

**RESOLUTION 18-2010**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION AND AUTHORIZING \$70,000 TO BE SPENT FROM THE CITY'S WATER DEVELOPMENT FEES**

WHEREAS, the Arizona Department of Transportation(ADOT) is planning a construction project to re-align and rebuild I-10 at the traffic interchange at SR 90; and

WHEREAS, the City Engineer recommends including as an element of this project 18-inch steel sleeves that will allow the City to install and locate water lines under I-10; and

WHEREAS, ADOT is amenable to include this additional element as part of the traffic interchange project so long as the City reimburses ADOT for the cost of the sleeves plus ADOT's project management mark-up, totaling approximately \$67,000; and

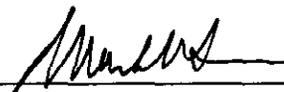
WHEREAS, the City's water system will benefit from this project by locating a water main under I-10 to connect two parts of the City's water system that currently lack connection, thereby increasing system-wide functionality and reliability; and

WHEREAS, the City's water development fee account is the appropriate source from which to pay for this capital improvement to the City's water system.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Council of the City of Benson, Arizona that:

1. The Intergovernmental Agreement with ADOT for the construction of a traffic interchange on I-10 at SR-90, attached hereto as Exhibit A, is hereby approved.
2. Up to \$70,000 of the City's water development fees fund is authorized to be expended on construction of steel sleeves under I-10 as part of this project.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA, this 8th day of March, 2010.

  
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MARK M. FENN, Mayor

ATTEST:

  
\_\_\_\_\_  
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
MICHAEL V. MASSEE, City Attorney

ADOT File No.: IGA/JPA 02-216-I  
AG Contract No.: P001 2009 000744  
Project: Maintenance for TI  
Improvements  
Section: SR 90/I-10  
TRACS No.: H6504 01C  
Budget Source Item No.: 10106 and  
City funding

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF BENSON

**THIS AGREEMENT** is entered into this date March 8, 2010, 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 BENSON, 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. Incident to the State's project of implementing widening and safety improvements at the SR 90/I-10 Traffic Interchange (TI), the State and City agree to participate in the operation and maintenance of the new traffic signal and any related lighting, TI illumination, pedestrian and aesthetic enhancements. In addition, the City will pay for the installation of approximately 900 LF of 18" steel sleeves, currently estimated at \$67,000.00, collectively hereinafter referred to as the "Project." The pedestrian facilities include sidewalks and Americans with Disabilities (ADA) ramps. The TI aesthetic enhancements consist of images of flora and fauna etched on tiles and embossed figures in the concrete surfaces (using form liners).
4. The Parties hereto agree to and acknowledge the following conditions: a) the estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; b) the Parties shall perform their responsibilities consistent with this Agreement; and c) any change or modification to the Project will only occur with the mutual written consent of both Parties.

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

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## **II. SCOPE OF WORK**

### **1. The State will:**

a. Prepare and provide design plans, specifications and other such documents and services required for construction bidding and construction of the Project, and submit any portions to the City for review, as appropriate.

b. Administer the advertisement for and construction of the State's project, including the construction of the traffic signal system, aesthetic improvements and pedestrian facilities.

c. Be responsible for the operation and maintenance of the traffic signal system and any related lighting, including emergency repairs, replacement batteries for the UPS system and routine inspection and testing.

d. Be responsible for the operation and maintenance of the lighting system to illuminate the TI (including sidewalks and ramps), including routine lamp replacement. Maintenance responsibilities include both underground and above ground features.

e. Upon execution of this Agreement, invoice the City for its share of the Project for the installation of approximately 900 LF of 18" steel sleeves, currently estimated at \$67,000.00, including construction administration and contingency fees, in addition to overhead charges as approved by a cognizant Federal agency. Either reimburse or invoice the City for the difference between estimated and actual costs for this **bid item # 50190008 PIPE (18" Steel Sleeve)**.

f. Invoice the City for any costs attributable to any engineering change orders requested by the City.

