

ADOT CAR No.: IGA /JPA 13-0002790-I
AG Contract No.: P001 000xxx
Project: Design and Installation of
Signs
Section: Various Locations
Federal-aid No.: FLA-0(218)T
ADOT Project No.: SH597 03D/01C
TIP/STIP No.:
Budget Source Item No.: 728XX

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF FLAGSTAFF

THIS AGREEMENT is entered into this date _____, 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" 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 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 established the Highway Safety Improvement Program (HSIP) as a core Federal-aid for the specific purpose of achieving a significant reduction in traffic fatalities and serious injuries on public roads. The State, the Federal Highway Administration (FHWA) and the City have identified systematic improvements within the City as eligible for this funding.
 4. The improvements proposed in this Agreement, hereinafter referred to as the "Project" include the design, purchase and installation of signs at various City locations. The State will administer design, advertise, bid award and administer construction and installation of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.
 5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and to authorize such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City, if the Project is approved by FHWA and funds for the Project are available.
 6. The Parties shall perform their responsibilities consistent with this Agreement and any change or modification to the Project will only occur with the mutual written consent of both Parties.
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7. The federal funds will be used for the scoping/design and construction of the Project, including the construction engineering and administration cost (CE). The estimated Project costs are as follows:

SH597 03D (design):

Federal-aid funds @ 100%	\$ 40,000.00
Subtotal –Design*	<u>\$ 40,000.00</u>

SH597 01C (construction):

Federal-aid funds @ 100%	\$ 260,000.00
Subtotal – Construction**	<u>\$ 260,000.00</u>
Total Federal Funds	\$ 300,000.00
TOTAL Project Cost	<u>\$ 300,000.00</u>

* (Includes ADOT design review and clearances preparation)

** (Includes 15% CE, 5% Project contingencies)

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 bid amount is less than the initial estimate, the difference between the final bid 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 eventual, actual costs exceeding the final bid amount.

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

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this Agreement, be the designated agent for the City, if the Project is approved by FHWA and funds for the Project are available.

b. Submit all documentation required to the FHWA pertaining to the Project with the recommendation that funding be approved for design, construction and installation of signs. Request the maximum federal funds programmed for this Project. Should costs exceed the maximum federal funds available it is understood and agreed that the City will be responsible for any overage.

c. Upon authorization by FHWA, with the aid and consent of the City and FHWA, the State shall proceed to administer design and construction, advertise for, receive and open bids subject to the concurrence of the FHWA and the City, to whom the award is made for and enter into a contract(s) with a firm(s) for the installation of the Project. Incorporate comments from the City as appropriate.

d. Be granted, without cost requirements, the right to enter City right of way as required to conduct any and all construction and pre-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.

e. Notify the City that the Project has been completed and is considered acceptable, coordinating with the City as appropriate to turn over full responsibility of the Project improvements. De-obligate or otherwise release any remaining federal funds from the construction phase of the Project within ninety (90) days of final acceptance.

f. 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.

2. The City will:

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

b. Review design plans, specifications and other such documents and services required for the construction bidding and installation of the Project, including design plans and documents required by FHWA to qualify projects for and to receive federal funds. Provide design review comments to the State as appropriate.

c. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, not covered by federal funding. 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. 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, 9.07 Monitoring Process and 9.08 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.

e. 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.

f. 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 pre-construction related activities, including without limitation, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

g. 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.

h. Upon notification of Project completion, agree to accept, maintain and assume full responsibility of the Project in writing.

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 (30) days 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 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 costs and/or damage incurred by any of the above and from any other 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 eventual 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 furnish and provide the difference between actual costs and the federal funds received.

4. The cost of the project under this Agreement includes applicable indirect costs approved by the FHWA.

5. 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.

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

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

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

9. 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".

10. 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.

11. 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.

12. 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: Randy Whitaker
211 West Aspen Avenue
Flagstaff, Arizona 86001
Phone: (928) 213-2681
Fax (928) 779-7684

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

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

15. 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 _____
JERRY NABOURS
Mayor

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

ATTEST:

By _____
ELIZABETH A. BURKE
City Clerk

September 17th 2013-ly

DRAFT

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 _____ 2013.

City Attorney

DRAFT