA and the Restated Master IGA are referred to collectively herein as the Amended Master IGA. Flagstaff and Northern Arizona University are members of NAIPTA. Pursuant to the terms of state law and the Amended Master IGA, NAIPTA is charged with planning and operating a public transportation system in the area that incorporates Flagstaff and the Northern Arizona University campus;

B. The parties are authorized to enter into this IGA by the provisions of Arizona Revised Statutes Title 2, Chapter 26, the Master IGA, and by A.R.S. § 11-951 et seq.;

C. On or about October 15, 2007, NAIPTA and Northern Arizona University entered into an IGA (the "2007 NAU IGA"), pursuant to which NAIPTA agreed to perform certain grant administration, planning, and administration services related to the Mountain Campus Transit System;

D. On or about September 7, 2006, NAIPTA and Flagstaff entered into an IGA (the "2006 City IGA") for the purpose of providing fixed route transit service and para-transit service in a manner that conforms to Flagstaff's 5 year transit plan and all local, state and federal laws and regulations.

E. On or about December 15, 2010, the Parties entered into an agreement for the planning, design, development, construction and operation of a bus route ("Route 10") connecting the downtown area of Flagstaff with Woodlands Village, through the Northern Arizona University Campus (the "2010 IGA"). The 2010 IGA superseded the 2007 NAU IGA and amended and supplemented the 2006 City IGA.

F. The Parties now wish to enter into an agreement to provide for the ongoing operation of Route 10. It is the intention of the Parties that this IGA supersedes and replaces those portions of the 2010 IGA that relate to the construction and operation of Route 10 only. It is further the intention of the Parties that the 2006 City IGA, as supplemented by the 2010 IGA, remains in full force and effect.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants of the Parties contained herein and other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **1. DEFINITIONS**

- a. "Bus Only Transitway" means a bus, pedestrian, and bike corridor and includes the portion of the Campus Transitway depicted by slashed lines on Exhibit "A".
- b. "Bus Stops" means a designated area for passengers to wait for the bus.
- c. "Bus Shelters" means any placed shelter, bench, lighting, trash can, bike rack, or other passenger amenities placed at a Bus Stop.
- d. "Campus Property" means the property adjacent to Route 10 that is owned and controlled by the Northern Arizona University.
- e. "Campus Transitway" means that portion of Route 10 located on the Northern Arizona University Campus, and depicted on Exhibit "A."
- f. "City Transitway" means that portion of Route 10 located on property owned or controlled by Flagstaff and depicted on Exhibit "A."

g. "Designated Transit Tax Revenues" means the tax revenues collected by the City of Flagstaff that are restricted to use for operation cost of and capital cost associated with the public transit system as approved by the voters.

h. "Mountain Link" means the bus service operated by NAIPTA on Route 10, pursuant to the terms of this IGA.

i. "Route 10" means the bus route to be operated by NAIPTA on the Campus and City Transitways as shown on Exhibit "A", pursuant to the terms of this IGA.

## **2 OPERATIONS**

### **2.1 Operating Costs.**

2.1.1 Northern Arizona University and Flagstaff will each pay NAIPTA a share of the annual costs for operation of Route 10, pursuant to the terms of this IGA. A budget for operating Route 10 will be developed annually by NAIPTA (the "Route 10 Costs") and will be paid as follows:

2.1.1.1 Flagstaff: Flagstaff will pay not less than 50% of the Route 10 Costs, from a combination of Designated Transit Tax revenues, farebox revenues, and Section 5307 Transit Formula Award funds (the "Designated Revenues"). In no event will City of Flagstaff financial resources other than the Designated Revenues be used to defray the Route 10 Costs, except by separate agreement.

2.1.1.2 Northern Arizona University: Northern Arizona University will pay the lesser of \$490,321 or fifty percent (50%) of the Route 10 Costs in FY2015.

Payments shall be made to NAIPTA in equal installments no less frequently than quarterly, on or before the 15<sup>th</sup> day of each quarter (or month), commencing July 15, 2014.

In regard to its financing obligations for the operation of the Project, Flagstaff is acting only in its capacity as administrator of Designated Transit Tax revenues.

2.1.2 Budget Review and Approval. The Route 10 Costs will be adjusted annually to reflect changes in actual costs, but each annual change will not exceed the percentage of change reflected in the United States Department of Labor Consumer Price Index for all Urban Consumers. Annual changes in the Route 10 Costs will be included in the annual budget of each of the Parties. NAIPTA will submit to Flagstaff and Northern Arizona University for their review and approval, no later than February 1<sup>st</sup> of each year commencing February 1, 2015, a one-year line-item budget for Route 10 Costs, for the fiscal year commencing on July 1 of such year, and each year thereafter for the Term of this IGA.