### **2. The City will:**

a. Review the design documents required for construction of the Project, and provide comments to the State as appropriate. All costs attributable to any engineering change orders requested by the City shall be the sole responsibility of the City. Remit payment to the State for said costs within thirty (30) days of receipt of invoice.

b. Upon completion and acceptance of the State's project and on behalf of the Parties herein, be responsible for the electrical energy costs to operate the signal, related lighting and TI illumination, at the City's expense.

c. Upon completion and acceptance of the State's related project and on behalf of the Parties herein, provide any maintenance and repair of sidewalks and ADA ramps at TI. Also maintain aesthetic enhancements at TI, including, but not limited to, routine cleaning and removal of graffiti.

d. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through-traffic. All traffic control will meet the requirements of the most recent Arizona Department of Transportation's Manual of Uniform Traffic Control Devices "MUTCD." The City will obtain an encroachment permit from the ADOT Safford District prior to performing any maintenance activities at the TI.

e. Upon execution of this Agreement and prior to bid advertising, remit its share of Project costs to the State within thirty (30) days of receipt of invoice. This amount is currently estimated at \$67,000.00 as outlined in paragraph II.1.e of this Agreement.

### **III. MISCELLANEOUS PROVISIONS**

1. This Agreement shall remain in full force and effect; provided, however, that any provisions in this Agreement for electrical power and maintenance shall be perpetual for each party, unless assumed by another governmental entity. Either party may cancel this Agreement upon a thirty-day (30) written notice to the other party. The State will not be obligated to maintain the designated elements if the City fails to fulfill its obligations. Should payment for the City's requested improvements not be received from the City prior to bid advertising, the State shall further determine the inclusion of such improvements in said Project.

2. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or other expenses (including, but not limited to, reasonable attorneys' fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death), property damage and any other claims (including, but not limited to, claims of derivative or vicarious liability), which are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

Each party hereby further agrees to cause any contractors if any, to indemnify, defend, save and hold harmless the State of Arizona and the City of Benson, or any agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of either the State of Arizona's or City of Benson's contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

Insurance shall be requested of such contractor upon execution of a valid encroachment permit.

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

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

5. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

6. 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.

7. 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 Benson  
Attn: Public Works Department  
PO Box 2223  
Benson, Arizona 85602  
(520) 586-2245  
(520) 586-3375 Fax

8. 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 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment 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.

10. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The City warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes § 23-214, Subsection A.

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the City may be subject to penalties up to and including termination of the Agreement.

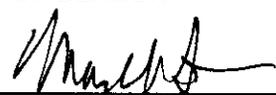
c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the City or subcontractor is complying with the warranty under paragraph (a).

11. Pursuant to Arizona Revised Statutes § 35-391.06 and § 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in Arizona Revised Statutes § 35-391 and/or § 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

12. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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

**CITY OF BENSON**

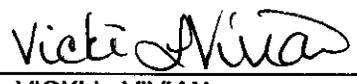
By   
MARK M. FENN  
Mayor

**STATE OF ARIZONA**

Department of Transportation

By \_\_\_\_\_  
DALLAS HAMMIT, P.E.  
Deputy State Engineer, Operations

**ATTEST:**

By   
VICKI L. VIVIAN  
City Clerk

Initial Draft 1/14/10 ghc  
District and Risk Management Input 1/25/10  
Draft 2 revisions 2/19/10 ghc  
ADOT comments 2/25/10

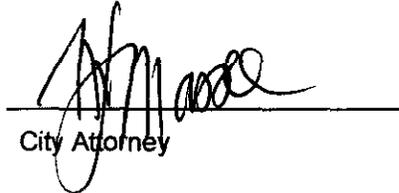
JPA 09-216-I

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

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 BENSON, 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 3<sup>rd</sup> day of March, 2010.

  
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City Attorney