

**CENTRAL YAVAPAI METROPOLITAN PLANNING ORGANIZATION & TOWN OF
PRESCOTT VALLEY**

TRANSIT ACTIVITIES IGA

This Service Planning Intergovernmental Agreement (this "Service IGA") is effective when fully executed by and between the Town of Prescott Valley, a municipal corporation of Arizona (hereinafter the "TOWN"), and the Central Yavapai Metropolitan Planning Organization, an Arizona non-profit (hereinafter "CYMPO"). The TOWN and CYMPO may be referred to in this Service IGA each individually as a "Party" and collectively as the "Parties".

RECITALS

A. The TOWN is the direct recipient of 5307 Urbanized Area Formula Grant funding apportioned through the Federal Transit Administration (FTA) for the Prescott Valley-Prescott Urbanized area.

B. CYMPO wishes to partner with the TOWN to access federal funding for public transit activities to further CYMPO's mission to serve the multi-modal needs of the CYMPO region, all on the terms and conditions set forth in this Service IGA.

C. Upon CYMPO receiving direct recipient status from the FTA, or the completion of all projects within this IGA (Attachment A), this agreement will be fulfilled (whichever comes first), except that, to the extent approved by the FTA, all FTA Grant funds held by TOWN to which this Service IGA is applicable shall be turned over to CYMPO.

D. Transit activities may include eligible capital, planning and operations initiatives set forth by CYMPO, which CYMPO will provide, less any direct funds the TOWN may, in its sole discretion, provide and designate as part of the match percentage).

E. The TOWN's 5307 Urbanized Area Formula Funds will be made available to CYMPO via reimbursement as agreed upon by the FTA. CYMPO will submit invoices to the TOWN for reimbursement and meet all FTA standard invoice requirements. Invoices in the same format shall also be sufficient for payment of any direct TOWN funds. TOWN will expeditiously submit such invoices with attendant documentation for payment.

F. The Parties are authorized to enter into this Service IGA by ARS §§11- 951 *et seq.* and 28-9101 *et seq.*

AGREEMENT

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

1. Definitions.

In this Agreement the following words have the listed meaning, unless the context requires otherwise:

“Contractor” means CYMPO.

“FTA” means the Federal Transit Administration.

“Grant management” refers to the administrative responsibilities required to submit the grant application and receive reimbursement for grant-funded expenses from FTA.

“Project management” is the practice of initiating, planning, and implementing the activities outlined in the scopes of work. Project management includes the development of the scopes of work and project activities, working with all relevant stakeholders to develop and implement projects and strategies, and reviewing and evaluating all project activities toward the accomplishment of transit goals.

“5307 Grant Cycle” shall mean the grant fiscal year from October 1, 20XX until September 30, 20XX. During this period, the TOWN is identified as the Direct recipient for 5307 Urbanized Area Formula Funding in the Prescott Valley-Prescott Urbanized Area (UZA).

“Party” means TOWN or CYMPO.

“Parties” mean both TOWN and CYMPO.

“Subcontractors” mean contractors hired by CYMPO for performance of its obligations and sub-contractor hired by subcontractors for performance of work regarding this Service IGA.

“TOWN” means the Town of Prescott Valley

“UZA” means Urbanized Area

2. Purpose. The purpose of this IGA is to set forth the terms and conditions pursuant to which CYMPO will undertake to provide certain transit activities for the Prescott Valley-Prescott UZA.

3. Obligations of the TOWN.

3.1 General Obligations.

3.1.1 The TOWN will include a description of this Service IGA and funding amount in its Executed Grant Agreement with FTA as required for applying for and obligating federal funds.

3.1.2. The TOWN will provide grant management services for the term of this Service IGA. Grant management services include the submission of grant applications to FTA and the submission of invoices to FTA for payments through ECHO Web, the FTA’s Grantee Payment Request System.

3.1.3 The TOWN will work with CYMPO to provide input and guidance on transit activities as they relate to ongoing coordination related to this Service IGA.

3.1.4 The TOWN staff will attend coordination meetings and provide updates on any additional and applicable transit and other transportation activities as appropriate to this Service IGA.

3.1.5 Any payment or reimbursement of funds under this Service IGA by the TOWN to

CYMPO is conditioned upon the TOWN having funds available for such purpose.

