

ADOT CAR No.: IGA /JPA 13-0003166-I
AG Contract No.: P001 2013 000xxx
Project: State Route (SR) 303L Landscaping
Maintenance & Construction
Section: Thomas Road to Camelback Road
Federal-aid No.: 303-A(221)A
ADOT Project No.: H8504 01C
TIP/STIP No.: DOT13-140
CFDA No.: 20.205 - Highway Planning
and Construction
Budget Source Item No.: 44913

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GOODYEAR

THIS AGREEMENT is entered into this date _____, 2014, 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 GOODYEAR, acting by and through its MAYOR (the "City"). The State and the City are collectively referred to as the "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 §§ 11-952 and 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 design and construct a project to add landscaping to the existing roadway along State Route (SR) 303L, between Thomas Road and Camelback Road (milepost 105.6-107.6), hereinafter referred to as the "Project". The purpose of this Agreement is to define each Party's responsibility related to maintenance of the Project as depicted in the Landscape Maintenance Exhibit, attached hereto and made a part hereof.
4. The Parties hereto agree to and acknowledge the following conditions: the Parties shall 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.

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

II. SCOPE OF WORK

1. The State will:

a. Prepare to state standards design plans, specifications and other such documents and services ("Project Documents") required for the bidding and construction of the landscape and irrigation Project. Submit same to the City for the City's concurrence.

b. Upon receipt of the City's concurrence of the Project Documents, advertise for bids and award one or more construction contracts for the Project. Administer the contract(s) and make all payments to the contractor(s). Be responsible for any contractor claims for additional compensation caused by or attributable to the State

c. Use color coded irrigation pipe and boxes to indicate the City's intent for future reclaimed water.

d. Provide decomposed granite, plants and/or seeding in the areas designated to be maintained by the City and shown on the Landscape Maintenance Exhibit, attached hereto and made a part hereof.

e. Cause its contractor to be responsible for water use over and above the maximum amounts designated in the Special Provisions, during construction of the Project and warranty periods only.

f. Allow the City to switch over the water lines for reclaimed and/or remediated water as mentioned in paragraph II.2.d.

g. Pay for the City and ADOT service meters, through its contractor.

h. Upon completion of the Project's construction and during the contractor's maintenance and warranty period, be responsible, through its contractor, for maintenance of the landscaping, landform graphics, and the irrigation and electrical systems.

i. Upon completion of the Project, perform the final inspection and notify the City in writing that the Project has been constructed in accordance with the Project documents and has been satisfactorily completed.

j. At the conclusion of the contractor's maintenance and warranty period, referred to in the construction contract as the Landscape Establishment Phase, assume responsibility for maintenance of landscaping, landform graphics, and pay for irrigation system electric, including all testing adjusting, repairing and operation of the irrigation system in the areas designated for the State to maintain on the attached Landscape Maintenance Exhibit.

k. Landscape maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying pesticides to combat diseases and other pests, pruning and replanting as required to maintain the landscaping.

l. Grant or confirm, per established procedures of the State's Phoenix Maintenance District Permit Office, that the City has a valid annual city-wide Blanket Permit on file, for routine/normal landscape maintenance and emergency maintenance work provided by the City within the State's rights of way. Agree any new construction or installation shall require a separate permit through the State's Phoenix Maintenance District Permit Supervisor, as per the Phoenix Maintenance District's established procedures.

m. Not be obligated to maintain the specified City portions of said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

n. 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.

2. The City will:

a. Review the design documents required for construction of the Project and provide comments to the State as appropriate. Be responsible for any contractor claims for additional compensation caused by or attributable to the City.

b. Furnish and install necessary water services from the water mains to the State's point of connection (POC) within the State's right-of-way, at the State's expense. The City will authorize and pay or waive any water development fees. (The State does not pay for line extensions).

c. Furnish all potable or reclaimed water at the design pressures stated in the design plans, to the maximum extent possible for landscape installation during the construction phase, and all water, thereafter necessary to properly maintain the landscape, at City's expense.

d. Agree to bear all costs of switching over the water lines for reclaimed and/or remediated water in the future for the landscaping. When the water lines switch over to reclaimed or remediated water, the water pressure range and volume will be consistent with the design parameters required for the landscaping. Reclaimed and/or remediated water shall be treated as required to ensure horticultural suitability as determined by the State.

