

ADOT CAR No.: IGA 19-0007325-I
AG Contract No.: P001 2019 001364
Project Location/Name: Rio De Flag
Bridge, STR #295
Type of Work: Excavate and backfill
Federal-aid No.: B40-D(203)T
ADOT Project No.: H8905 01C
TIP/STIP No.: NA
CFDA No.: 20.205 - Highway Planning and
Construction
Budget Source Item No.: NA

INTERGOVERNMENTAL AGREEMENT

**BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF FLAGSTAFF**

THIS AGREEMENT is entered into this date November 14, 2019, 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. In conjunction with the State's bridge replacement project and at the request of the City, the State will advertise, bid and award, the excavation and backfill of the channel under the Rio De Flag Bridge (structure number 295), on Interstate 40 Business Route ("I-40B") at milepost 196.08, (the "Project"). The purpose of the Project is to accommodate the future construction of the City's Flagstaff Urban Trails System (FUTS) and the United States Army Corps of Engineers (USACE) drainage structure. The City will contribute \$677,538.00 and be solely responsible for all river excavation and backfill costs.

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 Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.
 - b. The final Project amount 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, including construction engineering (CE), construction contingency, and indirect costs at the rates noted in the Cost Estimate, as shown on Exhibit A, attached and made a part of this Agreement. If the final bid amount is less than the initial estimate, the difference between the final bid amount and the initial estimate will be reimbursed to the City. The City acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all actual costs exceeding the final bid amount.

2. The State will:
 - a. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the City's authorized agent for the Project.
 - b. After this Agreement is executed, invoice the City for the costs associated with the Project estimated at \$677,538.00. After the Project has been completed, the State will either invoice or reimburse the City for the difference between estimated and actual costs of the Project.
 - c. Prepare and provide the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project 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.
 - e. With FHWA authorization, proceed to administer construction: advertise, receive and open bids, award, and enter into a contract with the firm for the construction of the Project. Administer contract(s) for the Project and make all payments to the contractor(s).
 - f. 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, and shall issue those encroachment permits in accordance with established regulations and procedures based on scope of work.
 - g. Notify the City of final inspection and acceptance of all the Project improvements.

3. The City will:
 - a. Designate the State as the City's authorized agent for the Project.
 - b. After the Agreement is effective, within 30 days of receipt of an invoice from the State, pay to the State \$677,538.00 for the costs associated with the Project. Be responsible and pay for the difference between the estimated and actual costs of the Project within 30 days of receipt of an invoice.
 - c. Review the design documents required for construction of the Project and provide comments to the State as appropriate.
 - d. Not permit or allow any encroachments upon or private use of the public right-of-way during construction, 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.
 - 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 construction and preconstruction related activities for the Project, on, to and over said City rights-of-way. This temporary right will expire with completion of the Project.
 - f. 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.
 - g. After final inspection and acceptance of the Project is complete, continue maintenance responsibility of all sidewalks constructed, modified, or relocated by the Project, in accordance with Master Maintenance Agreement 81-007-I or any subsequent maintenance agreements, at its sole expense.

III. MISCELLANEOUS PROVISIONS

1. Pursuant to this Agreement, the City designates ADOT as the City's authorized agent for the Project.
2. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.
3. Any change or modification to the Project will only occur with the mutual written consent of both Parties.
4. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and all related deposits and/or reimbursements are made.

Any provisions for maintenance shall be perpetual, unless assumed by another competent entity.

5. This Agreement may be cancelled at any time prior to the award of the Project contract 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 or maintain the Project.
6. 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.
7. 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 into this Agreement by reference, in the State's contract with any and all contractors, of which the City shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the City.
8. The City acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
9. This Agreement shall be governed by and construed in accordance with Arizona laws.
10. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
11. The City shall retain all books, accounts, reports, files and other records relating to the Agreement for five years after completion of the Project. 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.
12. 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."

