

ADOT CAR No.: IGA 19-0007328-I
AG Contract No.: P001 2019 001342
Project Location/Name: I-40 Lone Tree
Road OP Bridges
Type of Work: Project Assessment
Federal-aid No.: 040-C(227)T
ADOT Project No.: F0185 01D
TIP/STIP No.: NA
CFDA No.: 20.205 - Highway Planning and
Construction
Budget Source Item No.: 8162

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF FLAGSTAFF

THIS AGREEMENT is entered into this date _____, pursuant to the Arizona Revised Statutes (“A.R.S.”) §§ 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the “State” or “ADOT”) and the CITY OF FLAGSTAFF, acting by and through its Mayor and City Council (the “City”). The State and the City are collectively referred to as “Parties.”

I. RECITALS

1. The State is empowered by A.R.S. § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by A.R.S. § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached and made a part of, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. At the City’s request, the State will administer a project assessment (PA), provide 30% design plans, and a cost estimate for additional bridge scoping work related to lengthening of the bridges on Interstate 40 (“I-40”) eastbound and westbound over Lone Tree Road at approximately mile post 196.26, structure numbers 1180 and 1181, (the “PA”). The PA will accommodate the City’s preferred cross-section, at a total right-of-way width on Lone Tree Road (under the I-40 bridges) of 98’ to 102’. The City will pay to the State the estimated \$107,850.00 for the PA costs and be responsible for all additional costs related to the PA. The final design and construction costs will be addressed in a separate agreement.

THEREFORE, in consideration of the mutual terms expressed in this Agreement, it is agreed as follows:

II. SCOPE OF WORK

1. The Parties agree:
 - a. The final PA costs may exceed the initial estimate, and in such case, the City is responsible for, and agrees to pay, any and all actual costs exceeding the initial estimate. If the final PA amount is less than the initial estimate, the difference between the final amount and the initial estimate will be refunded to the City.
 - b. The scope and costs for final design, construction and maintenance will be negotiated in a future intergovernmental agreement (IGA).
2. The State will:
 - a. Execute this Agreement and be the City's authorized agent for the PA.
 - b. After this Agreement is executed, invoice the City in the amount of \$107,850.00, for the costs of the PA. After the PA has been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.
 - c. Prepare and provide the 30% design plans, estimate, and other such documents and services requested by the City for decision making purposes, and incorporate comments from the City as appropriate.
 - d. Notify the City of changes in pricing between the estimated and actual costs as soon as practicable, but before significant costs are incurred.
 - e. Address any comments made by the City in regards to the draft PA.
 - f. After addressing any comments made by the City, provide the City with a final PA, at which time the project will be deemed complete, subject to final invoicing or reimbursement and set forth below.
3. The City will:
 - a. Designate the State as the City's authorized agent for the PA.
 - b. After this Agreement becomes effective, within 30 days of receipt of an invoice from the State, pay to the State \$107,850.00 for the PA costs. After the PA is complete, the State will either invoice or reimburse the City for the difference between estimated and actual costs of the PA.
 - c. Provide the State with any information in its possession that is needed for the completion of the PA.
 - d. Review the draft PA documents produced in the PA and provide comments to the State as appropriate.

- e. Grant to the State, its agents and/or contractors, by way of right-of-way permit, without cost, the temporary right to enter City rights-of-way, as required, to conduct any and all preconstruction related activities for the PA, on, to and over said City rights-of-way. This temporary right will expire with completion of the PA.
- f. Perform Subsurface Utility Engineering (SUE), Phase 1 in accordance with ASCE 38-02. This is the horizontal locating of all utilities within the project and showing the information on the 30% plans.
- g. Provide final approval of the PA to the State after all the City's comments have been addressed.

III. MISCELLANEOUS PROVISIONS

- 1. Pursuant to this Agreement, the City designates ADOT as the City's authorized agent for the PA.
- 2. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.
- 3. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the PA and all related deposits and/or reimbursements are made.
- 4. This Agreement may be cancelled at any time prior to completion of the PA and after 30 days written notice to the other Party. It is understood and agreed that, in the event the City terminates this Agreement, the City shall be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that in the event the City terminates this Agreement, the State shall in no way be obligated to complete the PA.
- 5. The City shall indemnify, defend, and hold harmless the State, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as the "State") from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the City, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. The City's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the State, except the obligation does apply to any negligence of the City which may be legally imputed to the State by virtue of the State's ownership or possession of land. The City's obligations under this paragraph shall survive the termination of this Agreement.
- 6. The Parties warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner,

the City shall provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.

7. The City acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
8. This Agreement shall be governed by and construed in accordance with Arizona laws.
9. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
10. The City shall retain all books, accounts, reports, files and other records relating to the Agreement for five years after completion of the PA. These documents shall be subject at all reasonable times to inspection and audit by the State. Such records shall be produced by the City at the request of ADOT.
11. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The Parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated by reference regarding “Non-Discrimination.”
12. Non-Availability of Funds: Every obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.
13. In the event of any controversy, which may arise out of this Agreement, the Parties agree to abide by arbitration as is set forth for public works contracts if required by A.R.S. § 12-1518.
14. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
15. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01.¹
16. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
17. All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

¹ In *Jordahl v. Brnovich et al.*, Case No. 3:17-cv-08263 (D. Ariz.), the U.S. District Court entered a preliminary injunction that enjoins the State from enforcing A.R.S. § 35-393.01(A) (the “Anti-Israel Boycott Provision”). That statute states that: “[a] public entity may not enter into a contract with a company to acquire or dispose of services, supplies, information technology or construction unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel.” Unless and until the District Court’s injunction in *Jordahl* is stayed or lifted, the Anti-Israel Boycott Provision (A.R.S. § 35-393.01(A)) is unenforceable and the State will take no action to enforce it.

For Agreement Administration:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
JPABranch@azdot.gov

City of Flagstaff
Attn: Bret Petersen
211 W. Aspen Avenue
Flagstaff, AZ 86001
928.213.2680

For Project Administration:

Arizona Department of Transportation
Project Management Group
205 S. 17th Avenue, Mail Drop 614E
Phoenix, AZ 85007
PMG@azdot.gov

City of Flagstaff
Attn: Bret Petersen
211 W. Aspen Avenue
Flagstaff, AZ 86001
928.213.2680

For Financial Administration:

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Project Management Group
205 S. 17th Avenue, Mail Drop 614E
Phoenix, AZ 85007
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City of Flagstaff
Attn: Brandi Suda
211 W. Aspen Avenue
Flagstaff, AZ 86001
928.213.2217

18. In accordance with A.R.S. § 11-952 (D), attached and incorporated in this Agreement 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 Agreement and that the Agreement is in proper form.

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

CITY OF FLAGSTAFF

STATE OF ARIZONA

Department of Transportation

By _____
CORAL EVANS
Mayor

By _____
STEVE BOSCHEN, PE
Division Director

ATTEST:

By _____
STACY SALTZBURG
City Clerk

ATTORNEY APPROVAL FORM FOR THE CITY OF FLAGSTAFF

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF FLAGSTAFF, an agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this _____ day of _____, 2019.

City Attorney