2.2 Interest. NAIPTA may deposit funds received from Flagstaff and Northern Arizona University in interest-bearing accounts, provided that all interest must be used to defray the Route 10 Costs in the succeeding year.

2.3 End of Year Funds. Pursuant to Section 3.5 of the Amended Master IGA, end of year funds will be rolled over into the next year's budget and will be applied to the next year's Route 10 Costs.

2.4 Fund Balance. Flagstaff and Northern Arizona University will each maintain a fund balance with NAIPTA as required by Section 10.2.1 of the Amended Master IGA.

## 2.5 Maintenance and Repair.

2.5.1 Northern Arizona University will be responsible for the maintenance and repair of the Bus Stops and Bus Shelters located on Campus Property. Maintenance includes trash removal, snow removal, graffiti removal, glass cleaning, maintenance of streets, access to bus shelters and other routine maintenance. Northern Arizona University cannot guarantee complete snow removal in front of bus shelters.

2.5.2 Flagstaff will be responsible for maintenance of Flagstaff streets, and for clearing snow from Flagstaff streets, but will not be responsible for snow removal or clearing snow at Bus Shelters.

2.5.3 NAIPTA will be responsible for repair and maintenance of Bus Stops and Bus Shelters located on property owned or controlled by Flagstaff. Maintenance includes trash removal, snow removal, graffiti removal, glass cleaning and other routine maintenance.

## 2.6 Operation of Mountain Links.

2.6.1 NAIPTA will operate Route 10 between 6:00 am and 10:00 pm, Monday thru Friday while school is in session during Spring and Fall Semesters, with no less than 15 minute frequency.

2.6.2 NAIPTA will operate Route 10 between 7:00 am and 8:00 pm, on all days school is not in session and on Saturdays, Sundays, and Holidays, with no less than 30 minute frequency.

2.6.3 NAIPTA will not operate service on Route 10 on Christmas Day, Thanksgiving Day, and days when emergency weather closures are declared on the rest of the Mountain Line system.

2.6.4 NAIPTA will operate Route 10 on the route depicted on Exhibit A.

2.6.5 NAIPTA, in consultation with Northern Arizona University, will provide marketing services as reasonably necessary to promote the use of the transit services to be provided pursuant to this IGA.

2.6.6 The Parties understand and agree that Northern Arizona University will continue to operate its own bus system on the Campus Transitway.

2.6.7 The Parties understand and agree that Northern Arizona University will, subject to the terms of this IGA, control the right of access to and use of the Campus Transitway. Northern Arizona University specifically has the right to access the Bus Only Transitway periodically to provide routine food service, refuse collection and for other purposes appropriate to a public institution of higher education. Such access will be operated in a manner that does not unreasonably interrupt Route 10 regular service.

2.6.8 Northern Arizona University understands and agrees that it is desirable and necessary for Flagstaff to operate emergency vehicles on and over the Campus Transitway, and hereby agrees to permit Flagstaff on the Campus for purposes consistent with the terms of this IGA, and to provide any additional documents necessary to implement the rights granted to Flagstaff pursuant to this Section 2.6.4.

2.6.9 The Parties understand and agree that Northern Arizona University students will be granted fare-free access to Route 10 along its entire route.

2.6.10 The Parties understand and agree that NAIPTA may provide additional bus service or routes to the benefit of the Northern Arizona University campus, provided that such additional service or routes may not be fare free, but shall not increase Northern Arizona University's financial obligations under this IGA.

### **3 TERM AND TERMINATION**

3.1 Term. This IGA is for an Initial Term of ten (10) years (the "Initial Term"), and may be renewed for up to two (2) successive five (5) years terms (each a "Renewal Term"), subject to the provisions of this IGA.

3.2 Notice of Renewal. This IGA shall be automatically renewed at the end of the Initial Term or the end of a Renewal Term, unless one Party provides to the other Parties written notice of the notifying Party's intent not to renew at least one (1) year prior to the end of the Term or Renewal Term.

3.3 Termination. If, at any time, any Party to this IGA wishes to terminate this IGA, that Party shall give written notice as provided herein of its intent to terminate at least one (1) year prior to the date of termination.

