

AMENDED LEASE AGREEMENT

This *AMENDED LEASE AGREEMENT*, entered into this ___ day of _____, 20___, by and between the **Town of Prescott Valley (“Town”)**, a municipal corporation of Arizona, LESSOR, and the **Central Yavapai Metropolitan Planning Organization, Inc. (“CYMPO”)**, a non-profit corporation of Arizona, LESSEE;

WITNESSETH:

WHEREAS, The Federal Transportation Act of 1973 (“FTA”) provides that the governor of each state designate a Metropolitan Planning Organization (MPO) for each urbanized area within the state with a census count greater than 50,000; and

WHEREAS, on May 1, 2003, the Town, the City of Prescott and the Town of Chino entered into an intergovernmental agreement (“IGA”) to create CYMPO consistent with the FTA and for the purpose of directing regional planning efforts concerning transportation and other regional issues; and

WHEREAS, on October 21, 2009 said IGA was amended to add the Town of Dewey-Humboldt as a participating agency; and

WHEREAS, on June 4, 2003, CYMPO (LESSEE) was incorporated as a non-profit corporation of Arizona; and

WHEREAS, LESSEE began a month to month lease of office space from the Town (LESSOR) commencing on December 15, 2003; and

WHEREAS, said lease included a portion of LESSOR’s Civic Center complex (“Civic Center”) for work space (including office furniture and equipment) for the CYMPO Administrator and mail, internet, and telephone services to said administrator; and

WHEREAS, CYMPO funding is largely based on transportation funds secured from the Federal Highway Administration (“FHWA”) through the Arizona Department of Transportation (“ADOT”), and FHWA has announced a policy change that requires CYMPO to pay actual dollars for office lease and utility costs rather than receive those as “in-kind” services from a participating agency; and

WHEREAS, LESSOR and LESSEE have determined to make certain adjustments to the earlier Lease Agreement (“Amended Lease Agreement”) to correspond with this policy change; and

WHEREAS, LESSOR’s Town Council has determined that it is in the best interests of the community that the certain public property described herein, not now needed for public purposes, be leased on the terms described herein; and

WHEREAS, LESSOR;s Town Council further finds that this arrangement with LESSEE is not a service contract to which the bid requirements of Town Code Article 3-04 would apply;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the parties hereto agree as follows:

1. LEASED PREMISES.

LESSOR does by these presents lease and demise to LESSEE, and LESSEE does lease from LESSOR, a portion of the Civic Center designated in Exhibit "A" (revised) attached hereto and expressly made a part hereof by reference (the "Leased Premises"), under the terms, covenants and conditions set forth hereinafter. The Leased Premises include office space within the building of Six Hundred Forty-one (641) square feet, an undivided interest of one and four-tenths percent (1.4%) in the primary common areas, and an undivided, unspecified interest in the secondary common areas.

2. USE OF LEASED PREMISES.

The Leased Premises are leased to LESSEE solely for the purpose of (a) providing work space (including office furniture and equipment) for the CYMPO Administrator and (b) providing mail, internet, and telephone services.

LESSEE further agrees to use the Leased Premises in a manner that does not materially damage the Leased Premises or constitute a nuisance or menace to other occupants, and to surrender possession of the Leased Premises at the expiration of this *AMENDED LEASE AGREEMENT* in as good a condition as normal wear and tear and reasonable and careful use will permit. LESSEE specifically agrees, in this regard, to follow all building rules established for the Civic Center and to not release hazardous materials in, on, or upon the Leased Premises in violation of Federal, State, or local law. Furthermore, except to the extent provided for herein, LESSEE shall not cause, maintain or permit any outside storage or services without LESSOR's written permission.

3. LEASE TERM.

The initial term of this *AMENDED LEASE AGREEMENT* was sixty days (60) days commencing on the 15th day of December, 2003, and ending on the 13th day of February, 2004. After the expiration (LESSEE not then being in default under the original *LEASE AGREEMENT*), LESSEE exercised its option to hold over and remained in possession of the LEASED PREMISES upon the same conditions herein contained. Such holding over created a month-to-month tenancy which may be terminated at any time by LESSOR upon thirty (30) days' notice to LESSEE or by LESSEE upon 30 days' notice to LESSOR. Rent and other charges shall be set from time to time by mutual execution of an amendment to this *AMENDED LEASE AGREEMENT* stating the new amounts. Neither party to this *AMENDED LEASE AGREEMENT* shall have the right to have a court or any other third party set the rent or other charges.

