

## **INTERGOVERNMENTAL AGREEMENT**

**by and between  
Coconino County  
and the  
City of Flagstaff**

This Intergovernmental Agreement ("Agreement") is made this \_\_\_ day of \_\_\_\_\_, by and between COCONINO COUNTY, a political subdivision of the State of Arizona, of 219 East Cherry Avenue, Flagstaff, Arizona ("County") and the CITY OF FLAGSTAFF, an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona ("City") for use of the Joe C. Montoya Community and Senior Center ("Center") for senior nutrition programs. The City and County may be referred to individually in this Agreement as a Party or collectively as Parties.

### **RECITALS**

- A. The Joe C. Montoya Community and Senior Center is a City-owned and operated facility located at 245 North Thorpe Park Road in Flagstaff.
- B. The County operates its Senior Congregate and Meals on Wheels programs at the Center, using the kitchen for meal preparation Monday through Friday, the Allen Room for congregat meals, and the driveway for Meals on Wheels and deliveries.
- C. Funding for the County nutrition programs is provided by Older American Act funds through the Area-Agency on Aging, Coconino County general funds, and participant and corporate donations.
- D. The County's current use of the Center for its senior nutrition programs is governed by an intergovernmental agreement with the City dated March 6, 2014, which has a term of five years.
- E. The County and the City desire to enter an intergovernmental agreement establishing the terms and conditions under which the County will continue to have access to the Center for the purpose of carrying out its senior nutrition programs.

NOW THEREFORE, pursuant to A.R.S. § 11-952, authorizing contracts between public agencies for services or the joint exercise of powers common to both, and the inherent powers of each Party to protect the health and welfare of its constituents, for and in consideration of the mutual obligations and covenants set forth herein, the Parties agree as follows:

### **AGREEMENT**

#### **1. DURATION AND TERMINATION.**

This Agreement shall be effective on the date first set forth above and shall continue in force and effect for an Initial Term of five (5) years. Upon expiration of the Initial Term, this Agreement may be renewed for up to two (2) successive five (5) year terms (each a "Renewal Term") subject to the provisions of this IGA upon mutual written consent of the Parties. This Agreement may be terminated by either Party upon thirty (30) days written notice of termination delivered to the other Party. Either Party may terminate this Agreement if sufficient funding is no longer available to carry out that Party's responsibilities under the Agreement. This Agreement may be terminated by either Party without penalty or further obligation, in accordance with the provisions of Arizona Revised Statutes §38-511, in the event of the occurrence of any of the circumstances described in A.R.S. §38-511(A).

**2. FUNDING; FINANCIAL RESPONSIBILITIES.**

The County shall be responsible and pay for all expenses associated with the operation of its senior nutrition programs, including but not limited to, the costs of food, supplies, telephones, vehicles, gasoline, liability insurance, and the maintenance and upkeep of all kitchen equipment, appliances, drains, and other items necessary for the operation of the program. The County shall be responsible for obtaining and paying for all permits and inspections necessary to operate the senior nutrition programs. The County shall pay for all costs associated with the supervision of its senior nutrition program staff. Any kitchen improvements or replacement of large equipment or appliances must be approved by the City in advance. The County shall pay for repairing or replacing any kitchen equipment damaged as a result of the County's own negligent use of such equipment. Aside from the references to maintenance obligations in Section 6 below, the City shall maintain only the Center itself and pay for the upkeep and repair of the same. The County shall maintain and pay for the upkeep, repairs and/or replacement of the storage shed located outside the Center near the kitchen entrance.

**3. UTILITIES.**

The City shall pay for all utility costs in the Center (other than communications related utilities including but not limited to phone, fax and internet services).

**4. SCHEDULING; USE OF BUILDING.**

The County shall have use of the kitchen for all meal program events between 5:30 a.m. and 2:30 p.m. Monday through Friday. The County shall have use of the Allen Room for meal program events between 10:30 a.m. and 2:30 p.m. Monday through Friday. No other groups or events shall be scheduled in the kitchen or Allen Room during the times listed above, without prior notification. The County may use the kitchen and Allen Room at other times subject to City approval and space availability. Programs and events have priority use of the Allen room outside of the times allocated to the County as defined in this agreement. If the need arises that the City requires the use of the Allen room and/or kitchen during the County's allotted time slot, the City may, in its sole discretion, use the kitchen and/or Allen Room. Where possible, the City shall give the County a two (2) week notice prior to such use. However, in the event that no such prior notice is possible due to an emergency situation, the City shall not be required to give the County the two (2) week notice.

