

DATA ACCESS / EXCHANGE AGREEMENT

ADOT File No: 20-0008030-I

Date:

Name of Department: City of Flagstaff

Doing Business As: Same as above

Business Address: 211 West Aspen
Flagstaff, AZ 86001

Mailing Address: Same as above

Telephone Number: 928.213.2000

CITY OF FLAGSTAFF (AGENCY) hereby requests authorization for connectivity to the Arizona Department of Transportation's (ADOT) (check all that apply):

- ALISS Database to submit electronic crash records.
- ALISS Database to access and retrieve crash data.
- ACIS to query, analyze and retrieve crash data.

CITY OF FLAGSTAFF (AGENCY) is authorized to enter into this Agreement pursuant to Arizona Revised Statutes ("A.R.S.") § 11-952.

The AGENCY (as defined below) hereby requests authorization for connectivity to the ALISS Database and/or AIDW ACIS of the Arizona Department of Transportation, Transportation Systems Management and Operations (TSMO) Division. The AGENCY's specific access capabilities are set forth and further described in the attached Addendum, which shall be considered a part of this Agreement between the AGENCY and ADOT.

The AGENCY understands and agrees that it shall only access the ALISS Database and/or the AIDW ACIS in accordance with the terms and conditions set forth herein. If at any time ADOT believes the AGENCY is using such access in an unauthorized or unlawful manner, ADOT reserves the right, in its sole discretion, to immediately terminate this Agreement.

This Agreement complies with GITA Statewide Standard P740-S741, Standard 4.7.3.

Definitions

"ACIS" means the Arizona Crash Information System.

"ADOT" means the Arizona Department of Transportation.

“AGENCY” means **CITY OF FLAGSTAFF.**

“Agreement” means this Data Access Exchange Agreement.

“ALISS” means the Accident Location, Identification and Surveillance System.

“Authorized individuals” means those persons who are employed or contracted by AGENCY to perform the activities authorized hereunder.

“Connectivity” means to make and/or maintain a computer connection with ADOT for the purpose of performing the activities authorized under this agreement.

“Encrypt” means to scramble computerized information to secure data by using special algorithms for transmission or other purposes.

“Parties” means ADOT and the AGENCY, collectively.

“Party” means ADOT or the AGENCY, as the case may be.

“Personal Information” means information that identifies an individual, including without limitation an individual's name, photograph, social security number, driver license number, physical description, race, ethnic origin, sexual orientation, income, blood type, DNA code, fingerprints, marital status, religion, home address, home telephone number, education, financial matters, and medical or employment history readily identifiable to a specific individual but does not include information on vehicular accidents, driving violations, and driver's status.

“RACF” means Resource Access Control Facility, which is a software security product that protects information by controlling access to it.

“Secure location” means an area designated specifically for authorized individuals to access ADOT’s database(s) and to which all unauthorized individuals shall be prohibited from entering.

“Sensitive Information” means any state information either in detail or aggregate that may be prejudicial or harmful to the state and its citizens.

Location of Activities

AGENCY may conduct authorized activities only at those locations which have been pre-approved by ADOT such as their place of business that adheres to the other guidelines outlined in this Agreement. ADOT reserves the right, in its sole discretion, to disapprove of location.

Equipment

AGENCY shall obtain computer equipment and software that is compatible with the information systems and connectivity requirements of ADOT, and which will allow access only to the specific database(s) listed in the Addendum to this Agreement.

Data Security

AGENCY shall provide a secure location for all computer equipment used to access ADOT's database(s).

AGENCY shall provide access to ADOT's ALISS Database and/or ACIS only to AGENCY personnel or contractors who are authorized individuals, and to no one else. If at any time ADOT believes that an authorized individual is using such access inappropriately, ADOT reserves the right to immediately terminate that individual's database access and/or to terminate AGENCY authorization under this Agreement.

AGENCY shall comply with all ADOT policies, procedures and directives regarding security and database access, including any future amendments thereto. All subcontractors utilized to perform the activities authorized by this Agreement must abide by the same security and access requirements as AGENCY.

AGENCY must disclose and obtain ADOT approval of any existing and/or contemplated strategic alliances, partnerships, Intergovernmental Agreements or subcontracting arrangements that AGENCY has or will enter into which involve the processing and/or use of ADOT data acquired pursuant to this Agreement.

AGENCY, its officers, agents, employees, contractors and representatives shall not, without the prior written approval of ADOT, disclose, distribute, or utilize in any manner not expressly authorized under this Agreement, any personal or sensitive information which is connected or otherwise associated with or accessed pursuant to this Agreement, either during the term of this Agreement or subsequent to any termination of this Agreement.

AGENCY shall maintain all hard copy information and electronic data related to this Agreement in a secure location at all times.

Data Privacy

AGENCY shall not utilize its computer connections with ADOT for any purpose other than the purpose(s) specified in the Addendum to this Agreement.

Network Security

AGENCY understands and agrees that any and all personal or sensitive information that it stores or transmits over external or public computer networks, such as the Internet, must be encrypted.