4. RENT.

As of February 1, 2011, the monthly rent to be applied by LESSEE to LESSOR shall be Fifty-eight Cents (\$0.58) per square foot of office space. With 641 square feet being leased, the total monthly lease payment shall be Three Hundred Seventy-two Dollars (\$372). Rent for any period which is less than one (1) month shall be prorated based upon a 30 day month.

It is understood by the parties that no transaction privilege or excise taxes are applicable to the Lease as of the date first-above written. However, in the event such taxes are imposed by competent authority during the term of the Lease or any extension thereof, rent shall be automatically increased at the time and in the amounts demonstrably needed to pay said taxes.

5. LESSEE'S COMPLIANCE WITH LAWS.

LESSEE shall comply fully with all applicable laws, statutes, ordinances or regulations regarding the use of the Leased Premises, including all sanitary and health regulations. LESSEE shall not use the Leased Premises for immoral purposes.

6. INSURANCE.

LESSEE at its expense shall, at all times during the term of this *AMENDED LEASE AGREEMENT* and any extension thereof, maintain in full force a policy or policies of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in the State of Arizona. Each policy shall be written on a(n) [occurrence/ claims-made] basis and shall insure LESSEE and LESSOR against liability for injury to persons and property and the death of any person or persons occurring in, on or about the Leased Premises, or arising out of LESSEE's maintenance, use and occupancy thereof. The described insurance shall afford protection of not less than \$500,000.00 in combined single limits for bodily injury and property damage.

All public liability and personal property damage policies shall contain a provision that LESSOR, named as an additional insured, shall be entitled to recovery under the policies for any loss occasioned by it, its officers, employees, agents and successors, by reason of the negligence or wrongdoing of LESSEE, its employees, agents, assigns, invitees, customers and sublessees. Furthermore, the policies shall provide that their coverage is primary over any other insurance coverage available to the LESSOR, its officers, employees, agents and successors. All such policies of insurance shall also contain a provision that the company writing the policy will give to LESSOR 30 days' written notice in advance of any cancellation or lapse, or the effective date of any reduction in amounts of insurance.

If at any time LESSEE fails, neglects or refuses to cause such insurance to be provided and maintained, then LESSOR may, at its election, procure or renew such insurance, and any amounts paid therefor by LESSOR shall be an additional amount due from LESSEE at the next rent payment date. LESSEE's obligations to carry the insurance provided for herein may be satisfied through coverage of a so-called blanket policy or policies of insurance maintained by LESSEE, provided that the coverage afforded LESSOR will not be reduced by reason of the use of such blanket policy of insurance. Copies of certificates of the needed insurance shall be delivered to LESSOR prior to LESSEE's occupancy of the premises. At LESSOR's option, LESSEE shall also provide LESSOR complete copies of the required insurance policies.

Nothing herein shall preclude LESSOR's Town Manager from expressly waiving this insurance requirement of LESSEE in writing for any given calendar year of the *AMENDED LEASE AGREEMENT* term.

7. INDEMNIFICATION.

LESSEE agrees to indemnify and hold LESSOR, its officers, employees, agents and successors, harmless, or cause LESSOR, its officers, employees, agents and successors, to be indemnified and held harmless for, from and against all liabilities, obligations, damages, penalties, claims, causes of action, costs, charges and expenses, including attorney's fees and costs, which may be imposed upon or incurred by or asserted against LESSOR, its officers, employees, agents and successors, by reason of the following: (i) any accident, injury or damage to any person or property occurring on or about the Leased Premises or any portion thereof; (ii) any use, nonuse or

condition of the Leased Premises or any portion thereof; or (iii) any failure on the part of LESSEE to perform or comply with any of the provisions of this *AMENDED LEASE AGREEMENT*; except that none of the foregoing shall apply to LESSOR's intentional conduct or active negligence. In case any action or proceeding is brought against LESSOR, its officers, employees, agents and successors, by reason of any such occurrence, LESSEE, upon LESSOR's request and at LESSEE's expense, shall resist and defend such action or proceeding, or cause the same to be resisted and defended, either by counsel designated by LESSEE or, where such occurrence is covered by liability insurance, by counsel designated by the insurer.