- 3.2 Financial Management Obligations. The TOWN will provide notice to FTA that it intends to allocate 5307 Urbanized Area Formula Funding for reimbursement to CYMPO for the remainder of the current 5307 Grant Cycle. The total funding amount that includes these 5307 funds will be as provided in Attachment A.
- 4 Obligations of CYMPO.
 - 4.1 General Obligations.
 - 4.1.1 CYMPO's scopes of work under this Service IGA is projected to include the activities set forth in "Attachment A" hereto ("CYMPO Transit Activity Projects"). CYMPO will conduct transit activities throughout the Prescott Valley-Prescott UZA.
 - 4.1.2 CYMPO will provide project management for the life of this Service IGA, to ensure that the activities in the Scopes of Work are successfully delivered while meeting FTA standards. Progress reports and in-kind tracking/valuation documentation will be completed quarterly by CYMPO staff and submitted to the TOWN for grant management and reporting.
 - 4.1.3 CYMPO will provide project management services for the terms of each 5307 Grant Cycle, as identified in Attachment A, and until all funds are expended, it being understood that if CYMPO obtains direct recipient status and is to receive grant funds referenced in Attachment A directly from the FTA that such management will no longer be under this Service IGA for TOWN as Grant Recipient.
 - 4.2 Financial Obligations.
 - 4.2.1 CYMPO will document in compliance with federal law and regulations, local match as required by the respective grant obligation, or such additional amounts (normally 20/80 split for capital and 50/50 for operations expenditures) as are required by FTA's requirements, as leverage for federal transit funding. CYMPO will provide such documentation to the TOWN at an interval agreed to by the Parties. CYMPO is not responsible for providing in-kind match for any grant funding of TOWN projects beyond the scope of this IGA. Town may provide but is not required to provide any contribution to the match required for receipt of this grant funding, outside of its identified responsibility as outlined in the Intergovernmental Agreement for CYMPO
 - 4.2.2 CYMPO will document, in compliance with federal law and regulations, staff time spent on projects outlined in Attachment A.
 - 4.2.3 CYMPO will use an accounting system which complies with generally accepted accounting principles and with applicable requirements of the FTA. CYMPO will comply with all requirements of FTA audit guidelines and any other provisions of funding agencies, including any requirement for electronic submissions.
 - 4.2.4 CYMPO agrees to provide the TOWN with its annual audit and compliance and management letter, letter on internal controls, and single audit report upon request.

Any additional reports, including but not limited to granting agencies' reviews, shall be forwarded to the TOWN for review. The TOWN shall have the right to audit CYMPO's books and records upon reasonable notice to CYMPO from the TOWN, 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.

4.2.3 CYMPO shall retain sufficient records of its billings and expenses demonstrating its compliance with the terms of this Service IGA for a period of at least 5 years from the date the audit report is issued, and shall allow the TOWN and FTA or their designee(s) access to such records upon request.

4.2.4 Town will comply with all accounting obligations it may have as a recipient of the grant funding at issue but this is not in derogation of any duty of CYMPO to perform as agreed in this section 4.

5 Term and Termination.

5.1 Term.

This Service IGA shall be effective through the completion date of the last transit activity, or CYMPO's designation of direct recipient status.

5.2 Termination.

5.2.1 Either Party may terminate this Agreement by giving the other Party thirty (30) days written notice of termination and termination will occur on the 30th day after recipient's receipt of such notice. CYMPO will promptly provide notice to its subcontractors and will not incur any further obligations for which it seeks reimbursement from the TOWN accruing 30 days after its receipt of a written notice of termination. The TOWN will remain responsible to reimburse CYMPO for Scope of Work activities it has performed to the termination date. This Agreement may be terminated without any further obligation on the part of the TOWN beyond those funds that are appropriated in the event that sufficient FTA appropriated funding (or other direct TOWN funding) becomes unavailable to assure full performance of its terms. CYMPO shall be notified in writing of such non-appropriation at the earliest opportunity.

5.2.2 Notwithstanding any other provision of this Service IGA: (i) termination shall not terminate either Party's obligations under sections 6, 7, or 8. of this Service IGA; (ii) CYMPO shall still comply post termination with the terms of sections 4.2.3, 4.2.4 and 4.2.5 in relation to funds received or expended before termination and/or the return of funds to the TOWN before or after termination (any grant funds then being returned by the TOWN to the FTA); and (iii) through the effective date of any termination, the TOWN shall continue to comply with the terms of section 3.2.

