

ADOT CAR No.: IGA 24-0009804-I
AG Contract No.: P0012024002037
Project Location/Name: SR 80; MP 341.45
- MP 341.53
Type of Work: Shared Use Path, West
Segment
Federal-aid No.: CDS -BIS-0(207)T
ADOT Project No.: T0621 01D/03D/01C/01R
TIP/STIP No.: BIS 24-03
CFDA No.: 20.205 - Highway Planning and
Construction
Budget Source Item No.:

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF BISBEE

THIS AGREEMENT ("Agreement") is entered into this date January 22, 2025, 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 City has received funding through Fiscal Year (FY) 2024 Allocation of Highway Infrastructure Programs (HIP) Congressionally Directed Spending Projects (Earmarks) for the work proposed under this Agreement which consists of completion of the west segment of the City of Bisbee shared multi-use path (MUP) within the existing footprint of the State Route 80 (SR 80), (the "Project"). The Project includes construction of the SUP located on SR 80 from Mile Post (MP) 341.45 to MP 341.53 (from the Queen Mine Tour to Old Bisbee under SR 80), including implementing a box culvert or other approved alternative from Main Street under SR 80 with connection to the east segment of the SUP at the Queen Mine Tour Entrance. The Project cost, shown in Exhibit A, is estimated at \$4,241,782, which includes federal aid and the Local Agency's match. The State will administer the design,

right of way acquisition; and advertise, bid and award, and administer construction of the Project.

4. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the Local Agency and authorization of such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the Local Agency for the Project, if the Project is approved by Federal Highway Administration (FHWA) and funds for the Project are available.
5. The foregoing Recitals and all Exhibits referred to herein and attached are 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. The Project will be completed, accepted, and paid for in accordance with the requirements of the Project plans and specifications.
 - b. The final Project cost estimate may exceed the initial estimate identified in Exhibit A, and in such case, the Local Agency is responsible for and agrees to pay the difference prior to bid advertisement. ADOT shall provide the Local Agency with written notice of any costs exceeding the initial estimate prior to such costs being incurred and obtain concurrence prior to continuing with the Project
 - c. 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 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 Local Agency acknowledges it remains responsible for actual costs and agrees to pay according to the terms of this Agreement.
 - d. The Local Agency and ADOT will each separately file a Notice of Intent (NOI) under the Construction General Permit (CGP) with the Arizona Department of Environmental Quality (ADEQ) before construction begins, if applicable to the Project.
 - e. The Project will be completed in accordance with the memorandum dated March 21, 2023 shown in Exhibit B.
2. The State will:
 - a. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the Local Agency's designated agent for the Project.

- b. After this Agreement is executed, and prior to performing or authorizing any work, invoice the Local Agency for the Local Agency's share of the initial Project Development Administration (PDA) costs, estimated at \$1,710, the Local Agency's share of the Project design costs, estimated at \$23,769, and the Local Agency's share of right-of-way acquisition costs, estimated at \$9,120. If 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 complete PDA for the Project. If design or right-of-way acquisition 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, design and right-of-way acquisition.
- c. After receipt of the PDA costs and the Local Agency's estimated share of the Project design and right-of-way acquisition costs, 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 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.
- d. 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 scoping/design. After receipt of FHWA authorization, proceed to 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 federal funds available it is understood and agreed that the Local Agency will be responsible for any overage. ADOT shall provide the Local Agency with written notice of any costs exceeding the maximum federal funds available prior to such costs being incurred and obtain concurrence prior to continuing with the Project.
- e. After completion of design and prior to bid advertisement, invoice the Local Agency for the actual PDA costs, as applicable, and the Local Agency's share of the Project construction costs, estimated at \$207,183. After the Project costs for construction are finalized, the State will either invoice or reimburse the Local Agency for the difference between estimated and actual costs. De-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.
- f. After receipt of the actual PDA costs, if applicable, and the Local Agency's estimated share of the Project construction costs, including the difference between the final and the initial construction cost estimates, if applicable, submit all required documentation to FHWA with the recommendation that the maximum federal funds programmed for construction of this Project be approved. Should costs exceed the maximum federal funds available, it is understood and agreed that the Local Agency will be responsible for any overage. ADOT shall provide the Local Agency with written notice of any costs

exceeding the maximum federal funds available prior to such costs being incurred and obtain concurrence prior to continuing with the Project.

