

ADOT CAR No.: IGA 23-0009396-I
AG Contract No.: P0012023001756
Project Location/Name: Commerce St; 72
Main St – Lavender Pit
Type of Work: Replace Bridge
Federal-aid No.: NA
ADOT Project No.: T0502 01D 03D
TIP/STIP No.: BIS23-03
CFDA No.: 20.205 - Highway Planning and
Construction
Budget Source Item No.: AZ SMART

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF BISBEE

THIS AGREEMENT (“Agreement”) is entered into this date December 8, 2023, 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 BISBEE, acting by and through its MAYOR and CITY COUNCIL (the “City” or “Local Agency”). The State and the Local Agency are each individually referred to as a “Party” are collectively referred to as the “Parties.”

I. RECITALS

1. The State is empowered by A.R.S. §§ 28-339 and 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. §§ 28-339 and 48-572 to enter into this Agreement and has by resolution, if required, a copy of which is attached and made a part of, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Local Agency.
3. The federal Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58 (November 15, 2021), created multiple new federal grant programs for surface transportation purposes to be administered by the US Department of Transportation. IIJA is currently authorized through September 30, 2026. Congress may extend IIJA prior to passing a new long-term highway program authorization, and these extensions may extend the September 30, 2026 deadline.
4. The Arizona State Match Advantage for Rural Transportation funds (AZ SMART Funds) was established by the Arizona State Legislature in Laws 2022, Chapter 322 House Bill 2872 which became effective on September 24, 2022 to assist eligible cities, towns, counties and ADOT in applying for and winning Federal Grants for surface transportation projects.

5. The work proposed under this Agreement consists of design of a new bridge on Commerce Street, approximately 520' in length, from 54 Main Street to 2 Main Street, (the "Project"). The Local Agency has received funding through AZ SMART Fund for the design of the Project. The Project cost, shown in Exhibit A, is estimated at \$208,500.00, which includes AZ SMART Funds. The State will administer the design. The construction phase of the Project will be addressed in a separate agreement.
6. The interest of the State in this Project is for the use and benefit of the Local Agency pursuant to federal law and regulations. The State shall be the designated agent for the Local Agency for the Project.
7. The foregoing Recitals and Exhibit A 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. To perform their responsibilities consistent with this Agreement; any change or modification to the Local Agency's Project will only occur with the mutual written consent of both Parties.
 - b. To adhere to A.R.S. § 28-339.
 - c. The Local Agency was awarded Design and Other Engineering Services (DOES) funds from the AZ SMART Funds on February 17, 2023. The federal grant application for construction of the Project must be submitted by the Local Agency prior to the passage of a new long-term highway program authorization that succeeds the IIJA, which is currently authorized through September 30, 2026. Congress may extend IIJA prior to passing a new long-term highway program authorization, and these extensions may extend the September 30, 2026 deadline. Federal grant awards will require the execution of a federal grant agreement.
 - d. The final Project amount may exceed the initial estimate(s) identified in Exhibit A, and in such case, the Local Agency is responsible for, and agrees to pay, any and all actual costs exceeding the initial estimate. If the final Project design amount is less than the initial estimate, the difference between the final Project design amount and the initial estimate will be de-obligated or otherwise released from the Project. Any remaining AZ SMART Funds will be returned to the State. The Local Agency acknowledges it remains responsible for actual costs and agrees to pay according to the terms of this Agreement.
2. The State will:
 - a. Execute this Agreement, and if funds for the Project are available, be the Local Agency's designated agent for the Project.

- b. If Project Development Administration (“PDA”) costs exceed the estimate during the development of design, notify the Local Agency, obtain concurrence prior to continuing with the development of design, and invoice as determined by ADOT and the Local Agency for additional costs to enable continuing PDA for the Project. If design costs exceed the estimate prior to completion of design, invoice the Local Agency for Project costs exceeding design. After the Project costs are finalized invoice or reimburse the Local Agency for the difference between actual costs and the amount the Local Agency has paid for PDA and design.
 - c. Advertise for and enter into contract(s) with the consultant(s) for the design and post-design of the Project. Should costs exceed the maximum AZ SMART Funds available it is understood and agreed that the Local Agency will be responsible for any overage.
 - d. On behalf of the Local Agency prepare and provide all documents pertaining to the design and post-design of the Project, incorporating comments from the Local Agency, as appropriate. Review and approve documents required by the Federal Highway Administration (“FHWA”) to qualify the Project for and to receive federal funds. Perform tasks that may consist of, but are not limited to, preparation of environmental documents; analysis and documentation of environmental categorical exclusion determinations; geologic materials testing and analysis; right of way related oversight and stewardship activities; preparation of reports, design plans, maps, specifications and cost estimates and other related tasks essential to the design development of the Project.
3. The Local Agency will:
- a. Designate the State as the Local Agency’s authorized agent for the Project.
 - b. Agree to be responsible for actual PDA costs, if during the development of design, PDA costs exceed the initial estimate. Be responsible and pay for the difference between the estimated and actual PDA and design costs of the Project within 30 days of receipt of an invoice.
 - c. Review design plans, specifications, cost estimates and other such documents required for the construction bidding and construction of the Project, including scoping/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.
 - d. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, that are not covered by AZ SMART Funds. Should costs be deemed ineligible or exceed the maximum AZ SMART Funds available, it is understood and agreed that the Local Agency is responsible for these costs; payment for these costs shall be made within 30 days of receipt of an invoice from the State.
 - e. 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 Right of Way Procedures 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 Local Agency, if applicable.