5.2.3 CYMPO will provide an accounting of match contributions under section 4.2 through termination within thirty (30) days after termination and, if termination occurs in June of a given year, by July 15 of that year.

6 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 Party and by the FTA to substantiate charges and claims related to this Service IGA shall be open to inspection and subject to audit and reproduction by authorized representatives of the other Party, 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 will be afforded access, at reasonable times and places, to all the other Party's records and personnel, pursuant to the provisions of this section, throughout the term of this Service IGA (including Renewal Terms), and for a period of 5 years after last or final payment as it relates to Transit project funding.

7 Indemnity. 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 attorneys' 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/derivative liability to the Indemnitee are caused or contributed to by the negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

8 General Provisions.

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

8.2 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.

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

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

8.5 ATTORNEY'S 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 receive 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.

8.6 NOTICES. All notices, requests, authorizations, approvals, consents and other such communications shall be in writing and shall be delivered: in person, by overnight delivery by Federal Express or UPS (freight prepaid); by certified or registered mail, return receipt requested; or by confirmed facsimile transmission and regular mail, postage prepaid to the address set forth below or to such other address as a Party hereafter provides notice of. Notices shall be deemed to be given on the date so delivered, mailed, expressed or faxed and shall be conclusively deemed received; the date delivered in person; the second business day after being so sent by Federal Express or UPS or by certified mail; and one (1) day after completion of facsimile transmission is and posting by first class mail, postage prepaid. A Party may change its address for receipt of notice effective 5 days after completion of notice of the new address to the other Party.

CYMPO:

CYMPO Executive Director
Central Yavapai Metropolitan Planning Organization
1971 Commerce Center Circle - Suite E
Prescott, AZ 86301
Telephone: (928) 442-5730
Fax: (928) 442-5736

TOWN:

The Town of Prescott Valley
Transit Administrator
7501 E. Skoog Blvd
Prescott Valley, AZ 86314
Tel: (928) 759-3119
Fax:

- 8.7 ADVERTISING. No advertising or publicity concerning the TOWN shall be undertaken without prior written approval of such advertising or publicity by the TOWN's Transit Administrator but TOWN approves of all public notices of this Service IGA required for CYMPO's approval and execution of this Service IGA and those required for obtaining quotes or proposals to obtain or approve subcontractors and subcontracts with subcontractors.
- 8.8 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.
- 8.9 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.
- 8.10 SEVERABILITY. If any term or provision of this Service IGA shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Service IGA shall remain in full force and effect, and such term or provision shall be deemed to be deleted.
- 8.11 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.

9. Publications.

All reports and maps completed as a part of this Service IGA, jointly written under this Service IGA, except copies of such documents made for the exclusive internal use of either Party, shall include an acknowledgment on the front cover or a title page, or in the case of maps, in the title block, which identifies the cooperative parties.

In addition, in accordance with 23 CFR 420.117(e), all such documents shall contain the following disclaimer statement:

“This report was funded in part through grant[s] from the Federal Highway Administration and/or Federal Transit Administration, U.S. Department of Transportation. The contents of this report reflect the views and opinions of the

author(s) who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily state or reflect the official views or policies of the U.S. Department of Transportation, the Arizona Department of Transportation, or any other State or Federal Agency. This report does not constitute a standard, specification or regulation”.

10. Title VI of the Civil Rights Act of 1964.

CYMPO HEREBY AGREES THAT as a condition to receiving any Federal financial assistance provided by the U.S. Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, as amended, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), the Civil Rights Restoration Act of 1987 (Public Law 100.259) and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the U.S. Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, religion, sex, disability, age, gender identity, national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the U.S. Department of Transportation, including the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations. CYMPO shall also incorporate and comply with the terms and conditions established in Appendix A.

11. Title VI/Non-Discrimination Assurances. This Service IGA is subject to the provisions of Title VI of the Civil Rights Act and CYMPO is herein notified of such. Additionally, CYMPO has agreed it shall include the following information in each of its agreements/contracts associated with the WP.

