

ADOT File No.: IGA/JPA 15-0005287-I
AG Contract No.: P0012015001283
Project: LED Street lighting
Procurement for Research
Section: Various Locations Citywide
Federal-aid No.: FLA-0(220)T
ADOT Project No.: SZ184 01D
TIP/STIP No.: FMPO F31401-2
**CFDA No.: 20.205 - Highway Planning
and Construction**
Budget Source Item No.: n/a

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF FLAGSTAFF

THIS AGREEMENT is entered into this date _____, 2015, 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 authorized the undersigned to execute this Agreement on behalf of the City.

3. The City, Flagstaff Metropolitan Planning Organization (FMPO) and Lowell Observatory have partnered to request Federal Aid funding for the City of Flagstaff's FY 2015 Surface Transportation Program – Street Lighting for Enhancing Dark Skies project (SLEDS). This federally-funded research project, ADOT Project Number PFM1401P, will be administered by the City and result in defining the procurement needs for ADOT Project No: SZ184. The State, the Federal Highway Administration (FHWA) and the City have identified systematic improvements within the City as eligible for this funding.

4. The purpose of this Agreement between the City and the State is to allow the State to acquire federal funds for the purchase of several different types of LED street lighting and fixture replacements to enhance Dark Skies on City streets (the "Project"). This procurement is in support of a research project in which the resulting research will determine the type of light bulbs the City will acquire and test with the ultimate lighting specifications to be developed through said research. The City will manage the procurement in multiple phases to serve the research process and reduce the number of lights that might be rejected. The City, through the State's Procurement Process and ADOT Procurement contract(s) will utilize an authorized supplier to provide the equipment and services as outlined in the contract and approved plans to complete this project with the aid and consent of the State and the FHWA. The City will install the Project at its own cost.

5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and the authorization of such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City for the Project, if the Project is approved by FHWA and funds for the Project are available. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project specifications and terms and conditions.

6. The Parties shall perform their responsibilities consistent with this Agreement; any change or modification to the Project will only occur with the mutual written consent of both Parties.

7. The federal funds will be used for the procurement of equipment for this Project. The estimated Project costs are as follows:

SZ184 01D (ADOT Project Management & Design Review (PMDR) Cost, non-federal-aid):

PMDR costs @ 100% *	\$ 10,000.00
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SZ184 01D:

Federal-aid funds @ 94.3% (capped)	\$ 199,000.00
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City's match @ 5.7%	<u>\$ 12,029.00</u>
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Subtotal – Project Costs	\$ 211,029.00
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Total Estimated Project Costs	\$ 221,029.00
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Total Estimated City Funds*	\$ 22,029.00
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Total Federal Funds	\$ 199,000.00
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The Parties acknowledge that the final Project costs may exceed the initial estimate(s) shown above, and in such case, the City is responsible for, and agrees to pay, any and all eventual, actual costs exceeding the initial estimate. If the final amount is less than the initial estimate, the difference between the final amount and the initial estimate will be de-obligated or otherwise released from the Project. 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 amount.

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

II. SCOPE OF WORK

1. 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 designated agent for the Project.

b. Execute this Agreement, and prior to performing or authorizing **any** work, invoice the City for the PMDR costs, estimated at \$10,000.00. Invoice the City in increments of \$5,000.00 to cover any overages of the PMDR costs. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual PMDR and design costs.

c. Submit all required documentation pertaining to the Project to FHWA with the recommendation that the maximum federal funds programmed for this Project be approved for procurement of several different types of LED street lighting and fixture replacements to enhance Dark Skies on City streets. Should costs exceed the maximum federal funds available it is understood and agreed that the City will be responsible for any overage.

d. Execute this Agreement and with FHWA authorization, coordinate with the City regarding the specifics of the equipment to be ordered to best ensure the requirements of the Project are met. Enter

into a contract(s) with the authorized supplier(s) to whom the award is made for the purpose of the Project.

e. Be granted, without cost requirements, the right to enter City right-of-way as required to conduct any and all pre-construction and construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry on to and over said rights-of-way of the City.

f. Instruct the vendor to bill the City and deliver equipment directly to the City for final acceptance. Within thirty (30) days of receipt and approval of an invoice for equipment purchased under this Agreement, reimburse the City for an amount not to exceed eighty percent (80%) of the total capped federal funds programmed and approved for the Project. The remaining twenty percent (20%) will be reimbursed after completion of the final inspection and within thirty (30) days of receipt and approval of the final invoice from the City.

g. Reserve the right to de-obligate federal funds should the Project go six (6) months or more without being charged to.

h. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

i. Verify installation of equipment was performed and completed in compliance with FHWA requirements, upon notification of installation of equipment by the City.