- f. As applicable, the Local Agency shall certify that it has adequate resources to discharge the Local Agency's real property related responsibilities and ensures that its Title 23-funded projects are carried out using the FHWA approved and certified ADOT Right of Way Procedures Manual and that they will comply with current FHWA requirements whether or not the requirements are included in the FHWA approved ADOT Right of Way Procedures Manual (23 CFR 710.201). Additionally the Local Agency shall certify that all real estate related activities requiring licensure are performed by licensed individuals as defined by the Arizona Department of Real Estate (A.R.S. §§ 32-2121 & 32-2122).
- g. Not permit or allow any encroachments on or private use of the right of way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the Local Agency shall take all necessary steps to remove or prevent any such encroachment or use. Provide a copy of encroachment permits issued within the Project limits to the State.
- h. Automatically grant to the State, by execution of this Agreement, its agents and/or contractors, without cost, the temporary right to enter the Local Agency's 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's rights of way. This temporary right will expire with completion of the Project.
- i. Investigate and document utilities within the Project limits; submit findings to ADOT determining prior rights or no prior rights; approve a location within the final right of way to re-establish the prior right location for those utilities with prior rights.
- j. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any Local Agency requested changes to the scope of work of the Project, such changes will require State 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.
- k. Submit an application to an appropriate federal discretionary grant program for the construction phase of the Project in accordance with section (II.1.c.) of this Agreement. Should the Local Agency no longer choose to pursue a federal grant for the construction phase of the Project, the Local Agency will be responsible for repaying all AZ SMART Fund expenditures for the Project. Payment for these costs shall be made within 30 days of receipt of an invoice from the State.
- l. Provide periodic reports to ADOT regarding status of the Project, federal grant application preparation and submissions, federal grant agreement execution, and other Project or federal grant information as requested by ADOT.

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 this Agreement 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 and all related deposits and/or reimbursements are made.
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. **Liability.** ADOT assumes no liability or financial responsibility for AZ SMART Fund Projects or the information submitted by the Applicant. The Applicant is solely responsible for complying with all applicable laws, rules and regulations, for any additional funding required to complete the Project(s) and for any claims due to delays, change orders or any other circumstances.
7. **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.

8. Governing Law. This Agreement shall be governed by and construed in accordance with Arizona laws.
9. Conflicts of Interest. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
10. Records. The Applicant is required to retain all records related to AZ SMART Funds for a period of five years after the date of the final payment of AZ SMART Funds from ADOT.
11. Audit. All AZ SMART Fund Projects are subject to audit. The State may refer Projects to the State Auditor General or ADOT's Internal Audit unit in cases of suspected misuse of AZ SMART Funding.
12. Title VI. The Applicant acknowledges and will comply with Title VI of the Civil Rights Act of 1964.
13. 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 by reference regarding "Non-Discrimination."
14. 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.
15. 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.
16. E-Verify. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
17. Contractor Certifications. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §§ 35-393.01 and 35-394.
18. Other Applicable Laws. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
19. 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 Group
205 S. 17th Avenue, Mail Drop 637E

City of Bisbee
Attn: Logan Dodd
76 Erie St.

Phoenix, AZ 85007
JPABranch@azdot.gov

Bisbee, AZ 85603
520.432.6000
ldodd@bisbeeaz.gov

For Project Administration:

Arizona Department of Transportation
Project Management Group
205 S. 17th Avenue, Mail Drop 614E
Phoenix, AZ 85007
PMG@azdot.gov

City of Bisbee
Attn: Logan Dodd
76 Erie St.
Bisbee, AZ 85603
520.432.6000
ldodd@bisbeeaz.gov

For Financial Administration:

Arizona Department of Transportation
Project Management Group
205 S. 17th Avenue, Mail Drop 614E
Phoenix, AZ 85007
PMG@azdot.gov

City of Bisbee
Attn: Logan Dodd
76 Erie St.
Bisbee, AZ 85603
520.432.6000
ldodd@bisbeeaz.gov

20. Revisions to Contacts. Any revisions to the names and addresses above may be updated administratively by either Party and shall be in writing.
21. 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.
22. Electronic Signatures. This Agreement may be signed in an electronic format using DocuSign.

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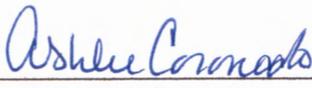
(Signatures begin on the next page)

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

CITY OF BISBEE

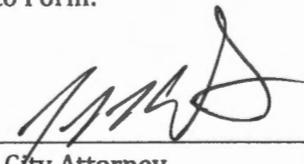
By  Date _____
KEN BUDGE
Mayor

ATTEST:

By  Date 12/5/23
ASHLEE CORONADO
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 Bisbee, an agreement among public agencies which, has been reviewed pursuant to A.R.S. §§ 11-951 through 11-954 and A.R.S. §§ 28-339 and 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 12/5/2023
City Attorney

ARIZONA DEPARTMENT OF TRANSPORTATION

DocuSigned by:
 By Paul V. Patane Date 12/7/2023
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PAUL PATANE
 Multimodal Planning Division Director

A.G. Contract No. P0012023001756 (ADOT IGA 23-0009396), an Agreement between public agencies, the State of Arizona and the City of Bisbee, has been reviewed pursuant to A.R.S. §§ 11-951 through 11-954 and A.R.S. §§ and 28-339 and 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.

DocuSigned by:
 By Daniel Bergin Date 12/8/2023
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 Assistant Attorney General

EXHIBIT A
Cost Estimate

T0502 01D/03D

The Project costs are estimated as follows:

ADOT Project Development Administration (PDA) Cost:

AZ SMART Funds \$30,000.00

Scoping/Design:

AZ SMART Funds \$178,500.00

Estimated TOTAL Project Cost **\$208,500.00**