“CYMPO, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

APPENDIX A

During the performance of this Service IGA, CYMPO, for itself, its assignees, and successors in interest agrees as follows:

1. **Compliance with Regulations:** CYMPO (**hereinafter includes subcontractors**) will comply with the Acts and the Regulations relative to Non-discrimination in Federally assisted programs of the FTA as they may be amended from time to time, which are herein incorporated by reference and made a part of this Service IGA.
2. **Non-discrimination:** CYMPO, with regard to the work performance by it during the Service IGA, will not discriminate on the grounds of race, color, religion, sex, disability, age, gender identity or national origin in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. CYMPO will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Service IGA covers any activity, project, or program.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by CYMPO for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential Subcontractor or supplier will be notified by CYMPO of CYMPO's obligations under this Service IGA and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** CYMPO will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TOWN or the FTA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of CYMPO is in the exclusive possession of another who fails or refuses to furnish the information, CYMPO will so certify to the TOWN or the FTA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of CYMPO's noncompliance with the Non-discrimination provisions of this Service IGA, the TOWN will impose such sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to CYMPO under the Service IGA until CYMPO complies; and/or
 - b. cancelling, terminating, or suspending the Service IGA, in whole or in part.
6. **Incorporation of Provisions:** CYMPO will include the provisions of paragraphs one through five in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. CYMPO will take action with respect to any subcontract or procurement as the TOWN or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if CYMPO becomes involved in, or is threatened with litigation by a Subcontractor or supplier because of such direction, CYMPO may request the TOWN to enter into any litigation to protect the interests of the TOWN. In addition, CYMPO may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this Service IGA, CYMPO, for itself, its assignees, and successors in interest, agrees to comply with all Federal non-discrimination statutes and authorities; including but not limited to:

1. **Pertinent Non-Discrimination Authorities.**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 *et seq.*).

Disadvantaged Business Enterprises (DBE)

CYMPO must adopt and implement the TOWN's DBE Program Plan as a condition of receiving federal funds.

The TOWN DBE Program Plan is available on request.

Non-Discrimination

CYMPO will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, national origin, age, or disability.

In compliance with the TOWN DBE Program Plan, CYMPO shall not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program. CYMPO will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, national origin, age, or disability.

CYMPO shall take all necessary actions required under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of TOWN-assisted contracts.

By executing this Service IGA, CYMPO agrees to perform the following minimum DBE Program Compliance Required Activities:

1. Cooperate with TOWN audits and site visits for DBE regulation and contract compliance; providing access to procedures; project files; and enabling onsite interviews with contracting, financial, DBE compliance, and project staff.

2. Each subcontract CYMPO signs with a subcontractor must include the following assurance:

a. A vendor/consultant/subcontractor/subconsultant (hereinafter referred to as "Contractor") shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of TOWN-assisted contracts. Failure by the Contractor to carry out these requirements represents a material breach of this contract, which may result in the termination of this contract or such other remedy as the Grantee, with the TOWN's concurrence, deems appropriate, which may include, but is not limited to:

- Withholding payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualify the Contractor from future bidding on the grounds of being non-responsible.

b. Each Contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.

c. Each Contractor shall designate a full-time employee who shall be responsible for the administration of the TOWN's DBE program.

d. Each Contractor shall prohibit agreements in which a DBE promises not to provide subcontracting quotations to other bidders.

e. Subcontract Payment Reporting in the DBE system:

i. The TOWN is required to collect data on DBE and non-DBE participation, including lower tier subcontracts, to report to FTA on Federal-aid projects.

CYMPO is notified that such record keeping is required by the TOWN for tracking DBE participation on both race neutral and race conscious projects (i.e. projects with and without DBE goals).

ii. CYMPO shall respond to any subrecipient payment audits reported each month, reporting its payments to all DBEs and non-DBE subcontractors working on the project. In addition, CYMPO shall require that all DBE and non-DBE subcontractors, shall also respond to its audits and report lower-tier subcontractor payments in the same manner.

iii. If, by the DBE system audit deadline, CYMPO has not submitted the required report for work performed during the preceding month, or the submitted report failed to include all amounts earned by and paid to all DBEs and non-DBEs, including all lower-tier DBE and non-DBE subcontractors, the Project Manager will work with the designated Town representative to determine if sanctions should be assessed. These liquidated damages shall be in addition to all other reductions or liquidated damages provided for elsewhere in the contract.

f. CYMPO shall include these provisions in all of its subcontracts and ensure that its subcontractors include these provisions in any lower-tier subcontracts.

g. Any language provided in this Service IGA DBE Section supersedes language provided by ProcurementPro for FTA-funded contracting requirements.