**5. DAILY OPERATIONAL STANDARDS.**

The County shall maintain the kitchen and Allen Room in a sanitary and safe condition at all times, per County health regulations. The County agrees to set up the Allen Room beginning at 10:30 a.m. and to clear the Allen Room beginning at 1:30 p.m. each day, Monday through Friday. County employees and volunteers will conduct themselves at all times in a professional and courteous manner while utilizing the kitchen at the Center.

The County agrees to clean off all tables and chairs prior to putting them away and to sweep and mop the floors to remove all debris after each serving. City staff will monitor clean up to ensure areas are ready for the next user group. County staff shall limit their activities, as much as possible, to the kitchen and Allen Room and shall keep other areas free of equipment and materials that may block or otherwise impair the use of the Center for other purposes. County staff shall alert the City of any special events, safety concerns, or repairs that are needed at the Center that the County becomes aware of under the course of its activities under this Agreement

**6. FACILITIES AND EQUIPMENT USE AND MAINTENANCE; SUPPLIES.**

The County shall maintain all kitchen equipment in an operational and sanitary condition, in compliance with applicable County health requirements. The County shall not allow any entity other than the County and its employees to use the kitchen equipment during the County's scheduled use periods. The City shall take reasonable steps to ensure that dining or food supplies purchased by the County are not used by any

other entity without the express permission of the County. The County shall clearly identify and label its dining and food supplies. As the kitchen and equipment are utilized extensively by the County, replacement of and repairs to existing kitchen equipment shall be handled on a case by case basis to determine which Party will be responsible for maintenance or replacement. These determinations will ultimately be made by the City, after the matter is reviewed by the Center's Supervisor, Facilities Supervisor, and the Recreation Services Director in cooperation with staff designated by the County. The County will pay for the replacement of dining room tables as needed as they are used primarily for the meal program.

**7. EMPLOYMENT STATUS.**

County employees and volunteers associated with the senior nutrition programs shall at all times remain employees of the County. The City shall not have supervisory authority or control over the day-to-day work of the County employees or volunteers associated with the County's senior nutrition programs.

**8. INSURANCE.**

The County and the City shall each maintain sufficient liability insurance to cover each Party's respective activities associated with this Agreement.

**9. 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 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 which result in vicarious or 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.

**10. NOTICES.**

Any notice or other communication required or permitted to be given under this Agreement 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 in accordance with this Section:

If to the County:	If to the City:
County Manager	City Manager
219 East Cherry Avenue	211 West Aspen Avenue
Flagstaff, AZ 86001	Flagstaff, AZ 86001

**11. AUTHORITY TO CONTRACT.**

Each Party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder and has taken all required acts or actions necessary to authorize the same.

**12. GOVERNING LAW.**

This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Arizona.

**13. DISPUTE RESOLUTION.**

Either Party shall have the right to litigate any disputes which arise under this Agreement. Any litigation brought by either Party against the other to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court. 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.

**14. AGENTS, EMPLOYEES, AND CONTRACTORS**

Agents, employees and contractors hired by a Party to provide services under this 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.

**15. 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.

**16. 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.

**17. INTEGRATION; MODIFICATION.**

Both Parties acknowledge and agree that they have 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. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded by and merged in this Agreement. This Agreement may be modified or amended only by written agreement signed by or for both Parties, and any such modification or amendment will become effective on the date so specified.

**18. 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.

**19. SEVERABILITY.**

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

**20. WAIVER.**

No failure to enforce any condition or covenant of this Agreement 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 Agreement constitute a waiver of any succeeding or other breach of this Agreement.

**21. HEADINGS.**

The headings used in this Agreement are for convenience only and are not intended to alter or affect the meaning of any provision of this Agreement.

**[SIGNATURE PAGE FOLLOWS]**

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

**CITY OF FLAGSTAFF**

**COCONINO COUNTY**

\_\_\_\_\_  
Barbara Goodrich  
City Manager

\_\_\_\_\_  
Matthew G. Ryan  
Chairman, Board of Supervisors

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Attest:

Attest:

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

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to form and as to authority granted  
by law:

Approved as to form and as to authority granted  
by law:

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

\_\_\_\_\_  
Deputy County Attorney

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_