AGENCY computers that are permanently or intermittently connected to internal computer networks must have an ADOT approved, password-based, access control system in order to access ADOT's database(s). This requirement applies to computers with direct connections to data centers, as well as AGENCY "wide area network." Regardless of the network connections, all AGENCY computers which are used to access ADOT information must employ approved, password-based, access control systems.

All in-bound connections to AGENCY computers from external networks must also be protected. All access control systems must utilize user-identifications (i.e. RACF ID's) and passwords unique to each user, as well as user-privilege restriction mechanisms. Password sharing is prohibited.

Non-exclusivity

This Agreement shall not preclude ADOT from entering into the same or similar Agreement with other public or private entities, including those performing identical or similar functions as AGENCY.

Notification

AGENCY shall assign a contact person for problem resolution and notification of procedural changes. AGENCY shall advise ADOT within two business days of any change in its designated contact person. All notices or

demands upon either party shall be in writing and an original shall be delivered electronically, in person, or sent by mail, addressed as follows:

To ADOT at:

ADOT Crash Records Section
Custodian of State Crash Records
1615 W. Jackson Street, Mail Drop 064R
Phoenix, AZ 85007
Fax: 602.712.3488
Email: AZCrashFacts@azdot.gov

To AGENCY at:

City of Flagstaff
ATTN: Stacey Brechler-Knaggs,
Grants & Contracts Manager
211 W. Aspen
Flagstaff, AZ 86001
928.213.2227
sknaggs@flagstaffaz.gov

Records

The AGENCY shall maintain a log or register of all ADOT records it requests and all ADOT records it obtains by virtue of the access provided herein. The AGENCY shall retain this log or register either manually or electronically for a period of five years after the date of request and receipt of the records. All other books, papers, records, data, and accounting records relating to this Agreement (“Records”) shall be maintained by AGENCY for a period of five years, or such greater or lesser time as may be required by federal or state law, rule, or the ADOT Records Retention Schedule. The Records shall be subject to inspection and audit by ADOT for five years after termination or completion of this Agreement. The Records shall be produced at the offices designated by ADOT.

It is further agreed that ownership of all records relating to this Agreement resides exclusively with ADOT, except for data retrieved pursuant to this Agreement.

Compliance

AGENCY shall comply with all of the terms set forth in this Agreement, together with all applicable state statutes, rules, and regulations. AGENCY shall also comply with all relevant ADOT policies, procedures and directives that ADOT provides to AGENCY throughout the course of this Agreement. All AGENCY subcontractors are held to the same compliance standards, and any failure to comply on the part of the subcontractor will be deemed a failure on the part of AGENCY.

Non-compliance

If AGENCY fails to comply with the terms of this Agreement, or with any applicable law, rule or regulation, ADOT reserves the right to take any remedial action that it deems necessary and appropriate, including without limitation the suspension, cancellation, revocation, or termination of this Agreement. In case of a violation of law, the Agreement shall immediately terminate.

Amendment and Modification of Agreement

AGENCY shall review and approve in writing any modification of the Agreement. Upon the amendment of any applicable law, rule or regulation, the Agreement shall automatically be modified to reflect such amendment. Any modification of the Agreement shall be incorporated herein and shall be subject to all other provisions of this Agreement. AGENCY may submit a written request to ADOT if there are any changes it desires be made to the Agreement, and such a request shall be approved or denied at ADOT’s sole discretion.

Termination

Either party may terminate this Agreement for convenience or cause upon 30 days prior written notice to the other party. Upon any termination of this Agreement, AGENCY shall, at ADOT’s request, remove and deliver to

TSMO all electronic data stored on any electronic storage devices and shall immediately return all other data and information received in connection herewith to ADOT.

This Agreement is subject to cancellation pursuant to A.R.S. §38-511. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract of any extension of 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 of the contract with respect to the subject matter of the contract. The cancellation under this section by any department or agency of the state or its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.

Waiver/Severability

AGENCY agrees that a waiver of any provision of this Agreement shall not act as a waiver of any other provision of this Agreement. If a provision of this Agreement is for any reason declared invalid, illegal, or unenforceable, that declaration shall not affect the remainder of the provisions of the Agreement.

Duration

This Agreement shall commence upon approval by the Division Director and execution by both parties, and shall thereafter continue in effect for a term of five years, unless previously terminated or canceled as provided herein. Prior to expiration of this five year period, the parties may mutually agree to extend the term of the Agreement for another five (or fewer) years by entering into an Amendment to this Agreement.

Liability

The AGENCY 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 AGENCY, its employees, officers, directors, agents, or representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. The AGENCY's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the State, except the obligation shall apply to any negligence of the AGENCY which may be legally imputed to the State by virtue of this Agreement or the State's ownership of the databases. The AGENCY's obligations under this paragraph shall survive the termination of this Agreement.

Limitation of Liability

The Arizona Department of Transportation (a) makes no warranty, express or implied, with respect to information provided under this agreement, including but not limited to, implied warranties of merchantability and fitness for any particular use; (b) assumes no liability for any direct, indirect, or consequential damages arising from any use of any part of the Data Access Exchange Agreement; (c) assumes no liability for any errors or omissions within the Data Access Exchange. Parties hereby waive, relinquish, and release the State of Arizona and the Arizona Department of Transportation from any claim for damage or injury arising from any use of the Data Access Exchange or any information derived from it.