3. Submit all FTA-assisted contracts to the TOWN to be assessed for a DBE goal.

2. Debarments/Suspension.

The federal funding in this Service IGA is considered a covered transaction under 2 CFR 1200.220 for purposes of debarment and suspension considerations. CYMPO and its subcontractors, suppliers, consultants or its agent or representation regarding this transaction are subject to this requirement. CYMPO represents and warrants that it has not been debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs pursuant to 2 CFR 200.212. CYMPO must comply with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government-wide Debarment and Suspension Non- procurement)," and 2 CFR 200.212. CYMPO will review the Excluded Parties Listing System and assure that it and any subcontractors establish and maintain entity registration on the System for Award Management before entering into any contracts.

3. Prohibited Interests.

Subcontractors shall not enter into any contract, subcontract, or arrangement in connection with its work or any property included or planned to be included in the WP, in which a member, officer, or employee of CYMPO either during his tenure or for one (1) year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee involuntarily acquired or had acquired prior to the beginning of his or her tenure any such interest, and if such interest is immediately disclosed to CYMPO, CYMPO may waive the prohibition contained in this paragraph, provided, that any such present member, officer, or employee shall not participate in any action by CYMPO or the locality relating to such contract, subcontract, or arrangement. CYMPO is required and must disclose any such interest to the TOWN within 5 business days of receipt of disclosure.

“No member, officer, or employee of the SUBCONTRACTOR or CYMPO either during his or her tenure or for one year thereafter shall have any interests, direct or indirect,

in this contract or the proceeds thereof.”

4. Gratuities.

Any person doing business with, or who may do business with CYMPO under this Service IGA may not make any offer of benefits, gifts, or favors to the MPO employees. Failure on the part of a subcontractor or CYMPO to adhere to this policy may result in termination of this contract.

5. Bonus or Commissions.

By execution of this Service IGA, CYMPO represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining approval of its application for the financial assistance hereunder.

6. Conflict and Dispute Resolution Process.

The affected parties to this Service IGA shall, at a minimum, ensure the attempted early resolution of conflicts relating to such matters. Early resolution shall be handled by direct discussion between the following officials: for the TOWN, the Director or designee and the Director or designee of CYMPO and, should FTA be involved, the appropriate Director.

If the conflict remains unresolved and involves FTA, then the following applies:

The conflict shall be resolved by the following Senior Agency Officials: for FTA - the appropriate Director; and for CYMPO - the Director or designee; and for the TOWN, the Director or designee.

If the conflict continues to remain unresolved and involves FTA, the conflict shall be resolved by the following Executive Agency Officials: for FTA - the appropriate Director; and for CYMPO - the appropriate Director or designee.

If resolution is not accomplished, the Parties agree to resolve all disputes through binding arbitration and, if FTA is involved, exhausting applicable administrative review and if required by applicable law, except as may be required by other applicable statutes or regulations.

7. Suspension or Termination for Convenience.

The TOWN reserves the right to terminate this Service IGA, in whole or in part at any time, when in the best interests of the TOWN without penalty or recourse. Upon receipt of the written notice, CYMPO shall stop all work, as directed in the notice, notify all sub-contractors of the effective date of the termination and minimize all further costs to the TOWN. In the event of termination under this paragraph, all documents, data and reports prepared by CYMPO under this Service IGA shall become the property of and be delivered to the TOWN upon request but CYMPO will be entitled to retain copies of the same for evidence of work performed; dispute resolution; compliance with auditing requirements; and for compliance with public records requirements. CYMPO shall be entitled to receive just and equitable compensation for work in progress, work completed, and materials accepted before the effective date of the termination (the “completed work” or “completed portion of the work” to include work for which just and equitable compensation is due). Regarding subcontractors, at the earlier of receipt by subcontractors of notice or 2 business days after termination, the TOWN shall continue to perform, in accordance with the requirements of the Service IGA, up to the date of termination, as directed in the termination notice.

The TOWN shall reimburse CYMPO for those eligible expenses incurred during the Service

IGA period which are directly attributable to the completed portion of the work covered and other work for which equitable payment is due by this Service IGA, provided that the work has been completed in a manner satisfactory and acceptable to the TOWN. CYMPO shall not incur new obligations for the terminated portion after the effective date of termination.

The TOWN may seek any remedy available at law for recovery of any funds paid to CYMPO for any and all amounts for which the TOWN has made payment to CYMPO if such amounts are not directly attributable to the completed portion of the work covered by this Service IGA or have been paid to CYMPO for work completed after the effective date of the termination.

