

ADOT CAR No.: IGA 24-0009570-I
AG Contract No.: P0012024000332
Project Location/Name: Fanning Dr @
BNSF – City of Flagstaff
Type of Work: Rail-Highway Safety
Improvements
Federal-aid No.: FLA-0(222)T
ADOT Project No.: T0528 01D/01X
TIP/STIP No.:
CFDA No.: 20.205 - Highway Planning
and Construction
Budget Source Item No.: NA

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
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” or “Local Agency”). The State and the Local Agency 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 Local Agency is empowered by A.R.S. § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Local Agency.
3. Congress has authorized appropriations for installing automatic warning signals, automatic gate arms, concrete crossings, pavement markings, and other railroad crossing related appurtenance.
4. The improvements proposed in this Agreement include Rail-Highway Safety Improvements at Fanning Drive, in the immediate area of the Burlington Northern Santa Fe (BNSF) Railway crossing, DOT number 025-129Y, located within the City, (the “Project”). The total Project cost, shown in Exhibit A, is estimated at \$1,200,000 and is eligible for federal aid. The Recapitulation Cost Sheet is shown on Exhibit B, and the Location Map is shown on Exhibit C. In a separate agreement between the State and BNSF, the State will have BNSF install pedestrian gates, fencing, signs, and lights. The City’s maintenance responsibilities are detailed in Section II.3.d.

5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the Local Agency and authorization of such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the Local Agency for the Project, if the Project is approved by the Federal Highway Administration (FHWA) and funds for the Project are available.
6. The foregoing Recitals and Exhibits shall be incorporated into this Agreement.

In consideration of the mutual terms expressed herein, the Parties agree as follows:

II. SCOPE OF WORK

1. The Parties agree:
 - a. The Project will be designed and constructed by the railroad in accordance with the requirements of the railroad plans and specifications.
 - b. The final Project amount may exceed the initial estimate(s) identified in Exhibit A, and in such case, the State will procure up to the amount approved and programmed for this Project. If the Local Agency desires to add work beyond what is described in this Agreement; it will be added by amendment to this Agreement and all costs will be the responsibility of the Local Agency.
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 Local Agency's designated agent for the Project.
 - b. Submit all required documentation pertaining to the Project to FHWA with the recommendation that the maximum federal funds programmed for this Project be approved.
 - c. After receipt of FHWA authorization, notify BNSF to proceed with the work covered by the railroad agreement.
 - d. Notify the Local Agency of completion and final acceptance of the Project; coordinate with the Local Agency and turn over full responsibility of the Project improvements as set forth below.
 - e. Not be obligated to maintain the Project, should the Local Agency fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

3. The Local Agency will:
 - a. Designate the State as the Local Agency's authorized agent for the Project.
 - b. Grant to the State (BNSF, and its agents and/or contractors), by way of right of way permit, without cost, the temporary right to enter Local Agency rights of way, as required, to conduct any and all construction and preconstruction related activities for the Project, on, to and over said Local Agency rights of way. This right of way permit will expire with completion of the Project.
 - c. Be responsible for the cost of any Local Agency requested changes to the scope of work of the Project, such changes will require State and FHWA approval. Be responsible for any contractor claims for additional compensation caused by Project delay attributable to the Local Agency. Payment for these costs will be made to the State within 30 days of receipt of an invoice from the State.
 - d. After completion and final acceptance of the Project, agree to maintain and assume full responsibility of the Project and all Project components. Such maintenance includes, but is not limited to barrier fencing, traffic signals, signs that are not attached to the railroad equipment, islands, curbs, and striping (markings necessary for the purpose of regulating, warning and guiding traffic), as applicable to the Project.
 - e. Be responsible to mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work.

III. MISCELLANEOUS PROVISIONS

1. Effective Date. This Agreement shall become effective upon signing and dating of all Parties.
2. Amendments. Any change or modification to the Project will only occur with the mutual written consent of both Parties.
3. Duration. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project. Any and all obligations of maintenance hereunder shall remain perpetual and shall survive any termination hereof and the assignment or assumption of this Agreement or the Project by another competent jurisdiction or entity.
4. Cancellation. This Agreement may be cancelled at any time up to 30 days before the award of the Project contract, so long as the cancelling Party provides at least 30 days' prior written notice to the other Party. It is understood and agreed that, in the event the Local Agency terminates this Agreement, the Local Agency 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 Local Agency terminates this Agreement, the State shall in no way be obligated to complete or maintain the Project.

