

ADOT CAR No.: IGA /JPA 16-0005736-I  
AG Contract No.: P001 2016 0000744  
Project Name: SR 347-UPRR Grade  
Separation  
Project Location: SR 347 over UPRR  
**Federal-aid No.: 347-A(204)A**  
**ADOT Project No.: H7007 02D**  
**TIP/STIP No.: DOT15-420**  
**CFDA No.: 20.205 - Highway Planning  
and Construction**  
**Budget Source Item No.: 27715**

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF MARICOPA

**THIS AGREEMENT** is entered into this date \_\_\_\_\_, 2016, 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") and the CITY OF MARICOPA, 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 on behalf of the City.

3. The State will administer the design of a bridge on State Route (SR) 347 over the Union Pacific Railroad (UPRR) within the City, (the 'Project'). The design costs will include utility relocation and right-of-way acquisition necessary for the Project. As part of the Project, SR 347 will be realigned to install a bridge overpass over the Union Pacific Railroad (UPRR) and associated configuration of selected local streets for connectivity of various driveways and business accesses along the route. The State will obtain federal funds for the design costs associated with the Project. The construction and maintenance of the Project will be addressed in a future agreement. The City will contribute a total of **\$525,700.00** towards the design of the Project and will participate in the Cost Risk Assessment meeting on March 29-30, 2016 to refine the scope of work. ADOT will not be responsible for the design, construction, and relocation of the Amtrak Station.

4. The Parties will 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.

5. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications

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

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## **I. SCOPE OF WORK**

### 1. The State will:

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

b. Upon execution of this Agreement, invoice the City in the amount of **\$525,700.00** for the estimated costs associated with the design of the Project. Should costs exceed the initial estimate, the State will be responsible for 79.1% of any additional costs associated with the design of the Project.

c. Submit all documentation required to FHWA pertaining to the Project with the recommendation that funding be approved for design, and request the maximum programmed federal funds for the design of the Project. Upon authorization, proceed to advertise for and enter into contract(s) with the consultant(s) for the design and post design of the Project.

d. On behalf of the City, prepare and provide all pertaining documents for the design of the Project; review and approve documents required by FHWA to qualify certain projects for and to receive federal funds, incorporating comments from the City, as appropriate. Such work may consist of, but is not specifically limited to, the preparation of environmental documents; the analysis and documentation of environmental categorical exclusion determinations; geologic materials testing and analysis; right-of-way related activities; preparation of reports, design plans, maps, specifications; cost estimates; and such other related tasks essential to the achievement of the objectives of this Agreement.

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

### 2. The City will:

a. Upon execution of this Agreement, designate the State as the authorized agent for the City, for purposes of this Project only.

b. Upon execution of this Agreement and within thirty (30) days of receipt of an invoice from the State, remit to the State **\$525,700.00** for the costs associated with the Project. Should costs exceed the initial estimate, be responsible for 20.9% of any additional costs associated with the design of the Project.

c. Review the design documents required for construction of the Project and provide comments to the State as appropriate.

d. Be responsible for 20.9% of 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 City is responsible for 20.9% of these costs; payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

## **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and all reimbursements provided herein. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon 30 days written notice to the other party. It is further understood and agreed that, in the event City cancels this Agreement, the State shall have no other obligation to continue with the Project.

2. The City shall indemnify, defend, and hold harmless the State, any of its departments, agencies, 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 City, 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 City'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 City which may be legally imputed to the State by virtue of the State's ownership or possession of land. The City's obligations under this paragraph shall survive the termination of this Agreement.

3. The State shall include Section 107.13 of the 2008 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated to this Agreement by reference, in the State's contract with any and all contractors, of which the City shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the City.

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

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

6. 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.

7. 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.

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

9. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

10. 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 09-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

11. 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.

12. 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.

13. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401 and Title 34 of the Arizona Revised Statutes.

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

15. 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. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, Arizona 85007  
(602) 712-7124  
(602) 712-3132 Fax

City of Maricopa  
Attn: Gregory E. Rose  
39700 W Civic Center Plaza  
Maricopa, AZ 85138  
(520) 316-6811  
(520) 316-6803

16. 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.

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**IN WITNESS WHEREOF**, the Parties have executed this Agreement the day and year first above written.

**CITY OF MARICOPA**

**STATE OF ARIZONA**  
Department of Transportation

By \_\_\_\_\_  
**CHRISTIAN PRICE**  
Mayor

By \_\_\_\_\_  
**STEVE BOSCHEN, P.E.**  
ITD Director

ATTEST:

By \_\_\_\_\_  
**VANESSA BUERAS**  
City Clerk

**ATTORNEY APPROVAL FORM FOR THE CITY OF MARICOPA**

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 MARICOPA, 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 \_\_\_\_\_, 2016.

\_\_\_\_\_  
City Attorney