In addition to the rights reserved in this Service IGA, the TOWN may terminate the Service IGA in whole or in part due to the failure of CYMPO to comply with any term or condition of this Service IGA, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Service IGA.

This Service IGA may be terminated by either Party provided that a termination shall not be effective until 30 days after a Party has served written notice up on the other Party. This Service IGA may be terminated by mutual consent of both Parties or unilaterally by either Party without cause.

8. Force Majeure.

Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Service IGA if and to the extent that such Party's performance of this Service IGA is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; shortages of materials or labor; fire; flood; lockouts; injunctions- intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such Party is unable to prevent by exercising reasonable diligence.

9. Insurance Requirements.

CYMPO will maintain the following minimum insurance:

Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$2,000,000
• Personal and Advertising Injury	\$1,000,000
• Damage to Rented Premises	\$50,000
• Each Occurrence	\$1,000,000

Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Agreement.

- Combined Single Limit (CSL) \$1,000,000

Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
- Each Accident \$1,000,000
- Disease – Each Employee \$1,000,000
- Disease – Policy Limit \$1,000,000

1. Policies shall be endorsed, as required by this written agreement, to include CYMPO and the TOWN as an additional insured with respect to liability arising out of all activities performed by, or on behalf of CYMPO. (Workers Compensation is exempt from this requirement)
2. Policies shall contain a waiver of subrogation endorsement as required by this written agreement in favor of CYMPO and the TOWN for losses arising from work performed by or on behalf of CYMPO.

Additional Insurance Requirements

The policies shall include, or be endorsed to include, as required by this Service IGA, the following provisions:

1. CYMPO's policies, as applicable, shall stipulate that the insurance afforded CYMPO shall be primary and that any insurance carried by the TOWN, its agents, officials, employees shall be excess and not contributory insurance.
2. Insurance provided by CYMPO shall not limit CYMPO's liability assumed under the indemnification provisions of this Service IGA.
3. TOWN will be listed as an additional Insured under applicable coverage.

Notice of Cancellation

Applicable to all insurance policies required within the Insurance Requirements of this Service IGA, CYMPO's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without 30 days prior written notice to the TOWN. Within two (2) business days of receipt, CYMPO must provide notice to the TOWN if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the TOWN and shall be mailed, emailed, hand delivered or sent by facsimile transmission.

Acceptability of Insurers

CYMPO's insurance shall be placed with the SSCIP pool or companies licensed in the State of Arizona. Insurers shall have an "A.M. Best" rating of not less than A- VII. The TOWN in no way warrants that the above-required minimum insurer rating is sufficient to protect CYMPO from potential insurer insolvency.

Verification of Coverage

CYMPO shall furnish the TOWN with certificates of insurance (valid ACORD form or equivalent approved by the TOWN) evidencing that CYMPO has the insurance as required by this Service IGA. An authorized representative of the insurer shall sign the certificates.

1. All such certificates of insurance and policy endorsements must be received by the TOWN

before work commences. The TOWN's receipt of any certificates of insurance or policy endorsements that do not comply with this Service IGA shall not waive or otherwise affect the requirements of this Service IGA.

2. Each insurance policy required by this Service IGA must be in effect at, or prior to, commencement of work under this Service IGA. Failure to maintain the insurance policies as required by this Service IGA, or to provide evidence of renewal, is a material breach of this Service IGA.

3. All certificates required by this Service IGA shall be sent directly to the TOWN. The TOWN reserves the right to require complete copies of all insurance policies required by this Service IGA at any time.

Subcontractors

CYMPO's certificate(s) shall include all subcontractors as insureds under its policies or CYMPO shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above.

The TOWN reserves the right to require, at any time throughout the life of this Service IGA, proof from CYMPO that its subcontractors have the required coverage.

Submissions

All insurance certificates and/or endorsements shall be mailed to the TOWN at the address herein. CYMPO and its sub-contractors shall cooperate with the TOWN's risk manager as appropriate to assure insurance coverage meets applicable requirements.

10. Copyright and Patent.

Indemnification: To the extent permitted by Arizona law including A.R.S. § 41-621 and § 35-154, CYMPO shall indemnify and hold harmless the TOWN and FTA against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of this Service IGA performance or use by the TOWN of materials furnished or work performed under this Service IGA. The TOWN shall reasonably notify CYMPO of any claim for which it may be liable under this paragraph.

