

ADOT CAR No.: IGA /JPA 16-0005959-I
AG Contract No.: P001 2016 002192
Project Location/Name: SR 347 at Union
Pacific Railroad
Type of Work: Construct railroad overpass
Federal-aid No.: 347-A(204)A
ADOT Project No.: H7007 01C
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 _____, 2017, 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 design, advertise, bid, award and administer the construction of a bridge on State Route (SR) 347 over the Union Pacific Railroad (UPRR) within the City, hereinafter referred to as the "Project". As part of the Project, SR 347 will be realigned to install a bridge overpass over the 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 construction costs associated with the Project. The City has contributed \$500,000.00 towards the Design Concept Report (DCR) under agreement JPA 10-159 and \$525,700.00 towards the design of the Project under JPA 16-0005736. The City has incurred costs associated with the Amtrak station relocation; the City has paid RailPros, Makpro and Marshall RR for these costs. The City will provide all invoices and backup documentation to ADOT for review and approval; the total approved costs will be deducted from the City's contribution of **\$13,972,300.00** for the construction of the Project.

4. The State will, by Resolution, bring into the State system the necessary rights-of-way needed for the Project. After final acceptance of the Project, the State will abandon ownership, jurisdiction, and maintenance responsibilities as depicted in Exhibit A, with the approval of the State Transportation Board. The City agrees to waive the requirements of Arizona Revised Statutes § 28-7209. ADOT will not be responsible for the design, construction, and relocation of the Amtrak Station.
5. The City, in order to obtain federal funds for the construction of the Project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA.
6. 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.
7. 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:

II. SCOPE OF WORK

1. The State will:
 - a. Execute this Agreement and be the designated agent for the City, for the Project, in order to acquire funds, as approved by FHWA.
 - b. Execute this Agreement, and prior to performing or authorizing any work, review and approve costs incurred and paid for by the City associated with the relocation of the Amtrak station. Invoice the City for the City's share of construction costs of **\$13,972,300.00**, minus ADOT reviewed and approved costs incurred for the relocation of the Amtrak station. Should costs exceed the initial estimate, the State will be responsible for 73% of additional costs associated with the construction of the Project.
 - c. After signing and execution of this Agreement, by Resolution of the State's Transportation Board, bring into the State system the necessary rights-of-way needed for the Project.
 - d. Provide 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; incorporate design review comments from the City as appropriate.
 - e. After receipt of the City's estimated share of the Project construction costs, 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, invoice the City 27% of any overages.

- f. With FHWA authorization, proceed to administer construction, 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 City concurrence prior to awarding the contract. Once awarded, invoice the City for the difference between estimated and actual costs, if applicable.
- g. 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.
- h. After final acceptance of the Project, with approval by Resolution of the State's Transportation Board, abandon and transfer ownership, jurisdiction, and maintenance responsibilities of the location depicted in Exhibit A.
- i. After acceptance by the City of ownership, jurisdiction, and maintenance responsibilities of the location depicted in Exhibit A, be granted continued right of entry approval to access crossroads as necessary to perform landscape establishment and/or right-of-way monumentation.
- j. Be generally responsible for facilities within the State's right-of-way limits as shown in Exhibit A including the construction, reconstruction, major rehabilitation and/or betterments, of the roadways, curbs, gutters, sidewalks, medians, drainage facilities, walls, bridge structures, lights, signals and other roadway-related facilities. The following items are excluded from the State's maintenance responsibilities: existing Maricopa-Casa Grande Highway under the new SR 347 bridge structure; landscaping; irrigation; electrical costs associated with the irrigation; electrical costs associated with signals at: Alterra Parkway; Honeycutt Avenue; Honeycutt Road; and Hathaway; maintenance of SR 347

2. The City will:

- a. Designate the State as the authorized agent for the City for the Project, in order to be eligible for federal funds, as approved by FHWA.
- b. Abandon ownership, jurisdiction, and maintenance responsibilities of the locations depicted in Exhibit A to the State, with the approval of the State Transportation Board.
- c. Provide all invoices and backup documentation from RailPros, Makpro, and Marshall RR for costs incurred associated with the relocation of the Amtrak station for ADOT for review and approval.
- 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, the City's share of Project construction costs, estimated at **\$13,972,300.00**, minus ADOT reviewed and approved costs for the relocation of the Amtrak station. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