- g. After receipt of FHWA authorization, proceed to advertise for, receive and open bids, award and enter into a contract with the firm for the construction of the Project. If the bid amounts exceed the construction cost estimate, obtain the Local Agency's concurrence and invoice the Local Agency for the difference between the construction cost estimate and the bid amount prior to awarding the contract.
 - h. Notify the Local Agency of completion and final acceptance of the Project. At such time, file a Notice of Termination (NOT) with ADEQ transferring CGP responsibilities to the Local Agency, and provide a copy to the Local Agency indicating that the State's maintenance responsibility of the Project is terminated, as applicable.
 - i. Notify the Local Agency of completion and final acceptance of the Project; coordinate with the Local Agency and turn over full responsibility of the Project improvements.
 - j. Not be obligated to maintain the Project, should the Local Agency fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.
 - k. Issue, in accordance with the established procedures of the State's Southeastern District Permit Office, a permit on a yearly basis for routine maintenance and emergency work. Routine maintenance and emergency work will be defined within the permit. Permits will be issued when appropriate insurance documents are provided as required by ADOT Risk Management.
3. The Local Agency will:
- a. Designate the State as the Local Agency's authorized agent for the Project.
 - b. Within 30 days of receipt of an invoice from the State, pay the Local Agency's share of the initial PDA costs, estimated at \$1,710, the Local Agency's share of Project design costs, estimated at \$23,769, and the Local Agency's share of right-of-way acquisition costs, estimated at \$9,120. 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, design, and right-of-way acquisition 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. After completion of design, within 30 days of receipt of an invoice from the State and prior to bid advertisement, pay to the State any outstanding PDA costs, the Local Agency's share of the Project construction costs, estimated at \$207,183, and if applicable, the difference between the final and initial construction cost estimates. Be responsible for and pay the difference between the estimated construction cost and Project bid amount prior to award. After Project completion, be responsible for and pay any outstanding Project costs, within 30 days of receipt of an invoice.

- e. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, that are not covered by federal funding. Should costs be deemed ineligible or exceed the maximum federal 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.
- f. 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.
- g. 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 it 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).
- h. 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.
- i. 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.
- j. 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 rights location for those utilities with prior rights.
- k. 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 and FHWA 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.

- l. After notification of final acceptance by the State, assume and maintain full responsibility of the Project, including Storm Water Pollution Prevention Plans (SWPPP) inspections, maintenance, and required documentation, until final stabilization is reached. Provide the NOI number to the State and the Contractor, accept CGP responsibilities at time of transfer, and file a NOT with ADEQ when final stabilization is reached, as applicable.
- m. After completion and final acceptance of the Project, agree to maintain and assume full responsibility of the Project and all Project components.
- n. Submit an encroachment permit application with all required documentation to the State's Southeastern District Permit Office 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 Southeastern 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. 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.
- p. 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.
- q. 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 State shall include Section 107.13 of the 2021 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated into this Agreement by reference, in the State's contract with any and all contractors, of which the Local Agency shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the Local Agency.
7. **Programmed Federal Funds.** The cost of scoping, design, construction and construction engineering work under this Agreement is to be covered by the federal funds

programmed for this Project, up to the maximum available. The Local Agency acknowledges that actual Project costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by FHWA as eligible for federal funds. Therefore, the Local Agency agrees to pay the difference between actual costs of the Project and the federal funds received.