Copyrights: CYMPO may copyright any books, publications, or other copyrightable materials developed in the course of the FTA funded project. FTA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

Patents: CYMPO is subject to the provisions of 37 CFR part 401 governing patents and inventions and must include or cite the standard patent rights clause at 37 CFR 401.14, incorporated herein as Exhibit D, except for §401.14(g), in all subgrants or contracts. In addition, CYMPO must include the following clause, suitably modified to identify the parties, in all subgrants or contracts, regardless of tier, for experimental, developmental or research work.

Exhibit D, Standard Patent Rights, attached hereto provides further information required to be provided under 37 CRF 401.14.

11. Anti-Lobbying.

CYMPO agrees to comply with the provisions of Section 1352 of Title 31, U.S. Code (Public law 101.121) as codified in Title 48, Federal Acquisition Regulations Subpart 3.8 and Subpart 52.203-11, 23 CFR 630.112(c)(5), and 49 CFR part 20 and 2 CFR 200.450. The legislation prohibits Federal appropriated funds from being expended by a recipient or any lower tier sub-recipients of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the award of any Federal contract, the making of any Federal grant or loan, or entering into any cooperative agreement, including the extension, continuation, renewal, amendments or modification of any Federal contract, grant, loan or cooperative agreement. Certification is required to indicate compliance with 49 CFR 20.100(a). Disclosure must be made on Standard Form LLL, found at <https://www.gsa.gov/forms-library/disclosure-lobbying-activities> if any non-appropriated funds are used for such activities described herein. All disclosure statements are to be furnished to the TOWN.

CYMPO agrees to complete the Lobbying Certification (Exhibit B) and, when appropriate, the Disclosure of Lobbying Activities (Exhibit C).

12. Energy Conservation.

CYMPO is required to comply with mandatory standards and policies, as applicable relating to energy efficiency which are contained in the State Energy Conservation Plan issued by the State of Arizona in compliance with the Energy Policy and Conservation Act (P.L. 94-165).

13. Environmental Protection.

CYMPO is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grant or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to FTA, and to the U.S.E.P.A. Assistant Administrator Enforcement (EN-329).

14. Drug Free Workplace.

CYMPO agrees to comply with laws governing a drug and alcohol-free workplace in compliance with the Federal Drug-Free Workplace Act of 1988 and 23 CFR 630.112(c)(3).

15. Transparency Act.

CYMO warrants compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, CYMPO will provide the TOWN information to enable FTA to comply with the requirements of the Act, as may be applicable.

16. Incorporation of Federal Terms.

All contractual provisions required by FTA are hereby incorporated by reference. All applicable clauses shown in the FTA Master Agreement apply to each Project funded by FTA.

Additionally, CYMPO agrees to abide by:

1. The requirements in 2 CFR 200.326,

2. The requirements in 2 CFR 200 Appendix II,
3. The requirements in 2 CFR 1201,
4. FTA funded procurements/contracts: Circular 4220.1F – Third Party Contracting Guidance or its Appendix D, as revised from time to time,

17. Miscellaneous Provisions.

1. This Service IGA is governed according to the laws of the State of Arizona. All cited statutes, public law, executive orders, and policies cited in this Service IGA are incorporated by reference as a part of this Service IGA.
2. The TOWN and CYMPO shall comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Service IGA. Any provision required by law, ordinances, rules, regulations, or executive orders to be inserted in the Service IGA shall be deemed inserted, whether or not such provisions appear in this Service IGA. The TOWN shall endeavor to ensure CYMPO is notified and made aware of such applicable laws and procedures. Compliance includes that Town will comply with those portions of Appendix A and Appendix E above where required by law in its activities regarding this Agreement and performance hereunder.
3. This Service IGA may be cancelled in accordance with Arizona Revised Statutes Section 38-511 as regards to conflicts of interest.
4. In accordance with Arizona Revised Statutes Section 11-952 (D), incorporated herein by reference, is the written determination of each Party's legal counsel that the Parties are authorized under the laws of this state to enter into this Service IGA and that the Service IGA is in proper form.
5. Neither Party shall assign, transfer or delegate any rights, obligations or duties under this Service IGA without the prior written consent of the other Party.
6. Each Party shall keep confidential all information, in whatever form, produced, prepared, observed, or received by the Party to the extent that such information is confidential by law.
7. To the extent applicable under Arizona Revised Statutes Section 41-4401, each Party and its subcontractors warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statutes Section 23-214(A). A breach of the above-mentioned warranty by any Party or its subcontractors shall be deemed a material breach of this Service IGA and may result in the termination of the Service IGA by the non-breaching Parties. Each Party retains the legal right to randomly inspect the papers and records of the other Parties' or its subcontractors' employees who work on the Service IGA to ensure that the Parties or their subcontractors are complying with the above-mentioned warranty.
8. CYMPO assures that it will comply with applicable provisions of the Americans with Disabilities Act (ADA), (Public Law No. 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act including 28 CFR parts 35-36, and applicable provisions of 49 CFR Parts 27, 37 and 38: Transportation for Individuals with Disabilities; Final Rule. The parties to this Service IGA shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-