- 13. **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.
- 14. 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.
- 15. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
- 16. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01.
- 17. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
- 18. All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered electronically, in person, or sent by mail, addressed as follows:

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
BPetersen@FlagstaffAZ.gov

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
BPetersen@FlagstaffAZ.gov

For Financial 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: Brandi Suda
 211 W. Aspen Avenue
 Flagstaff, AZ 86001
 928.213.2217
BSuda@FlagstaffAZ.gov

- 19. 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.

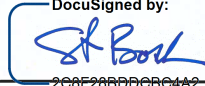
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IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

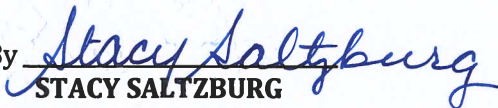
CITY OF FLAGSTAFF

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 7th day of November 2019.



City Attorney

EXHIBIT A

IGA 19-0007325-I Cost Estimate

H8905 01C (construction):

Estimated Construction Costs	\$ 518,070.00
Construction Engineering at 14%	\$ 72,530.00
Construction Contingencies at 5%	<u>\$ 25,904.00</u>
Subtotal - Construction	\$ 616,504.00
Indirect Cost Allocation Plan (ICAP) at 9.90%	\$ 61,034.00
Estimated TOTAL City Project Cost	\$ 677,538.00

RESOLUTION NO. 2019-51

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, AND THE CITY OF FLAGSTAFF FOR THE ADVERTISING, BID, AWARD, EXCAVATION AND BACKFILL OF THE CHANNEL UNDER THE RIO DE FLAG BRIDGE ON THE INTERSTATE – 40 BUSINESS ROUTE.

RECITALS:

WHEREAS, the State of Arizona, Department of Transportation, and the City of Flagstaff desire to enter into an intergovernmental agreement ("IGA") for the advertising, bid, award, excavation and backfill of the channel under the Rio de Flag bridge on Interstate 40 Business Route, and

WHEREAS, the City of Flagstaff had made the request of the Arizona Department of Transportation to perform the work to accommodate the future construction of the City of Flagstaff's Urban Trail System and the United States Army of Corps Engineers' drainage structure, and

WHEREAS, the City of Flagstaff will contribute \$677,538.00 and be solely responsible for all excavation and backfill costs under the IGA, and

WHEREAS, the purpose of the IGA is to set forth the parties' respective duties and obligations with respect to the advertising, bid, award, excavation and backfill of the channel under the Rio de Flag bridge on the Interstate 40 Business Route; 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 approve the IGA.

ENACTMENTS:

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

SECTION 1. In General.

The Flagstaff City Council hereby authorizes the Mayor to execute the Intergovernmental Agreement between the State of Arizona, Department of Transportation, and the City of Flagstaff, attached hereto as Exhibit A, which shall become effective upon the date first executed by both parties ("Effective Date").

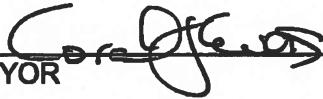
SECTION 2. Effective Date.

This resolution shall be immediately effective upon adoption.

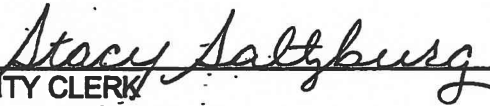
RESOLUTION NO. 2019-51

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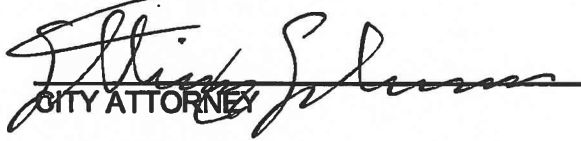
PASSED AND ADOPTED by the City Council of the City of Flagstaff this 15th day of October, 2019.


MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

Exhibits:
IGA



MARK BRNOVICH
ATTORNEY GENERAL

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

DAWN NORTHUP
DIVISION CHIEF COUNSEL
Eli D. Golob
ASSISTANT ATTORNEY GENERAL
DIRECT LINE: 602-542-8842
E-MAIL: ELI.GOLOB@AZAG.GOV

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012019001364 (ADOT IGA/JPA 19-0007325-I), 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: November 14, 2019

MARK BRNOVICH
Attorney General

ELI D. GOLOB
Assistant Attorney General
Transportation Section

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