

ADOT CAR No.: 18-0007206
AG Contract No.: P001 2018 003355
Project Location/Name: Butler Ave TI &
Fourth St Overpass
Type of Work: Bridge Rehabilitation
Federal-aid No.: 040-D(234)T
ADOT Project No.: H881501C
TIP/STIP No.: NA
CFDA No.: 20.205 - Highway Planning
and Construction
Budget Source Item No.: 19816

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF FLAGSTAFF

THIS AGREEMENT is entered into this date December 3, 2018, pursuant to the Arizona Revised Statutes §§ 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 Arizona Revised Statutes § 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 Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto 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. The Parties desire to combine resources in order to construct a new bridge structure over Interstate 40 (I-40), replacing the existing westbound and eastbound Fourth Street overpass structures, numbers #1183 and #1182. The project will include a new bridge structure over I-40, pedestrian improvements on the bridge and Fourth Street, Fourth Street roadway improvements to accommodate the approaches to the new bridge structure and utility relocations needed for the bridge reconstruction, (the "Bridge Project"). The City will be responsible for maintenance as more specifically set forth in Section (II)(3)(f) of this Agreement.
4. The Bridge Project will be constructed per the contract documents, developed under IGA 17-0006701-I.

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 Bridge Project construction cost is estimated at \$10,200,000.00. The Parties will each contribute \$5,100,000.00 toward the construction of the Bridge Project.
 - b. To equally share Bridge Project costs that exceed the initial \$10,200,000.00 construction cost estimate.
 - c. To equally share the Bridge Project construction costs that exceed the Bridge Project contract amount that may be caused by change orders, force accounts, and/or quantity overruns. To work together on pricing of associated change order costs. ADOT will make the final decision to prevent additional costs or delay to the Bridge Project.
 - d. That if the Agreement is completely or partially terminated, or the final Bridge Project cost is less than the initial \$10,200,000.00 construction cost estimate, the unused contributions will be returned to both Parties in the same percentages as originally contributed.
 - e. To perform their responsibilities consistent with this Agreement.
 - f. The Bridge Project will be performed, completed, accepted and paid for in accordance with the requirements of the Bridge Project plans and specifications.
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.
 - b. Administer the procurement and construction of the project plans, specifications and contract for the Bridge Project.
 - c. Invoice the City for the costs associated with the construction of the Bridge Project, estimated at \$5,100,000.00. 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.
 - d. Notify the City and work with the City on pricing of change order, force accounts, and/or quantity overrun costs. ADOT will make the final decision to prevent additional costs or delay to the Bridge Project.

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- e. Not be obligated to construct the Bridge Project, should the State or any other funding not be available.
 - f. Manage and coordinate all construction efforts for utility relocations for the Bridge Project within City of Flagstaff or ADOT right-of-way.
 - g. Confirm per established procedures of the State's Northcentral District Permit Office, that the City has a valid annual blanket encroachment permit on file for only routine/minor maintenance and emergency maintenance work provided by the City within the State's rights-of-way. Agree that any new construction or installation shall require a separate encroachment permit through the State's Northcentral District Permits Office. Review insurance coverage documentation after receipt from the City 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 be responsible for the maintenance of the structural integrity of the bridge.
3. The City will:
- a. Within 30 days of receipt of an invoice from the State, pay to the State \$5,100,000.00 for the costs associated with the construction of the Bridge Project. Be responsible for and pay, in a 50/50 split with the State, total Bridge Project costs that exceed the original estimate, within 30 days of receipt of an invoice.
 - b. Work with the State in reviewing the pricing of change order, force accounts, and/or quantity overrun costs and provide comments to the State as appropriate.
 - c. Not permit or allow any encroachments upon or private use of the public right-of-way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.
 - 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, on, to and over said City rights-of-way. This right-of-way permit will expire with completion of the Bridge Project.
 - e. Maintain and follow requirements of a valid annual blanket encroachment permit for the routine/minor maintenance and emergency maintenance work provided by the City within the State's rights-of-way. Any new construction or 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 Permit Office of any emergency maintenance work affecting the State right-of-way.

- f. After final inspection and acceptance of the Bridge Project is complete, assume maintenance responsibility of signing, striping and maintenance of all pedestrian, bike, and architectural features on Fourth Street at its sole expense. Maintenance activities include but are not limited to such activities as snow removal, sweeping, graffiti removal, litter and trash removal, weed control in non-landscaped areas, sidewalk and Flagstaff Urban Trail System ("FUTS") concrete panel repair and replacement, and pedestrian rail and guard repair.

III. MISCELLANEOUS PROVISIONS

1. Pursuant to this Agreement, the City designates ADOT as the City's authorized agent for the Bridge Project.
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 Bridge Project and all related deposits and/or reimbursements are made.
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, 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.
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 State shall include Section 107.13 of the 2008 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated to this Agreement by reference, in the State's contract with any and all contractors, of which

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the City shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the City.

