

ADOT File No.: IGA 18-0007206-I
Amendment No. One: 19-0007441-I
AG Contract No.: P001 2018 003355
Project Location/Name: I-40 Butler Ave
TI & Fourth St Underpass
Type of Work: Replace Bridges
Federal-aid No.: 040-D(234)T
ADOT Project No.: H8815 01C
TIP/STIP No.: NA
CFDA No.: 20.205 - Highway Planning and
Construction
Budget Source Item No.: 19816

**AMENDMENT NO. ONE
TO
INTERGOVERNMENTAL AGREEMENT**

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF FLAGSTAFF

THIS AMENDMENT NO. ONE to INTERGOVERNMENTAL AGREEMENT (the “Amendment No. One”), is entered into this date _____, pursuant to 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 the “Parties.”

WHEREAS, the INTERGOVERNMENTAL AGREEMENT, IGA 18-0007206-I, A.G. Contract No. P001 2018 003355, was executed on December 3, 2018, (the “Original Agreement”);

WHEREAS, the State is empowered by A.R.S. § 28-401 to enter into this Amendment No. One and has delegated to the undersigned the authority to execute this Amendment No. One on behalf of the State;

WHEREAS, the City is empowered by A.R.S. § 48-572 to enter into this Amendment No. One and has by resolution, a copy of which is attached and made a part of, resolved to enter into this Amendment No. One and has authorized the undersigned to execute this Amendment No. One on behalf of the City; and

NOW THEREFORE, in consideration of the mutual terms expressed herein, the purpose of this Amendment No. One is to revise the Project description, Project costs, and maintenance responsibilities. The Parties desire to amend the Original Agreement, as follows:

I. RECITALS

Section I, Paragraph 3 is revised, as follows:

3. The Parties desire to combine resources in order to construct new bridge structures over Interstate 40 (I-40), replacing the existing westbound and eastbound Fourth Street underpass structures, numbers #1183 and #1182. The project will include new bridge structures over I-40, pedestrian improvements on the bridges and Fourth Street, Fourth Street roadway improvements to accommodate the approaches to the new bridge structures and utility relocations needed for the bridge reconstruction, (the "Bridge Project"). At the request of the City, the State will design and construct project enhancements in conjunction with the Bridge Project, including a retaining wall south of the bridges on the west side of Fourth Street and associated railings, substituting two tube railings for the barriers separating the FUTS from the traffic on the west side of the bridges and separating bikes and pedestrians from traffic on the east side of the bridge, an upgraded pedestrian fence structure on both sides of the bridges sufficient to allow the City to later construct aesthetic enhancements on the pedestrian fence under an encroachment permit, and three (3) three inch (3") conduits through the bridges for use by the City under encroachment permit, (the "Project Enhancements"). The City will be solely responsible for any and all costs associated with the Project Enhancements, as itemized in Exhibit A, attached and made a part of this Agreement. The City has paid to the State \$94,000.00, for costs associated with the design of the Project Enhancements. The construction cost for the Project Enhancements are estimated at \$360,017.00. The City will be responsible for maintenance as more specifically set forth in Section (II.) (3.) (f.) of this Agreement.

II. SCOPE OF WORK

Section II, Paragraphs 1.a., 1.b., and 1.d., are revised, and Paragraphs 1.g. and 1.h. are added, as follows:

1. The Parties agree:
 - a. The Bridge Project construction cost is estimated at \$12,308,052.00, as shown on Exhibit A. The Parties will each contribute \$6,154,026.00 toward the construction of the Bridge Project.
 - b. To equally share Bridge Project costs that exceed the current \$12,308,052.00 construction cost estimate.
 - d. That if the Agreement is completely or partially terminated, or the final Bridge Project cost is less than the initial \$12,308,052.00 construction cost estimate, the unused contributions will be returned to both Parties in the same percentages as originally contributed.
 - g. The City will be solely responsible for all Project Enhancements costs. The construction cost for said Project Enhancements is estimated at \$360,017.00, as itemized in Exhibit A.

