

ADOT File No.: IGA/JPA 12-021-I
ADOT CAR No.: 13-0000327-I
AG Contract No.: P001 2013 001872
Project: Shared Use Path (SUP)
Section: Country Club Dr. - I-40
Federal Project No.: TEA 040-D(225)T
ADOT Project No.: H8494 01D
TIP/STIP No.: 2012- 2016 F71301
Budget Source Item No.: 75312

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF FLAGSTAFF

THIS AGREEMENT is entered into this date PLEASE DO NOT ENTER, 2013, 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") 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 hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
 3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of Transportation Enhancement (TE) activities and TE funds have been requested from the Federal Highway Administration (FHWA) for a State project within the boundary of the City.
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4. A shared use path (SUP) will be constructed on the east side of Country Club Drive. The existing fence on the exterior bridge barrier will be replaced with a new fence, a new safety rail will be added to the existing interior bridge barrier, and a new median and landscape will be installed on Country Club Drive south of the I-40 interchange, (hereinafter referred to as the "Project"). The State shall advertise, bid and award the Project. The City will maintain the Project and all Project components within and including the interior barrier, the State will maintain the safety rail and fencing on the exterior barrier.

5. The Parties hereby agree to and acknowledge the following conditions: **a)** the estimated Project costs are subject to change and can change significantly before completion of the Project; **b)** the Parties shall perform their responsibilities consistent with this Agreement; and **c)** any change or modification to the Project will only occur with the mutual written consent of both Parties. Amendments must be approved with the same formality as this original Agreement.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Prepare and provide design plans, specifications and other such documents and services required for construction of the Project.

b. Upon approval by the Federal Highway Administration (FHWA), proceed to advertise for, receive and open bids subject to the concurrence of the FHWA. The State will enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project; administer contracts(s) for the Project; make all payments to the contractor(s) and assume responsibility for contractor claims for additional compensation caused by the Project delays attributable to the State.

c. Upon completion of the Project, perform the final inspection and notify the City in writing that the Project has been constructed in accordance with the Project documents and has been satisfactorily completed.

d. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

e. Issue, per established procedures of the State's Flagstaff District Permit Office, a valid blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance work to be provided by the City within the State's rights-of-way. Process any other Encroachment Permits that may be needed to work within the State's right-of-way to effectively meet the obligations set forth for the City in this Agreement. The State agrees all activities that are reasonably required to be performed by the City under this Agreement shall be set forth in and covered by the appropriate Encroachment Permit.

f. Not be obligated to maintain said Project, except for safety rail and fencing on the exterior barrier, as cited in Recital 4, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City will:

a. Upon execution of this Agreement designate the State as authorized agent for the City.

b. Upon completion of the Project, agree to accept and assume full responsibility of said Project in writing.

c. Provide for cost and, as part of the City's annual budget process, or maintenance of any and all emergency repairs, including replacements, if necessary, of any and all improvements constructed and installed by the State within and including the interior barrier, as cited in Recital 4 of this Agreement. Provide perpetual maintenance for any and all improvements constructed and installed by the State within the interior barrier including, but not limited to, keeping sidewalks and ramps reasonably clean and clear of debris, removing overhanging and intruding vegetation, and maintaining and repairing landscaped surfaces and the interior barrier. Be responsible for any repairs necessary to keep the sidewalks and ramps compliant with the American with Disabilities Act Accessibility Guidelines.

d. Provide and maintain at City cost, the electrical and/or solar power and water necessary to establish Project landscaping, including all testing, adjusting, repairing and operation of the temporary irrigation system, if installed for this Project.

e. Provide all maintenance work within the State right-of-way in a manner which minimizes traffic congestion and interference with through-traffic. All traffic control will meet the requirements of the most recent approved version of Arizona Department of Transportation's Manual on Uniform Traffic Control Devices (MUTCD) 2009 edition and the Arizona supplemental modifications, dated January 13, 2012.

f. Request and maintain, per established procedures of the State's Flagstaff District Permit Office, a valid blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance work provided by the City within the State's rights-of-way. Agree to obtain separate permits for any new construction or installations in accordance with the Flagstaff District established procedures. The City agrees all activities performed by the City under this Agreement shall be set forth in and covered by the appropriate Encroachment Permit.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project. If the federal funding related to this Project is terminated or reduced by the federal government, or if 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.

2. The cost of the project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (FHWA).

3. The City and the State 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.

4. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

7. 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 herein by reference regarding "Non-Discrimination".

8. 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.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. 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:

Arizona Department of Transportation

Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

City of Flagstaff

Attn: Grants Manager
211 West Aspen
Flagstaff, AZ 86001
(928) 213-2227
(928) 213-2209 Fax

ADOT Transportation Enhancement & Scenic
Roads Section
1615 W. Jackson St. MD EM10
Phoenix, AZ 85007
(602) 712-6258
(602) 712-3347 Fax

For City Financial Matters:

Management Services Director
211 West Aspen
Flagstaff, AZ 86001
(928) 213-2205
(928) 213-2209 Fax

11. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.

12. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

13. In accordance with Arizona Revised Statutes § 11-952(D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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

CITY OF FLAGSTAFF

STATE OF ARIZONA

Department of Transportation

By _____
GERALD W. NABOURS
Mayor

By _____
DALLAS HAMMIT, P.E.
Senior Deputy State Engineer, Development

ATTEST:

By _____
ELIZABETH A. BURKE
CityClerk

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 A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY OF FLAGSTAFF 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 _____ day of _____, 2013.

City Attorney