5. Indemnification. The Local Agency shall indemnify, defend, and hold harmless the State, any of its departments, agencies, boards, commissions, 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 Local Agency, 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 Local 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 does apply to any negligence of the Local Agency which may be legally imputed to the State by virtue of the State's ownership or possession of land. The Local Agency's obligations under this paragraph shall survive the termination of this Agreement.
6. Programmed Federal Funds. The cost of work under this Agreement is to be covered by the federal funds programmed for this Project. The final Project amount may exceed the initial estimate(s) identified in Exhibit A, and in such case, the State will procure up to the amount approved and programmed for this Project. If the City desires to add work beyond what is described in this IGA; it will be added by amendment to the IGA and all costs will be the responsibility of the City.
7. Termination of Federal Funding. 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 any past, current or future expenses under this Agreement.
8. Indirect Costs. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.
9. Federal Funding Accountability and Transparency Act. 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 Local Agency 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. Governing Law. This Agreement shall be governed by and construed in accordance with Arizona laws.
11. Conflicts of Interest. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
12. Inspection and Audit. The Local Agency shall retain all books, accounts, reports, files and other records relating to this Agreement which shall be subject at all reasonable times to inspection and audit by the State for five years after completion of the Project. Such records shall be produced by the Local Agency, electronically or at the State office as set forth in this Agreement, at the request of ADOT.

13. Title VI. The Local Agency acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
14. Non-Discrimination. 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, as amended by Executive Order 2023-01, issued by the Governor of the State of Arizona and incorporated in this Agreement by reference regarding “Non-Discrimination.”
15. 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.
16. Arbitration. 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.
17. E-Verify. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
18. Contractor Certifications. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §§ 35-393.01 and 35-394.
19. Other Applicable Laws. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
20. Notices. 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 Agreement Section
205 S. 17th Avenue, Mail Drop 637E
Phoenix, AZ 85007
JPABranch@azdot.gov

City of Flagstaff
Attn: Christine Cameron
211 West Aspen Avenue
Flagstaff, AZ 86001
Phone: 928.213.2682
ccameron@flagstaffaz.gov

For Project Administration:

Arizona Department of Transportation
Utility & Railroad Engineering
Attn: Jane Gauger
205 S. 17th Avenue, Mail Drop 618E
Phoenix, AZ 85007
602.712.4052
jgauger@azdot.gov

City of Flagstaff
Attn: Christine Cameron
211 West Aspen Avenue
Flagstaff, AZ 86001
Phone: 928.213.2682
ccameron@flagstaffaz.gov

21. Revisions to Contacts. Any revisions to the names and addresses above may be updated administratively by either Party with written notice to the other Party.
 22. Legal Counsel Approval. In accordance with A.R.S. § 11-952 (D), the written determination of each Party's legal counsel providing that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form is set forth below.
 23. Electronic Signatures. This Agreement may be signed in an electronic format including DocuSign.
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Remainder of this page is intentionally left blank.

(Signatures begin on the next page)

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective upon the signing and dating of all Parties.

CITY OF FLAGSTAFF

By _____ Date _____
BECKY DAGGETT
Mayor

ATTEST:

By _____ Date _____
STACY SALTZBURG
City Clerk

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 A.R.S. §§ 11-951 through 11-954 and A.R.S. § 48-572 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. Approved as to Form:

By _____ Date _____
City Attorney

ARIZONA DEPARTMENT OF TRANSPORTATION

By _____ Date _____

STEVE BOSCHEN, PE
Infrastructure Delivery and Operations Division
Division Director

This 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 A.R.S. § 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.

By _____ Date _____

Assistant Attorney General

EXHIBIT A
Cost Estimate

T0528 01D/01X

The federal funds will be used for the ADOT oversight, coordination and clearances and BNSF preliminary engineering costs and construction of the Project, including construction contingency. The estimated Project costs are as follows:

Preliminary Engineering:

ADOT work; Federal-aid funds @100%	\$ 40,000
BNSF work; Federal-aid funds @ 100%	\$ <u>110,000</u>
Total Preliminary Engineering	\$ 150,000

Construction:

Pedestrian gates, fencing, signs & lights – Work by BNSF Federal-aid funds @ 100%	\$ <u>1,050,000</u>
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Estimated TOTAL Project Cost **\$ 1,200,000**

EXHIBIT B RECAPITULATION COST SHEET

Project Number:	T0528	Created on:	1/5/2024
Location:	Fanning Dr @ BNSF, Flagstaff	Prepared by:	K. Marquez
Federal ID:	FLA-0(222)T		
DOT Number:	025-129Y		
IGA Agreement Number:	IGA-24-0009570-I		

DESCRIPTION	PROJECT PHASE	FHWA CODE	ESTIMATED COST *	FEDERAL ELIGIBLE SECTION 130 FUNDS	TOTAL CITY OF FLAGSTAFF FUNDS
				100%	0%
PRELIMINARY ENGINEERING - DESIGN	01D				
ADOT - Oversight, Coordination, Clearances		15	\$ 40,000	\$ 40,000	\$0
BNSF - Preliminary Engineering		15	\$ 110,000	\$ 110,000	
SUBTOTAL PRELIMINARY ENGINEERING COST			\$ 150,000	\$ 150,000	\$0
CONSTRUCTION	01X				
BNSF - Construction- Pedestrian gates, fencing, signs, lights		22	\$ 1,050,000	\$ 1,050,000	\$0
				\$ -	
SUBTOTAL CONSTRUCTION COST			\$ 1,050,000	\$ 1,050,000	\$0
TOTAL PROJECT COST			\$ 1,200,000	\$ 1,200,000	\$0

* If Local Agency project: do not include ICAP
 ** If ADOT project: do include ICAP

