

ADOT CAR No.: IGA 22-0009019-I
AG Contract No.: P0012023000223
Project Location/Name: SR80; Old
Bisbee-Erie St
Type of Work: Shared Use Path
Federal-aid No.: BIS-0(204)T
ADOT Project No.: T0413 01D/03D/01C
TIP/STIP No.: BIS23-01
CFDA No.: 20.205 - Highway Planning and
Construction
Budget Source Item No.: NA

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF BISBEE

THIS AGREEMENT (“Agreement”) is entered into this date January 22, 2024, 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” and are collectively referred to as the “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, 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 Local Agency is the successful recipient of a discretionary grant through the American Rescue Plan Act (ARPA) for construction of a Multi-Use Path (MUP) within the existing footprint of the State Route 80 (SR80) (the “Project”). The Project includes construction of a MUP from Erie Street to Queen Mine Tour entrance including reconfiguring SR 80 (1 travel lane in each direction and a two-way center turn lane), installation of approximately six foot wide, 42” tall median to separate the travel lanes from the MUP. This Project will connect to a separate MUP project being completed from the Queen Mine Tour entrance to Main Street which will complete the 1.43 mile MUP from downtown Bisbee to Erie St. The Local Agency will design, advertise, bid and award, and administer construction of the Project. The Local Agency will be responsible for all Project costs including but not limited to ADOT’s Project Development Administration (PDA) costs, design, utility relocations, right of way

easements, ADOT's construction administration (CA) costs, and construction. The Local Agency will be responsible for hiring a third-party firm to conduct the inspection and materials sampling and testing work. The estimated PDA cost of \$30,000.00 and estimated CA cost of \$40,000.00 will be paid by the Local Agency to the State. The Local Agency will be responsible for maintenance of the MUP and related infrastructure including the median barrier.

4. The foregoing Recitals 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. That they will 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.
 - b. The Local Agency will enter into a Grant Agreement (GA) through ARPA and provide a copy to ADOT.
 - c. The Local Agency will be responsible for any and all actual costs associated with or arising out of the Project, without limitation.
 - d. The Local Agency will adhere to A.R.S. § 28-6923.
 - e. The Local Agency will notify ADOT of any construction-related safety concerns that may affect the traveling public immediately upon discovery via the State's Traffic Operation Center and the Southeast District Office. The Local Agency will be responsible for installing temporary traffic control devices for the safety of the public as required for immediate response. Any safety features damaged due to construction activity, through installation, use or routine maintenance will be repaired immediately by the Local Agency. Any property in the area referenced by this Agreement, disturbed or damaged, will be restored or repaired in as good a condition as before such damage or disturbance by the Local Agency.
 - f. If ADOT determines that additional work is required, ADOT will provide the Local Agency with written notice of such additional work and the Parties will meet and agree upon the scope of the additional work. The Local Agency, through its contractor will perform the work as required by ADOT and agreed to by the Parties. In the event the Local Agency refuses to do the work, ADOT will perform the work and invoice the Local Agency for the cost. The Local Agency will make payment for these costs to the State within 30 days of receipt of an invoice.

PDA and construction administration costs of the Project within 30 days of receipt of an invoice.

- b. Hire a qualified consultant to prepare design plans, ensuring State design and construction standards and specifications are followed for the Project area within current and future State right of way provide specifications, cost estimates and other such documents required for the construction bidding and construction of the Project, including design plans and any other required; phase and incorporate design review comments from the State as appropriate.
- c. Prepare the necessary right of way, environmental, geotechnical, and utility reports for the Project to obtain necessary clearances for the design and to authorize the Project for construction.
- d. Submit to the State for review and approval: preliminary plans at Stage II (30%), Stage III (60%), Stage IV (95%); and the Stage V (100%) Sealed and Signed Package. All submittals shall include plans and cross sections, specifications and special provisions and itemized cost estimates. All submittals shall adhere to the requirements of the State Stage Deliverables Checklist provided as a reference on the State website and shall include all the appropriate reports. A Checklist must be included with every submittal as required by current State procedure requirements.
- e. All submittals shall be submitted by the Local Agency's design consultant based on a distribution list prepared by the State, Southeast District and the ADOT Project Manager. Incorporate State design review comments as mutually agreed upon.
- f. Attend a Comment Resolution Meeting after every submittal described above.
- g. Ensure that the designer and "Third-Party" contract administrator will provide all Project-related documents required for construction close out.
- h. Not adversely affect the safety, function, construction, operation, maintenance, or stability of the highway.
- i. Hire a contractor to construct the approved Project and make all payments to the contractor(s) under such contract(s).
- j. Coordinate the Local Agency's third party construction inspection services with ADOT's Southeast District inspector.
- k. After final acceptance of the Project, provide an electronic version of the record drawings to the ADOT Project Manager.
- l. Within the authority of the Local Agency not allow any encroachments or private use of the right of way. In the event of any unauthorized encroachment or improper use, the Local Agency shall immediately notify the ADOT Southeast District Permits Office and ADOT Douglas Maintenance Office.