### **4 GENERAL TERMS**

4.1 Insurance.

4.1.1 NAIPTA's Insurance. NAIPTA shall maintain insurance as required by the 16.1 of the Amended Master IGA, as well as any other insurance required by law, including but not limited to Workers Compensation insurance. In addition, NAIPTA shall cause contractors, design professionals, subcontractors or any other third party collectively "Third Parties" to provide adequate insurance based on scope of work for construction services, design services and any other services performed under a contract resulting from this IGA, naming Northern Arizona University and Flagstaff as additional insureds. NAIPTA shall further cause Third Parties to indemnify and hold the State of Arizona, Northern Arizona University, Flagstaff and their officers, employees or agents harmless from and against any and all claims, actions, liabilities, damages, losses, or expenses caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Third Parties, their owners, officers, directors, agents, employees or subcontractors for performance under a contract resulting from this IGA.

4.1.2 Northern Arizona University's Insurance. Northern Arizona University shall maintain adequate insurance (which may include self-insurance) to cover any liability arising from the acts or omissions of its employees or agents arising out of the performance of this IGA. Northern Arizona University 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 Northern Arizona University. Any insurance or self-insurance maintained by Northern Arizona University shall be in excess to the coverage provided by NAIPTA and shall not contribute to it.

4.2 Mutual Indemnifications. Each Party to this IGA (as "Indemnitor") agrees to defend, indemnify and hold harmless the other Parties, and such Party's officers, officials, employees, agents, and directors (collectively, "Indemnitees") from and against any and all claims, demands, losses, liabilities, causes of action and costs (including expert witness fees, attorneys fees and costs of defense and appellate appeal) ("Claims"), which may be imposed upon, incurred by or asserted against the Indemnitees, attributable (directly or indirectly) to, or arising in any manner by reason of, the negligence, acts, errors, or omissions of any agent, officer, servant, or employee of the Indemnitor, or anyone for whom Indemnitor may be legally liable, in the performance of this Agreement.

4.3 Records and Audit Rights. Each Party's work and accounting records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the other Parties to substantiate charges and claims related to this IGA shall be open to inspection and subject to audit and/or reproduction by authorized representatives of the other Parties, to adequately permit evaluation and verification of the performance and cost of the work, and to conduct and prepare all audits and reports required by law. Representatives of each Party shall be afforded access, at reasonable times and places, to all of the other Party's records and personnel, pursuant to the provisions of this Section, throughout the term of this IGA

(including Renewal Terms), and for a period of five (5) years after last or final payment.

4.4 Amendments. Any amendment, modification or variation from the terms of this IGA shall be in writing and signed by all Parties hereto.

4.5 Assignment. This IGA may not be assigned except with the prior written approval of all the Parties, which approval may be withheld for any reason.

4.6 Governing Law. This IGA shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this IGA shall be proper in the Superior Court of Coconino County, Arizona and all Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

4.7 Notices. All notices or demands required to be given pursuant to the terms of this IGA shall be given to the other Party in writing, delivered by hand or registered or certified mail, at the address designated by the Parties in writing. Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail. In order to facilitate communication, each Party shall provide the other Parties with e-mail addresses for the primary contacts in relation to this IGA.

4.8 Incorporation of Recitals and Exhibits. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

4.9 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 Parties or any subconsultant who works on this IGA to ensure compliance with this warranty.

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.

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 Arizona Revised Statutes § 23-214(A).

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 4.9 "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.

4.10 Cancellation for Conflict of Interest. Pursuant to the provisions of A.R.S. §38-511, a Party may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Party is, at any time while the contract or any extension thereof is in effect, an employee of any other Party to the contract in any capacity or a consultant to any other Party to the contract with respect to the subject matter of the contract.

4.11 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 arbitration, to the extent required by state law, litigation or some other dispute resolution procedure. Mediation will be conducted as set forth in Section 14 of the Amended Master IGA.

[Signature pages follow]



**IN WITNESS WHEREOF**, the Parties hereto have executed this IGA.

**ARIZONA BOARD OF REGENTS  
ACTING ON BEHALF OF NORTHERN ARIZONA UNIVERSITY**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVAL OF NORTHERN ARIZONA UNIVERSITY GENERAL COUNSEL**

I hereby state that I have reviewed the proposed Intergovernmental Agreement, between Northern Arizona University, Flagstaff and NAIPTA, and declare the IGA to be in proper form and within the powers and authority granted to NAU under the laws of the State of Arizona.

\_\_\_\_\_  
Northern Arizona University General Counsel

**IN WITNESS WHEREOF**, the Parties hereto have executed this IGA.

**CITY OF FLAGSTAFF  
AN ARIZONA MUNICIPAL CORPORATION**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVAL OF FLAGSTAFF CITY ATTORNEY**

I hereby state that I have reviewed the proposed Intergovernmental Agreement, between NAU, Flagstaff and NAIPTA, and declare the IGA to be in proper form and within the powers and authority granted to Flagstaff under the laws of the State of Arizona.