Discrimination”.

9. Israel Boycott Not Permitted: In accordance with A.R.S. §35-393.01, CYMPO and the TOWN each warrant to the other that it is not engaged in, and will not engage in, a boycott of Israel as defined in A.R.S. 35-393 et seq. during the term of this Service IGA.

10. The Parties agree to the additional FTA required provisions are set forth in Exhibit E hereto, which are incorporated herein by this reference.

11. Pursuant to 2 CFR Part 200, Subpart F, Appendix II(K) and 2 CFR 200.216 the Parties shall not procure or obtain, or extend or renew a contract to procure (or obtain, or procure or obtain equipment, services, or systems that use) covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, -

a. produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) as described in Public Law 115-2332, section 889;

b. for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); or

c. produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

12. Pursuant to 2 CFR 200, Subpart F, Appendix II, for contracts in excess of \$150,000, the Parties agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671g) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the contracting agency and to ADOT, who will report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA)

13. To the extent applicable (and except to the extent that FTA determines otherwise in writing), the Parties agree to comply with the policies of Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency.”

14. If applicable under 49 U.S. § 5325(k), to the extent practicable, the Parties agree and assure that any subrecipients will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a project supported with federal assistance appropriated or made available for 49 U.S.C. Chapter 53, and will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, and individual with a disability, or a former employee.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have approved this Service IGA by resolution of their governing boards and have caused these presents to be executed by their duly authorized officers.

CYMPO:
Central Yavapai Metropolitan Planning
Organization

Craig L. Brown, CYMPO Board Chair

Vincent Gallegos, CYMPO Executive Director

Printed Name

Printed Name

Date

Date

ATTEST:

Allison McCarthy, Administrative Assistant

TOWN:
The Town of Prescott Valley

Who: Kell Palguta
Title: Mayor

Printed Name

Date

ATTEST:

Fatima Fernandez, TOWN Clerk

Approval of Legal Counsel:

This Service IGA has, prior to its execution, been submitted to attorneys for each party, who have determined the Service IGA is in the proper format and is within the powers and authority granted under the laws of Arizona.

Central Yavapai Metropolitan Planning Organization and the Town of Prescott Valley
Service IGA for Transit Activities

Musgrove, Drutz, Kack & Flack, PC

Thomas P. Kack
Attorney for CYMPO

Ivan Legler
Attorney for TOWN

Date

Date

Attachment A

The following table shows the projects identified for CYMPO’s Transit Activities. Funding for these projects are to be made available to CYMPO by the Town through the terms of this Service Planning IGA:

Table 1: CYMPO Transit Activity Projects

Award Status	FTA Fiscal Year	Title of Project	FTA Grant	Town of Prescott Valley 5307 Urbanized Area Formula Funds	Matching Fund Rate	Matching Funds (Provided by CYMPO)
Awarded	FFY22	SR69 Urbanized Corridor Master Plan	FTA G-29	\$40,000.00	20.00%	\$10,000.00
Awarded	FFY22	Active Community Transportation – Unified Plan (ACT-UP)	FTA G-29	\$96,000.00	20.00%	\$24,000.00
Awarded	FFY22	Transit Planning	FTA G-29	\$40,000.00	20.00%	\$10,000.00
Awarded	FFY23	Transit Planning	FTA G-30	\$200,000	20.00%	\$50,000.00
Awarded	FFY23	Program Support Administration	FTA G-30	\$150,000.00	20.00%	\$37,500.00
Intent to Request	FFY24	Transit Activities	TBD	TBD	TBD	TBD