8. Termination of Federal Funding. 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.
9. Indirect Costs. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.
10. 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. Termination of Federal Funding. 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.
11. Governing Law. This Agreement shall be governed by and construed in accordance with Arizona laws.
12. Conflicts of Interest. This Agreement may be canceled in accordance with A.R.S. § 38-511.
13. 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.
14. Title VI. The Local Agency acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
15. 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 in this Agreement by reference regarding "Non-Discrimination."
16. 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.

- 17. 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.
- 18. E-Verify. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
- 19. Contractor Certifications. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §§ 35-393.01 and 35-394.
- 20. Other Applicable Laws. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
- 21. 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
Stephen J. Pauken
76 Erie St
Bisbee, AZ 85603
520.432.6014
spauken@bisbeeaz.gov

For Project Administration:

Arizona Department of Transportation
Multimodal Planning Division
Attn: Mark Hoffman
1611 W Jackson St, MD 310B
Phoenix, AZ 85007
602.712.7454
mhoffman@azdot.gov

City of Bisbee
Stephen J. Pauken
76 Erie St
Bisbee, AZ 85603
520.432.6014
spauken@bisbeeaz.gov

For Financial Administration:

Arizona Department of Transportation
Multimodal Planning Division
Attn: Angela Estrada
1611 W Jackson St, MD 310B
Phoenix, AZ 85007
602.712.8316
aringorestrada@azdot.gov

City of Bisbee
Stephen J. Pauken
76 Erie St
Bisbee, AZ 85603
520.432.6014
spauken@bisbeeaz.gov

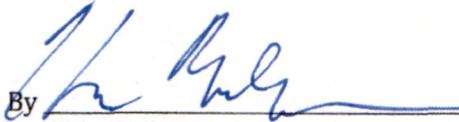
- 22. Revisions to Contacts. Any revisions to the names and addresses above may be updated administratively by either Party with written notice to the other Party.

23. 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.

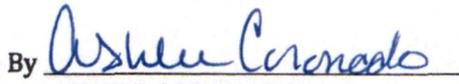
24. Electronic Signatures. This Agreement may be signed in an electronic format including DocuSign.

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 1-21-25
KEN BUDGE
Mayor

ATTEST:

By  Date 1-21-25
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.

By  Date 1-21-25
JOSEPH D. ESTES
City Attorney

ARIZONA DEPARTMENT OF TRANSPORTATION

DocuSigned by:
By  Date 1/22/2025
STEVE BOSCHEN, PE
Division Director

This 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.

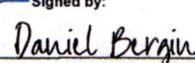
Signed by:
By  Date 1/22/2025
DANIEL BERGIN
Assistant Attorney General

EXHIBIT A
Cost Estimate

T0621 01D/03D/01C/01R

The Project costs are estimated as follows:

ADOT Project Development Administration (PDA):

| | |
|-----------------------------|-----------|
| Federal-aid funds @ 94.3% | \$ 28,290 |
| Local Agency's match @ 5.7% | 1,710 |
| | \$ 30,000 |

Scoping/Design:

| | |
|-----------------------------|------------|
| Federal-aid funds @ 94.3% | \$ 393,231 |
| Local Agency's match @ 5.7% | 23,769 |
| | \$ 417,000 |

Right-of-Way Acquisition:

| | |
|-----------------------------|------------|
| Federal-aid funds @ 94.3% | \$ 150,880 |
| Local Agency's match @ 5.7% | 9,120 |
| | \$ 160,000 |

Construction:*

| | |
|-----------------------------|--------------|
| Federal-aid funds @ 94.3% | \$3,427,599 |
| Local Agency's match @ 5.7% | 207,183 |
| | \$ 3,634,782 |

Estimated TOTAL Project Cost **\$ 4,241,782**

Total Estimated Local Agency Funds **\$ 241,782**
Total Federal Funds **\$4,000,000**

* (Includes a minimum 20% construction engineering (CE) and administration cost (this percentage is subject to change, any change will require concurrence from the Local Agency) and 5% Project contingencies)