2. The City will:

a. Designate the State as authorized agent for the City for the Project.

b. Within thirty (30) days of receipt of an invoice from the State, pay the initial PMDR costs, estimated at \$10,000.00. If, additional funding to cover PMDR costs is required, pay the invoiced amount to the State within thirty (30) days of receipt. Be responsible for any difference between the estimated and actual PMDR and design costs of the Project.

c. Be responsible for the cost of installation and any costs exceeding the maximum federal funds available for the Project, provided the City is unable to reduce the scope of the Project to meet available federal funds. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the City is responsible for these costs, payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

d. Coordinate with the State during the procurement process of the Project.

e. Purchase and install the equipment acquired under this Agreement and maintain all Project improvements provided for the life of the equipment.

f. Install all equipment purchased within one (1) year of receipt of equipment; keep complete records of all equipment installed per this Project in a manner consistent with State and FHWA requirements.

g. Within thirty (30) days of payment to the vendor, invoice the State for reimbursement of up to eighty percent (80%) of the total capped federal funds programmed and approved for the Project, for eligible costs incurred by the City, for the purchase of equipment under this Agreement. The remaining twenty percent (20%) will be reimbursed after completion of the final inspection. Provide back-up documentation with each invoice. Be responsible for all costs incurred in performing and accomplishing the work described in this Agreement not covered by federal funding.

h. Notify the State when all equipment has been installed and is ready for inspection. Within thirty (30) days of completion of the final inspection, invoice the State for the remaining twenty percent (20%) of federal funds programmed and approved for the Project.

i. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work requested by the City. Such changes require the prior approval of the State and FHWA. Be responsible for any contractor claims for additional compensation caused by Project delays attributable to the City. Payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

j. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction, in accordance with The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended; 49 CFR 24.102 Basic Acquisition Policies; 49 CFR 24.4 Assurances, Monitoring and Corrective Action, parts (a) & (b) and ADOT ROW Manual: 8.02 Responsibilities, 8.03 Prime Functions, 9.06 Monitoring Process and 9.07 Certification of Compliance. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the City, if applicable.

k. Not permit or allow any encroachments upon or private use of the 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.

l. Grant the State, its agents and/or contractors, without cost, the right to enter City rights-of-way, as required, to conduct any and all construction and preconstruction related activities, including without limitation, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

m. Pursuant to 23 USC 102(b), repay all federal funds reimbursements for preliminary engineering costs on the Project if it does not advance to right-of-way acquisition or construction within ten (10) years after federal funds were first made available.

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 procurement, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the City will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that should the City terminate this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid on behalf of the City and the fulfillment of any other responsibilities of the State as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless, defend and indemnify from loss the State, any of its departments,

agencies, officers or employees from any and all liability, costs and/or damage incurred by any of the above arising or resulting from this Agreement; and from any other liability, damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non-performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of design, construction and construction engineering work under this Agreement is to be covered by the federal funds set aside for this Project, up to the maximum available. The City acknowledges that the actual costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the City agrees to pay the difference between actual costs and the federal funds received, provided the City is unable to reduce the scope of the Project to meet available federal funds.

4. 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.

5. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.

6. 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.

7. The City acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend \$500,000.00 or more (prior to 12/26/14) and \$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. 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 (9) 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

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

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

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

11. 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".

12. 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.

13. 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.

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

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

16. 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 Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax
JPABranch@azdot.gov

City of Flagstaff

Attn: Stacey Brechler-Knaggs
211 W. Aspen
Flagstaff, Arizona 86001
928-213-2227
sknaggs@flagstaffaz.gov

For Program Administration:

Arizona Department of Transportation
Statewide Project Management
205 S. 17th Avenue
Phoenix, Arizona 85007
Phone (602)712-6961
amanzor@azdot.gov

City of Flagstaff

Attn: Stacey Brechler-Knaggs
211 W. Aspen
Flagstaff, Arizona 86001
928-213-2227
sknaggs@flagstaffaz.gov

For Financial Administration:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax
JPABranch!@azdot.gov

17. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein 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.

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 _____
JERRY NABOURS
Mayor

By _____
STEVE BOSCHEN, P.E.
ITD Division Director

ATTEST:

By _____
ELIZABETH A. BURKE
City Clerk

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 _____ day of _____, 2015.

City Attorney