- h. Future I-40 improvements could result in the removal or alteration of the Project Enhancements, in which case no compensation will be owed to the City.

Section II, Paragraphs 2.a., 2.b., 2.c., 2.g., and 2.h. are revised, and Paragraphs 2.i. through 2.k. are added, as follows:

- 2. The State will:
 - a. Execute this Agreement, and if the Bridge Project is approved by Federal Highway Administration (FHWA) and funds for the Bridge Project are available, be the City's authorized agent for the Bridge Project and Project Enhancements.
 - b. Administer the procurement and construction of the project plans, specifications and contract for the Bridge Project and Project Enhancements.
 - c. Invoice the City for the costs associated with the construction of the Bridge Project, estimated at \$6,154,026.00, and the costs associated with the construction of the Project Enhancements estimated at \$360,017.00. After the Bridge Project construction costs are finalized, the State will either reimburse the City in the same percentages as originally contributed to the Bridge Project or invoice the City, in a 50/50 split, for the difference between estimated and actual costs to complete the construction of the Bridge Project, if necessary. After the Project Enhancements costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs of the Project Enhancements.
 - g. Confirm per established procedures of the State's Northcentral District Permit Office, that the City has a valid annual encroachment permit on file for only routine/minor maintenance and emergency maintenance work for the Project Enhancements provided by the City within the State's rights-of-way. Agree that any new construction or installation, including any new or replacement fiber installation, shall require a separate encroachment permit through the State's Northcentral District Permits Office, and shall issue those encroachment permits in accordance with established regulations and procedures based on scope of work.
 - h. Notify the City of final inspection and acceptance of all the Bridge Project improvements and Project Enhancements, and be responsible for the maintenance of the structural integrity of the bridge.
 - i. Provide conduit and pull boxes at the Bridge Project location for the sole use of the City.
 - j. After receipt and review of the City's permit application(s) for fiber installation, issue a permit to the City for approved fiber installation, at ADOT's reasonable discretion.
 - k. Not be obligated to reconstruct Project Enhancements if future freeway projects require the removal or alteration of the Project Enhancements.

Section II, Paragraphs 3.a., 3.d., 3.e., and 3.f. are revised and Paragraphs 3.g. through 3.m. are added, as follows:

3. The City will:
 - a. Within 30 days of receipt of an invoice from the State, pay to the State \$6,154,026.00 for the costs associated with the construction of the Bridge Project and \$360,017.00 for the costs associated with the construction of the Project Enhancements. Be responsible for and pay, in a 50/50 split with the State, total Bridge Project costs that exceed the original estimate, and all Project Enhancements costs that exceed the original estimate, within 30 days of receipt of an invoice.
 - d. Grant to the State (and 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 construction and preconstruction related activities for the Bridge Project and Project Enhancements, on, to and over said City rights-of-way. This right-of-way permit will expire with completion of the Bridge Project and Project Enhancements.
 - e. Maintain and follow requirements of a valid annual encroachment permit for the routine/minor maintenance and emergency maintenance work for the Project Enhancements provided by the City within the State's rights-of-way. Any new construction or installation, including any fiber installation, shall require a separate encroachment permit as per the State's established procedures, which may be obtained through the State's Northcentral District Permits Office. Notify the State's Northcentral District Permits Office of any emergency maintenance work affecting the State right-of-way.
 - f. After final inspection and acceptance of the Bridge Project, including Project Enhancements, is complete, assume maintenance responsibility of signing, striping and maintenance of all pedestrian, bike, and architectural features on Fourth Street (including on the bridges) as set forth below in this paragraph at its sole expense. The City is also solely responsible for the maintenance of all Project Enhancements, set forth in Exhibit A, but not for maintenance of the underlying bridge structure. Maintenance activities include but are not limited to such activities as snow removal, sweeping, graffiti removal, litter and trash removal, weed control, sidewalk and Flagstaff Urban Trail System ("FUTS") concrete panel repair and replacement, pedestrian rail and guardrail repair, the installed conduit, pull boxes and fiber optic cable, and aesthetic features: colors, accent colors, and painting of the Project Enhancements on the bridge structures. Maintenance responsibilities will also include the two tube railing and associated appurtenances, but does not include the concrete exterior parapets on the bridges. Repair of any damage caused by vehicle collisions or damage in other ways to the two tube railings on the bridge or to the Project Enhancements is the responsibility of the City, however the City is not responsible for repair of damage to the underlying bridge structure or ADOT standard pedestrian fencing. All improvements on Fourth Street outside of ADOT right-of-way are the sole responsibility of the City.
 - g. Comply with the latest edition Manual on Uniform Traffic Control Devices (MUTCD) published by the Federal Highway Administration (FHWA) and adopted by ADOT, as per Arizona Revised Statutes § 28-641, when performing any work under this Agreement.