\_\_\_\_\_  
Flagstaff City Attorney

**IN WITNESS WHEREOF**, the Parties hereto have executed this IGA.

**NORTHERN ARIZONA INTERGOVERNMENTAL  
PUBLIC TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_

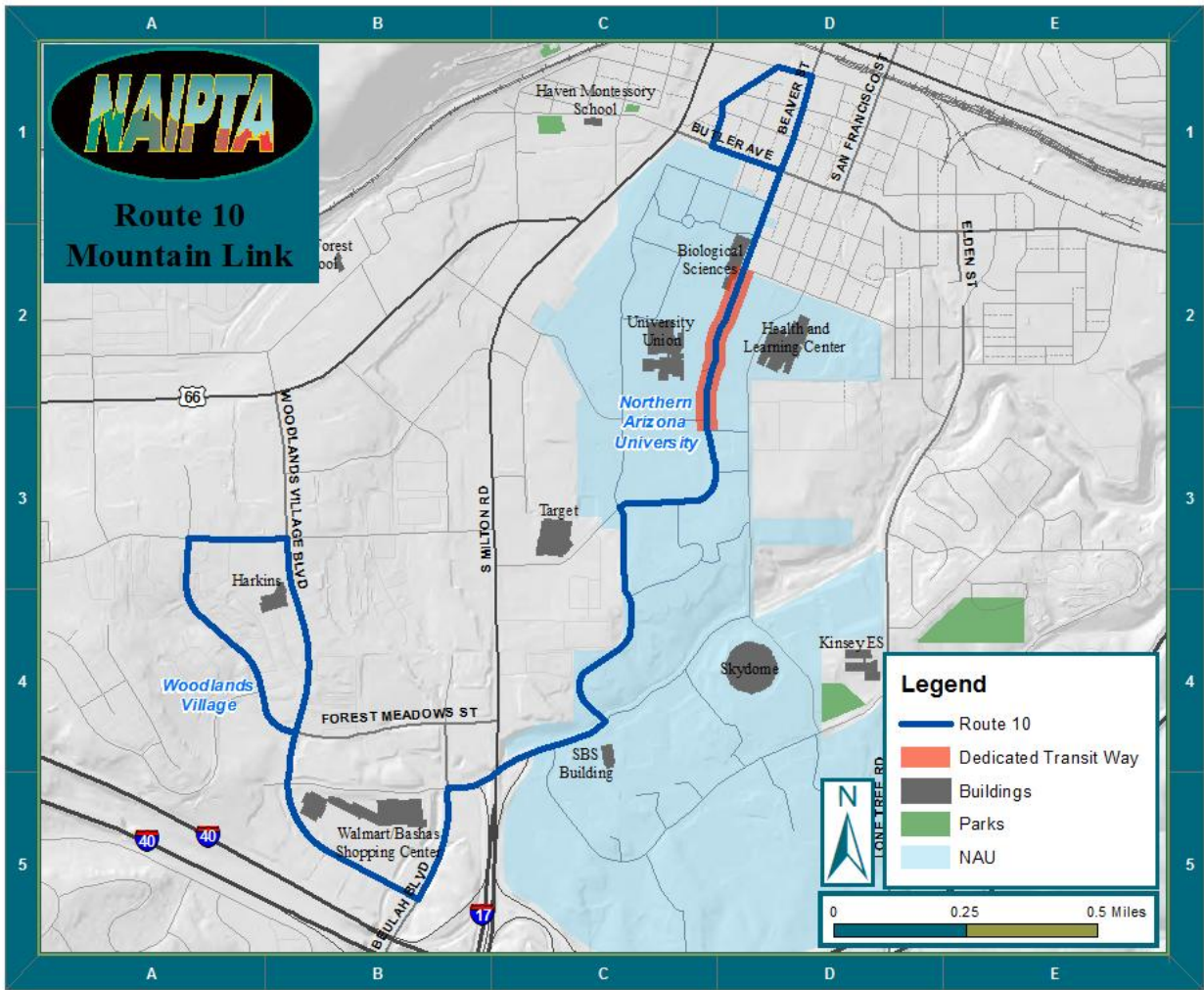
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVAL OF NAIPTA GENERAL COUNSEL**

I hereby state that I have reviewed the proposed Intergovernmental Agreement, between NAU, Flagstaff and NAIPTA, and declare the IGA to be in proper form and within the powers and authority granted to NAIPTA under the laws of the State of Arizona.

\_\_\_\_\_  
NAIPTA General Counsel



PHOENIX 53963-1 123947v3

PHOENIX 53963-1 123947v3

updated April 5, 2014

**EXHIBIT "A" TO IGA**