In the event any such action or claim is brought or asserted against LESSOR, LESSEE shall have the right (subject to the right of LESSOR to make all final decisions with respect to LESSOR's liability for claims or damages) to (i) participate with LESSOR in defense of the claim or action, (ii) participate with LESSOR in negotiating any agreement or settlement with respect to any such claim or cleanup, and (iii) participate with LESSOR in the conduct of any required cleanup, removal or other remedial action.

LESSOR shall not be liable to LESSEE for any damages arising from any act or negligence of any other tenant, if any, on the property of LESSOR in which the Leased Premises are located.

8. UTILITIES.

LESSOR shall arrange for water, sewer, garbage, electrical and gas utility services to be provided to the Leased Premises in conjunction with and to the same extent as such services are provided to the remainder of the Civic Center. In consideration therefore, LESSEE shall pay LESSOR a monthly flat fee of One Hundred Fifteen Dollars (\$115.00).

As part of the above monthly fee, LESSOR shall arrange for adequate circuits and telephone and data cables into the building, as well as access to equipment rooms. LESSOR shall be solely responsible for paying all costs associated with LESSEE's telephone, cable, or similar telecommunications (including internet and Help Desk requests) services. LESSOR will also provide mapping services from LESSOR's Geographic Information Services (GIS) Division.

LESSOR shall not be liable in damages or otherwise for any failure or interruption of any utility service, and no such failure or interruption shall entitle LESSEE to terminate this Lease or abate the rent or other charges.

9. CLEANING AND MAINTENANCE.

LESSOR shall keep and maintain the Leased Premises in good condition, working order and repair, including primary and secondary common areas.

In the event repairs are required, in whole or in part, because of the act, neglect, fault or omission of any duty by LESSEE, its agents, employees, or invitees, or because of breaking and entering, LESSEE shall pay LESSOR the reasonable cost of said repairs.

LESSOR shall not be liable for any failure to make any repairs or to perform any maintenance unless such failure persists for an unreasonable time after written notice of the need for such repairs or maintenance is given by LESSEE. Except as provided other areas of this agreement, there shall be no abatement of rent and no liability in LESSOR by reason of any injury to or interference with LESSEE's business arising from repairs to or maintenance of the Civic Center. LESSEE waives the right to make repairs at LESSOR's expense under any law, statute or ordinance now or hereafter in effect.

10. ALTERATIONS AND ADDITIONS.

LESSEE may make alterations in or additions to the Leased Premises at its own expense, provided that prior to commencing any such work LESSEE shall first obtain LESSOR's written approval of LESSEE's plans and specifications. In making any such alterations or additions, LESSEE agrees to comply fully with all applicable laws, regulations or ordinances. LESSEE further agrees that any such work shall be done at such times and in such manner as LESSOR may designate from time to time. LESSEE shall give LESSOR written notice five (5) days prior to employing any laborer or contractor to construct alterations or additions so that LESSOR may post a notice of nonresponsibility.

LESSOR may also make such alterations or additions to the Civic Center, including the Leased Premises, as it deems necessary. There shall be no abatement of rent and no liability in LESSOR by reason of any injury to or interference with LESSEE's business arising from such alterations or additions. However, LESSOR agrees to comply fully with all applicable laws, regulations or ordinances, and further agrees that any such work on the Leased Premises shall only be done after consultation with LESSEE as to appropriate times and manner.

All alterations and additions which are permanent in nature shall become property of LESSOR upon termination of the *AMENDED LEASE AGREEMENT*. Permanent alterations or additions are those where removal would cause permanent damage to the Leased Premises. Any alterations or additions done at LESSOR's expense shall also become the property of LESSOR upon termination of the *AMENDED LEASE AGREEMENT*.

LESSEE shall repair, at its sole cost, any damage to the Civic Center caused by removal of any of LESSEE's property. Also, LESSEE shall keep the Civic Center, including the Leased Premises, free from any liens arising out of any work performed, materials furnished to, or obligations incurred by LESSEE.