- e. Be responsible for 27% of all costs incurred in performing and accomplishing the work as set forth under this Agreement that are not covered by federal funds. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the City is responsible for 27% of these costs; payment for these costs shall be made within 30 days of receipt of an invoice from the State.
- f. Not 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 City shall take all necessary steps to remove or prevent any such encroachment or use.
- g. 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 preconstruction related activities, including without limitation, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.
- h. Investigate and document utilities within the Project limits; submit findings to ADOT determining prior rights or no prior rights; approve an easement within the final right-of-way to re-establish the prior right location for those utilities with prior rights.
- i. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any City 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 City. Payment for these costs will be made to the State within 30 days of receipt of an invoice from the State.
- j. Request and maintain, per established procedures of the State's Central District Permit Office, a valid blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance work provided by the City within the State's rights-of-way. Agree to obtain separate permits for any new construction and/or installations in accordance with the Central District established procedures. The City agrees all activities performed by the under this Agreement shall be set forth in and covered by the appropriate Encroachment Permit.
- k. Waive the requirements of Arizona Revised Statutes Section § 28-7209.
- l. After final acceptance of the Project by the State and approval by Resolution of the State's Transportation Board, accept ownership and jurisdiction, responsibilities of the locations depicted in Exhibit A and maintenance responsibilities depicted in Exhibit B.
- m. After acceptance of ownership, jurisdiction, and maintenance responsibilities, continue to grant the State, its agents and/or contractors, without cost, right of entry approval to access crossroads, to perform landscape establishment and/or right-of-way monumentation.
- n. Be responsible for paying the electrical bills associated with the signals at the following locations: Alterra Parkway; Honeycutt Avenue; Honeycutt Road; and Hathaway.

- i. Upon notification of Project completion, be responsible for maintaining the facilities within the City's right-of-way limits and those areas identified in Exhibit B as being the City's responsibility. Additionally maintain existing Maricopa-Casa Grande Highway under the new SR 347 bridge structure; all landscaping and irrigation (including the electrical costs associated with the irrigation) within the State right-of-way as shown on Exhibit A.

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 related deposits and/or reimbursements are made. Any provisions for maintenance shall be perpetual, unless assumed by another competent entity. This Agreement may be cancelled at any time prior to the award of the Project contract and after 30 days written notice to the other Party. It is understood and agreed that, in the event the City terminates this Agreement, the City 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 City terminates this Agreement, the State shall in no way be obligated to complete or maintain 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. The cost of 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 City 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 City agrees to pay 27% of the difference between actual costs of the Project and the federal funds received.
5. 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.

6. The cost of the Project under this Agreement includes indirect costs approved by the FHWA, as applicable.
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. The City acknowledges compliance with federal laws and regulations and may be subject to the CODE OF FEDERAL REGULATIONS, TITLE 2, PART 200 (also known as The Uniform Grant Guidance). Entities that expend \$750,000.00 or more (on or after 12/26/14) of federal assistance (federal funds, federal grants, or federal awards) are required to comply by having an independent audit in accordance with §200.331 Subpart F. Either an electronic or hardcopy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine months of the sub recipient fiscal year end.
ADOT – FMS
Attn: Cost Accounting Administrator
206 S 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
SingleAudit@azdot.gov
9. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.
10. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
11. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.
12. 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".
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. 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.

- 15. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.
- 16. The Parties shall comply with the applicable requirements of Arizona Revised Statutes §35-393.01.
- 17. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended. Notwithstanding any laws, rules, regulations, or ordinance to the contrary, the City will be responsible for all maintenance of the area described in Exhibit A attached hereto.
- 18. 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:

For Agreement Administration:

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

For Project Administration:

Arizona Department of Transportation
Project Management Group
205 S. 17th Avenue
Phoenix, Arizona 85007
(602) 712-8683

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

For Finance Administration:

Arizona Department of Transportation
Project Management Group
205 S. 17th Avenue
Phoenix, Arizona 85007
(602) 712-8683

City of Maricopa
Attn: Brenda Hasler
39700 W Civic Center Plaza
Maricopa, AZ 85138
(520) 316-6854

- 19. 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.
Division Director

ATTEST:

By _____
VANESSA BUERAS
City Clerk

DRAFT

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 _____, 2017.

City Attorney