7. Should the federal funding related to this 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.
8. The cost of the Bridge Project under this Agreement includes indirect costs approved by FHWA, as applicable.
9. 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 will provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.
10. The City acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
11. The City acknowledges compliance with federal laws and regulations and may be subject to the CODE OF FEDERAL REGULATIONS, TITLE 2, PART 200 (also known as The Uniform Grant Guidance). Entities that expend \$750,000.00 or more (on or after 12/26/14) of federal assistance (federal funds, federal grants, or federal awards) are required to comply by having an independent audit in accordance with §200.331 Subpart F. Either an electronic or hardcopy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine months of the sub recipient fiscal year end.

ADOT – FMS
Attn: Cost Accounting Administrator
206 S 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
SingleAudit@azdot.gov
12. This Agreement shall be governed by and construed in accordance with Arizona laws.
13. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
14. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.
15. 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 in this Agreement by reference regarding "Non-Discrimination".
16. 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.

17. In the event of any controversy, which may arise out of this Agreement, the Parties agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.
18. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.
19. The Parties shall comply with the applicable requirements of Arizona Revised Statutes §35-393.01.
20. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
21. 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:

For Agreement Administration:

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

City of Flagstaff
Attn: Stacey Brechler-Knaggs
211 W. Aspen Avenue
Flagstaff, AZ 86001
928.213.2227
SKnaggs@flagstaffaz.gov

For Project Administration:

Arizona Department of Transportation
Project Management Group
205 S. 17th Avenue, Mail Drop 614E
Phoenix, AZ 85007
602.712.7545

City of Flagstaff
Attn: Rick Barrett
211 W. Aspen Avenue
Flagstaff, AZ 86001
928.213.2675
RBarrett@flagstaffaz.gov

For Financial Administration:

Arizona Department of Transportation
Project Management Group
205 S. 17th Avenue, Mail Drop 614E
Phoenix, AZ 85007
602.712.7545


City of Flagstaff
Attn: Stacey Brechler-Knaggs
211 W. Aspen Avenue
Flagstaff, AZ 86001
928.213.2227
SKnaggs@flagstaffaz.gov

22. In accordance with Arizona Revised Statutes § 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.

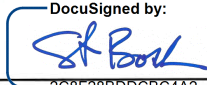
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IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

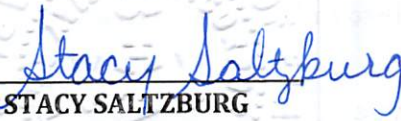
CITY OF FLAGSTAFF

By 
CORAL EVANS
Mayor

STATE OF ARIZONA
Department of Transportation

DocuSigned by:
By 
STEVE BOSCHEN, PE
Division Director

ATTEST:

By 
STACY SALTZBURG
City Clerk

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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 26th day of November, 2018.



Senior Assistant City Attorney

RESOLUTION NO. 2018-54

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF FLAGSTAFF FOR THE CONSTRUCTION OF THE FOURTH STREET AND INTERSTATE 40 BRIDGE REPLACEMENT PROJECT.

RECITALS:

WHEREAS, the City of Flagstaff and the Arizona Department of Transportation desire to combine resources in order to construct a new bridge structure over Interstate 40 ("I-40"), replacing the existing westbound and eastbound Fourth Street Overpass structures, numbers #1183 and #1182. The project will include a new bridge structure over I-40, pedestrian improvements on the bridge and Fourth Street, Fourth Street roadway improvements to accommodate the approaches to the new bridge structure and utility relocations needed for the bridge reconstruction (the "Bridge Project"); and

WHEREAS, the Bridge Project will be constructed per the contract documents, developed under IGA 17-0006701-I; and

WHEREAS, the purpose of this IGA is to set forth the parties' respective duties and obligations with respect to the construction of the Bridge Project; and

WHEREAS, the State is empowered by Arizona Revised Statutes § 28-401 and the City is empowered by Arizona Revised Statutes §§ 48-572 to enter into this IGA; and

WHEREAS, the City Council has read and considered the staff summary report and proposed IGA attached thereto, and finds that it is in the best interests of the City to enter into the IGA.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That Intergovernmental Agreement IGA 18-0007206, A.G. Contract No. P001 2018 003355 between the Arizona Department of Transportation and the City of Flagstaff be hereby accepted and approved, and that the Mayor be authorized and directed to execute the IGA on behalf of the City of Flagstaff.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 20th day of November, 2018.

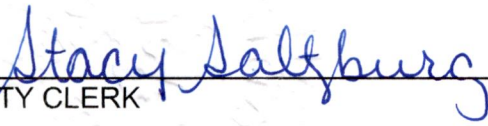
MAYOR




RESOLUTION NO. 2018-54

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ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
STATE GOVERNMENT DIVISION /
TRANSPORTATION SECTION

DAWN NORTHUP
DIVISION CHIEF COUNSEL
SUSAN E. DAVIS
ASSISTANT ATTORNEY GENERAL
DIRECT LINE: 602-542-8855
E-MAIL: SUSAN.DAVIS@AZAG.GOV


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012018003355 (**ADOT IGA/JPA 18-0007206**), an Agreement between public agencies, the State of Arizona and the City of Flagstaff, has been reviewed pursuant to A.R.S. §§ 11-951 through 11-954 and 28-401, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: December 3, 2018

MARK BRNOVICH
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED/sp/7508964