- m. 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.
- n. Submit an encroachment permit application with all required documentation to the State's Southeast District Permit Office for the initial construction of the Project, separate encroachment permit applications for related pre-construction activities as needed, and an encroachment permit application for routine maintenance and emergency work. Provide appropriate insurance with each encroachment permit once, then annually for the maintenance and emergency work, to keep that permit valid. Notify the State's Southeast District Permit Office of any emergency maintenance work affecting the State right of way. Submit an encroachment permit application for any new construction or installation.
- o. After final inspection and acceptance of the Project, assume operation, and maintenance responsibilities, for the MUP and related infrastructure including the median barrier.
- p. Be responsible for the maintenance and electrical power for the Project, maintenance includes but is not limited to, replacement and/or repair of all damaged Project lighting equipment, including knockdowns, and maintenance of street and underdeck lighting.
- q. Perform maintenance and any structural and non-structural repairs of improvements, within the Project limits, ensuring that the maintenance and repairs are completed to the standards the improvements were designed and constructed to which are the ADOT design and construction standards and specifications. The areas and features of maintenance include, but are not limited to: pathways, sidewalks, curb and gutter, driveways, pedestrian access ramps, street surfaces, shoulders, median dividers of crossroads, pavers, screen and sound walls, and surface drainage features feeding into the State's drainage system including catch basins. Maintenance activities include but are not limited to: sweeping, crack sealing, removal of spills and debris, graffiti removal, repair of potholes, leveling and/or patching of asphalt concrete pavement with premix, pavement markings, seal coating of oxidized pavement, litter and trash removal, repair of the surface/base of damaged pavement presenting a safety hazard, cracking and/or buckling of sidewalk, homeless encampment cleanup, and landscape. The repairs or maintenance performed by the Local Agency shall not compromise the safety and structural stability of the State facilities.
- r. Comply with the latest edition Manual on Uniform Traffic Control Devices (MUTCD) published by the Federal Highway Administration (FHWA) and adopted by ADOT, as per A.R.S. § 28-641, when performing any work under this Agreement. Traffic Control plans will be processed through the State's Southeast District Permits Office.

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 and all related deposits and/or reimbursements are made. 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 canceled at any time up to 30 days before the award of the Project contract, so long as the canceling 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. Third Party Indemnification. The Local Agency shall require its contractors to indemnify, defend, and hold harmless the State from any and all Claims, demands, suits, actions, proceedings, loss, costs, and damages of every kind and description, including any attorneys' fees and litigation expenses that 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 contractor, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incident to the performance of the work, or arising out of Workmen's Compensation claims, Unemployment Compensation claims, or Unemployment Disability Compensation claims of employees of the contractor and/or its subcontractors, or Claims under similar such laws or obligations. The contractor's obligation under this subsection shall not extend to any liability to the extent caused by the negligence of the State, or its employees, except the obligation does apply to any negligence of the contractor that may be legally imputed to the State by virtue of its ownership or possession of land.
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 canceled in accordance with A.R.S. § 38-511.
10. 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.
11. Title VI. The Local Agency acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
12. 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 issued by the Governor of the State of Arizona and incorporated in this Agreement by reference regarding "Non-Discrimination."
13. 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.
14. 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.
15. E-Verify. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
16. Contractor Certifications. The City shall certify that all contractors comply with the applicable requirements of A.R.S. §§ 35-393.01 and A.R.S. 35-394.
17. Other Applicable Laws. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
18. 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
Phoenix, AZ 85007
JPABranch@azdot.gov

City of Bisbee
Attn: Steve Pauken
76 Erie Street
Bisbee, AZ 85603
520.432.6014
spauken@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: Steve Pauken
76 Erie Street
Bisbee, AZ 85603
520.432.6014
spauken@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: Steve Pauken
76 Erie Street
Bisbee, AZ 85603
520.432.6014
spauken@bisbeeaz.gov

For Maintenance Concerns:

Arizona Department of Transportation

City of Bisbee
Attn: Steve Pauken
76 Erie Street
Bisbee, AZ 85603
520.432.6014
spauken@bisbeeaz.gov

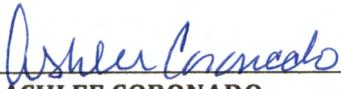
19. Revisions to Contacts. Any revisions to the names and addresses above may be updated administratively by either Party and shall be in writing.
 20. Legal Counsel Approval. In accordance with A.R.S. § 11-952 (D), the written determination of each Party's legal counsel providing that the Parties are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

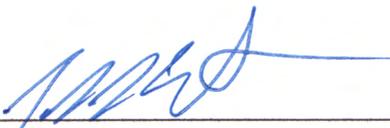
By  Date 1-16-24
KEN BUDGE
Mayor

ATTEST:

By  Date 1/16/24
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. § 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 1-16-24
City Attorney

ARIZONA DEPARTMENT OF TRANSPORTATION

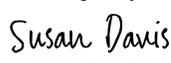
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 By _____ Date 1/20/2024
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STEVE BOSCHEN, PE
 Infrastructure Delivery and Operations Division
 Division Director

DocuSigned by:

 By _____ Date 1/21/2024
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BRENT A. CAIN, PE
 Transportation Systems Management and Operations Division
 Division Director

A.G. Contract No. P0012023000223 (ADOT IGA 22-0009019-I), 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. § 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 _____ Date 1/22/2024
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 Assistant Attorney General