Certification

On behalf of AGENCY identified below, I hereby request approval of this Agreement. I certify that all of the information set forth herein by AGENCY is true and accurate, and that any records or information obtained from ADOT's database(s) and system(s) pursuant to this Agreement will be used solely for the purpose(s) specified in the Addendum to this Agreement, and for no other purposes. I further certify that I have the authority to execute this Agreement on behalf of AGENCY. I understand that AGENCY must abide by the provisions of this Agreement if approved by the Division Director and executed by both parties.

Mandatory Provisions for Arizona State Agencies

None of the provisions of the Agreement may be waived, changed or altered except in writing signed by both parties.

Except as permitted by law and provided by this Agreement, ADOT is not authorized to indemnify the AGENCY.

Every payment obligation of ADOT under this Agreement is conditioned upon the availability of funds allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by ADOT or any other agency of the State of Arizona at the end of the period for which funds are available. No liability shall accrue to ADOT or any other agency of the State of Arizona in the event this provision is exercised, and neither ADOT nor any other agency of the State of Arizona shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

AGENCY shall comply with Executive Order 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulations, including the American with Disabilities Act. AGENCY shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

Compliance requirement for A.R.S. 41-4401 – immigration laws and E-Verify requirement.

- The AGENCY warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)
- A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the AGENCY may be subject to penalties up to and including termination of the Agreement.
- ADOT retains the legal right to inspect the papers of any employee who works on the Agreement to ensure that the AGENCY or subcontractor is complying with the above-mentioned warranty.

Joint Venturer – Except as otherwise provided by law, in the performance of duties and activities under this Agreement, the parties hereto will be acting in their individual governmental capacities and not as agents, employees, partners, joint ventures, or associates of each other. The officers, employees, agents, or subcontractors of one party shall not be deemed or construed to be the employees or agents of the other party. Each party shall remain responsible for the supervision of their respective staff and students and shall maintain adequate insurance coverage as required by law.

AGENCY assigns to ADOT any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to AGENCY toward fulfillment of this Agreement.

This Agreement shall be construed in accordance to the laws of the State of Arizona.

The parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. 12-1518 except as may be required by other applicable statutes.

The parties shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01.

The parties may execute this Agreement in two or more counterparts, each of which shall be deemed an original and together which shall constitute one and the same document.

CITY OF FLAGSTAFF

By _____ on _____
GREG CLIFTON Date
City Manager

ATTEST:

By _____ on _____
STERLING SOLOMAN Date
City Attorney

By _____ on _____
STACY SALZBURG Date
City Clerk

FOR ADOT USE ONLY

Received by _____ on _____
TIMOTHY JORDAN Date
AzTraCS Program Coordinator

AUTHORIZATION

On behalf of the Arizona Department of Transportation, the authorization requested by the **CITY OF FLAGSTAFF** pursuant to this Agreement (including the attached Addendum) is hereby approved.

ARIZONA DEPARTMENT OF TRANSPORTATION
Transportation Systems Management and Operations

By _____ on _____
BRENT A. CAIN, PE Date
Division Director

AGREEMENT ADDENDUM

THIS ADDENDUM is made and entered into pursuant to A.R.S. §§28-401 et seq. and with GITA Statewide Standard P740-S741, Standard 4.7.3, as part of the foregoing Data Access / Exchange Agreement between the Arizona Department of Transportation (ADOT) and the **CITY OF FLAGSTAFF** (AGENCY).

Subject to ADOT’s right to terminate as set forth in this Agreement:

- I. ADOT <grants/~~does not grant~~> AGENCY authorization to access its ALISS Database via approved direct program-to-program interactions over an approved persistent connection and to thereby submit electronic crash records information contained in such databases according to the terms and conditions stated in this Agreement. Electronic crash records shall be submitted no more than once per day.
- II. ADOT <grants/~~does not grant~~> AGENCY authorization to access its ALISS Database via an approved secure gateway and with two-factor authentication to retrieve pertinent crash records data including vehicle information according to the terms and conditions stated in this agreement.
- III. ADOT <grants/~~does not grant~~> AGENCY authorization to access its ACIS via an approved secure gateway and with user identifications and passwords unique to each user to run queries and retrieve crash data strictly for the purposes of safety analysis and in accordance with the terms and conditions stated in this agreement. Data query and retrieval may be done on an as-needed basis.

The foregoing Agreement and Addendum are mutually agreed to:

CITY OF FLAGSTAFF

ARIZONA DEPARTMENT OF TRANSPORTATION

Transportation Systems Management and Operations

By _____ on _____
GREG CLIFTON Date
City Manager

By _____ on _____
BRENT A. CAIN, PE Date
Division Director

ATTEST:

By _____ on _____
STERLING SOLOMAN Date
City Attorney

By _____ on _____
STACY SALZBURG Date
City Clerk