11. CONTACT PERSONS.

LESSOR and LESSEE shall each designate a contact person or persons to act as a liaison in the administration of this *AMENDED LEASE AGREEMENT* and the resolution of any disputes hereunder. LESSOR's initial contact person shall be the Town Manager. LESSEE's initial contact person shall be the Administrator. The designated contact persons may be changed by either party in a writing mailed to the other party as provided hereinafter.

12. ACCEPTANCE OF PREMISES.

By its entry onto the Leased Premises, LESSEE acknowledges that it has examined the Leased Premises and accepts the same as being in the condition called for in this *AMENDED LEASE AGREEMENT*.

13. FEES, TAXES AND ASSESSMENTS.

LESSEE shall be solely responsible for any local, state or federal fees, taxes and assessments applied to LESSEE's sales or other activities on the Leased Premises, or to its interest in either the Leased Premises or this *AMENDED LEASE AGREEMENT*. LESSEE shall, at all times during this

lease, maintain a Transaction Privilege Tax number, retain its status as a valid corporation under the laws of Arizona, and retain its status as a 501(c)(3) organization for federal income tax purposes.

14. ASSIGNMENT/SUBLETTING.

LESSEE agrees that it will not assign or sublet in whole or in part any portion of the Leased Premises without the prior written consent of LESSOR, which consent shall not be unreasonably withheld. LESSOR may sell, transfer, or assign all or any part of its interest in the Leased Premises without the consent of LESSEE.

15. ENTRY OF LESSOR.

LESSOR reserves the right, upon ten (10) days' written notice to LESSEE of its intent to do so, to enter upon the Leased Premises at reasonable times for the purpose of inspecting the premises.

16. REMEDIES UPON BREACH.

All of the provisions of this *AMENDED LEASE AGREEMENT* are conditions. Breach of any one of these conditions by LESSEE or any sublessee shall be sufficient grounds for cancellation of this *AMENDED LEASE AGREEMENT* by LESSOR, subject to the other provisions of this *AGREEMENT*. In that event, LESSOR may declare LESSEE's interest forfeited, and LESSOR shall be forever wholly absolved from liability for any damages which might result to LESSEE or any sublessee because of the *AMENDED LEASE AGREEMENT* being canceled or forfeited prior to the expiration of the full term.

In the event of a breach of this *AGREEMENT* which is either not curable or remains uncured after 30 days' written notice by LESSOR to LESSEE of failure to pay rent, taxes or other assessments (or which remains uncured after forty-five (45) days' written notice by LESSOR to LESSEE of failure to satisfy the other conditions of this *AMENDED LEASE AGREEMENT*), LESSOR may, in addition to all other remedies available to LESSOR in law or in equity, (i) enter and repossess the Leased Premises or any part thereof, expelling and removing therefrom all persons and property and either storing property at LESSEE's risk and expense or otherwise disposing thereof (as to which LESSOR shall not be liable to LESSEE or any sublessee for any claim for damages or loss which may thereby occur), and (ii) either (a) terminate this *AMENDED LEASE AGREEMENT* holding LESSEE liable for damages for its breach, or (b) treat the *AMENDED LEASE AGREEMENT* as having been breached anticipatorily and the Leased Premises abandoned by LESSEE, without thereby altering LESSEE's continuing obligations for payment of rent and performance of those *AMENDED LEASE AGREEMENT* provisions to be performed by LESSEE during the *AMENDED LEASE AGREEMENT* term.

LESSEE shall pay to LESSOR upon demand all costs, expenses and fees, including attorneys' fees, which LESSOR may reasonably incur in connection with the exercise of any remedies on account of or in connection with any breach by LESSEE, plus interest on all amounts due from LESSEE to LESSOR at the rate set by the Arizona State Treasurer according to law.

The remedies herein granted to LESSOR shall not be exclusive or mutually exclusive, and LESSOR shall have such other additional remedies against LESSEE as may be permitted in law or in equity at any time. Provided, however, that LESSOR shall not be relieved of any obligation imposed by law for mitigation of damages, nor shall LESSOR recover any duplicate damages. Any

exercise of a right of termination by LESSOR shall not be construed to end or discharge any right of LESSOR to damages because of LESSEE's breach.