Traffic Control plans will be reviewed and/or approved by and through the State's Northcentral District Permits Office.

- h. Pay the State for both design and construction costs of the Project Enhancements as specified in Recitals 3 above.
- i. Be responsible for any and all construction and maintenance costs of all components associated with fiber installation. Restore any disturbed area to pre-fiber installation conditions at the City's sole expense, at the request of the State.
- j. Have access to the pull boxes and conduit referenced in Section (II.2.i.) of this Agreement.
- k. Not be allowed to lease any part of aforementioned conduits to any other agency, private company, or jurisdiction, for profit during the life of this Agreement.
- l. Be responsible to rebuild any Project Enhancements, if desired by the City, if and when future freeway projects require the removal of the existing Project Enhancements.
- m. Submit an encroachment permit application for fiber installation to the Northcentral District Permits office.

III. MISCELLANEOUS PROVISIONS

Section III, Paragraphs 1., 3., 4., 7., and 19. are revised, as follows:

- 1. Pursuant to this Agreement, the City designates ADOT as the City's authorized agent for the Bridge Project and Project Enhancements.
- 3. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Bridge Project and Project Enhancements and all related deposits and/or reimbursements are made. Any provisions for maintenance shall be perpetual, unless assumed by another competent entity.
- 4. This Agreement may be cancelled at any time prior to the award of the Bridge Project construction contract and after 30 days written notice to the other Party. After the award of the contract this Agreement may not be cancelled unless the construction contract is cancelled by either ADOT or the contractor. It is understood and agreed that, in the event the City terminates this Agreement, the City shall be responsible for all costs related to the Bridge Project and Project Enhancements, 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 Bridge Project or Project Enhancements.
- 7. Should the federal funding related to the Bridge Project be terminated or reduced by the federal government, or Congress rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for future expenses under this Agreement.

19. The Parties shall ensure that all contractors comply with the applicable requirements of A.R.S. §35-393.01.¹

EXCEPT AS AMENDED, ALL OTHER terms and conditions of the Original Agreement remain in full force and effect.

THIS AMENDMENT NO. ONE shall become effective upon signing and dating of the Determination Letter by the State’s Attorney General.

IN ACCORDANCE WITH A.R.S. § 11-952 (D) attached and incorporated in this Amendment No. One 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 Amendment No. One and that the Amendment No. One is in proper form.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. One the day and year first above written.

CITY OF FLAGSTAFF

STATE OF ARIZONA
Department of Transportation
Infrastructure Delivery and Operations Division

By _____
CORAL EVANS
Mayor

By _____
STEVE BOSCHEN, PE
Division Director

ATTEST:

Transportation Systems Management and
Operations Division

By _____
STACY SALTZBURG
City Clerk

By _____
BRENT CANE, PE
Division Director

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.

ATTORNEY APPROVAL FORM FOR THE CITY OF FLAGSTAFF

I have reviewed the above referenced Amendment No. One to the Original 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 Amendment No. One 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 Amendment No. One.

City Attorney

Date