e. Be responsible for all associated costs to incorporate the reclaimed and remediated water for the Project. Be responsible for operational and maintenance costs of the reclaimed and remediated water system which includes but not limited to; booster-pumps, filters, and other reclaimed/remediated features. Be responsible for repairing any disturbance of existing landscaping including but not limited to vegetation, decomposed granite, rock mulch, landform graphics and existing irrigation.

f. At the conclusion of the contractor's maintenance and warranty period, referred to in the construction contract as the Landscaping Establishment Phase, assume responsibility for maintenance of landscaping, landform graphics, decomposed granite and/or seeding including all testing adjusting repairing and operation of the irrigation system in areas designated for the City on the attached Landscape Maintenance Exhibit. At this time, the City shall assume responsibility of paying for the irrigation system electrical power necessary to operate the City's irrigation controllers and if applicable any booster pumps.

g. Landscape maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying pesticides to combat diseases and other pests, pruning and replanting as required to maintain the landscaping.

h. Obtain, per established procedures of the State's Phoenix Maintenance District Permit Office, a valid annual city-wide Blanket Permit for the routine/normal maintenance and emergency maintenance work provided by the City within the State's rights-of-way. Comply with all applicable permit and Certificate of Insurance requirements. Agree that any new construction or installation shall require a separate permit as per the Phoenix Maintenance District's established procedures, of which may be obtained through the Phoenix Maintenance District Office referenced herein.

i. Comply with the 2009 Manual on Uniform Traffic Control Devices (MUTCD) (or latest edition) as published by the Federal Highway Administration (FHWA) and the current Arizona Supplement, as per Arizona Revised Statutes § 28-641, during all maintenance operations conducted by the City on State highway rights-of-way. Traffic Control plans will be reviewed and/or approved by and through the Arizona Department of Transportation (ADOT), Phoenix Maintenance District Permits Office.

j. Not permit or allow any encroachments upon or private use of the public 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.

k. Hereby grant to 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 for the Project, including without limitation, temporary construction easements or temporary rights of entry on, to and over City's rights-of-way.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project, which shall include the contractor's maintenance and warranty period and related deposits and/or reimbursements. Any provisions for water, electrical services and/or landscaping maintenance shall be perpetual by the City and the State in accordance with the Landscape Maintenance Exhibit. Further, this Agreement may be cancelled at any time prior to advertisement of the Project construction contract, upon thirty (30) days written notice to the other Party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain the Project.

2. The Parties to this Agreement agree that the State of Arizona shall be indemnified and held harmless by the City for the vicarious liability of the State as a result of entering into this Agreement. Each Party to this contract is responsible for its own negligence.

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

4. The cost of the Project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (FHWA).

5. The State warrants compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). If applicable the City warrants compliance with 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.

6. The City acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend \$500,000.00 or more (prior to 12/26/14) and \$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. Either an electronic or hardcopy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services.

ADOT – FMS
Attn: Cost Accounting Administrator
206 S 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
SingleAudit@azdot.gov

7. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
8. To the extent applicable under law, the provisions set forth in Arizona Revised Statute §§ 35-214 and 35-215 shall apply to this Agreement.
9. 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".
10. Non-Availability of Funds: Every obligation of the State and the City 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 or the City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised, and the State or the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.
11. 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.
12. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401 and Title 34 of the Arizona Revised Statutes.
13. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
14. 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 | City of Goodyear |
| Joint Project Administration | Attn: Keith Brown |
| 205 S. 17 th Avenue, Mail Drop 637E | 190 N Litchfield Rd |
| Phoenix, Arizona 85007 | Goodyear, AZ 85338 |
| (602) 712-7124 | Phone |
| (602) 712-3132 Fax | Fax |
15. 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.
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IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

CITY OF GOODYEAR

STATE OF ARIZONA

Department of Transportation

By _____
GEORGIA LORD
Mayor

By _____
DALLAS HAMMIT, P.E.
Senior Deputy State Engineer, Development

ATTEST:

By _____
MAUREEN SCOTT
City Clerk

ATTORNEY APPROVAL FORM FOR THE CITY OF GOODYEAR

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 GOODYEAR, 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 _____, 2014.

City Attorney