17. SURRENDER OF PREMISES.

LESSEE shall, upon termination of the *AMENDED LEASE AGREEMENT*, quit and surrender the Leased Premises in good order and condition and repair, reasonable wear and tear and acts of God excepted.

18. SIGNS/DECALS/POSTERS.

LESSEE agrees that it will not place, affix, or otherwise install any decals, posters, signs or other advertising, artistic, commemorative or communicative illustrations on or to any portion of the Leased Premises or the Civic Center as a whole, without the written consent of LESSOR. If consent is so given, any such installations shall be at LESSEE'S expense.

19. INTERPRETATION.

Whenever any word is used in this *AMENDED LEASE AGREEMENT* in the masculine gender, it shall also be construed as being used in the feminine and neuter genders, and singular usage shall include the plural and vice versa, all as the context shall require.

20. PARTIAL INVALIDITY.

If any provision of this *AMENDED LEASE AGREEMENT* is held to be invalid or unenforceable, all the remaining provisions shall nevertheless continue in full force and effect.

21. MARGINAL HEADINGS.

The marginal and topical headings of the paragraphs of this *AMENDED LEASE AGREEMENT* are for convenience only, and are not to be considered a part of this *AGREEMENT* or used in determining its content or context.

22. MODIFICATION.

Any modification or amendment of this *AMENDED LEASE AGREEMENT* shall be in writing and shall be executed by all parties.

23. SUCCESSION OF BENEFITS.

The provisions of this *AMENDED LEASE AGREEMENT* shall inure to the benefit of and be binding upon the parties thereto, their heirs, executors, successors, administrators, and permitted assigns.

24. TIME.

Time is of the essence in this *AMENDED LEASE AGREEMENT* for each and every term, condition, covenant and provision.

25. APPLICABLE LAW.

That this *AMENDED LEASE AGREEMENT* shall be interpreted and enforced pursuant to the laws of the State of Arizona.

26. CONFLICT OF INTEREST.

Pursuant to A.R.S. §38-511, any contract to which subdivisions of the State are a party may be canceled without penalty within three (3) years after its execution, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the subdivision is, at any time while the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party with respect to the subject matter.

27. NOTICES.

Whenever under this *AMENDED LEASE AGREEMENT* a provision is made for any demand, notice or declaration of any kind, it shall be in writing and served either personally or sent by certified United States mail, postage prepaid, addressed at the addresses as set forth below:

To LESSEE at: Central Yavapai Metropolitan Planning Organization, Inc.
7501 E. Civic Circle
Prescott Valley, AZ 86314
c/o Administrator

To LESSOR at: Town of Prescott Valley
7501 E. Civic Circle
Prescott Valley, Arizona 86314
c/o Town Manager

Such notice shall be presumed to be received within forty-eight (48) hours from the time of mailing, if mailed as provided for in this paragraph.

28. ENTIRE AGREEMENT

The terms of this document constitute the entire agreement between the parties, and the parties represent that there are no collateral agreements or side agreements, written or oral, not otherwise provided for within the terms of this *AMENDED LEASE AGREEMENT*.

IN WITNESS WHEREOF, the parties hereto have caused this *AMENDED LEASE AGREEMENT* to be executed the day and year first-above written.

Town of Prescott Valley, a municipal corporation of
Arizona, LESSOR

By _____
Harvey C. Skoog, Mayor

ATTEST:

Diane Russell, Town Clerk

APPROVED AS TO FORM:

Ivan Legler, Town Attorney

**Central Yavapai Metropolitan
Planning Organization, Inc.**,
a non-profit corporation of Arizona, LESSEE

By _____
Ronald E. Romley, Chairman
CYMPO Board of Directors

ATTEST:

Jean Knight, Clerk of the Board

APPROVED AS TO FORM:

Barry Cline, Attorney

STATE OF ARIZONA)
) ss:
COUNTY OF YAVAPAI)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Harvey C. Skoog, Mayor of the Town of Prescott Valley, a municipal corporation of Arizona, on behalf of said municipal corporation.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss:
COUNTY OF Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, Chairman of the Board of Directors, Central Yavapai Metropolitan Planning Organization, Inc., a non-profit corporation of Arizona, on behalf of said corporation.

Notary Public

My Commission Expires:
