

ADOT File No.: IGA/ JPA.: 15-0005194-I
Amendment No. Two: 19-0007239-I
AG Contract No.: P001 2015001096
Project Location/Name: Winchester Rd.,
16th Ave.- Southern Ave.
Type of Work: Sidewalk Connections
Federal-aid No.: APJ-0(212)T
ADOT Project No.: SZ183 01D/03D/01C
TIP/STIP No.: APJ 15-441D
CFDA No.: 20.205 - Highway Planning and
Construction
Budget Source Item No.: N/A

**AMENDMENT NO. TWO
TO
INTERGOVERNMENTAL AGREEMENT**

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF APACHE JUNCTION

THIS AMENDMENT NO. TWO to INTERGOVERNMENTAL AGREEMENT (the “Amendment No. Two”), is entered into this date _____, pursuant to 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 APACHE JUNCTION, acting by and through its MAYOR and CITY COUNCIL (the “City”). The State and the City are collectively referred to as the “Parties.”

WHEREAS, the INTERGOVERNMENTAL AGREEMENT, IGA/JPA 15-0005194-I, A.G. Contract No. P001 2015 001096, was executed on May 14, 2015, (the “Original Agreement”); and IGA/JPA 15-0005194-I Amendment No. One, executed on April 9, 2018, (the “Amendment No. One”);

WHEREAS, the State is empowered by A.R.S § 28-401 to enter into this Amendment No. Two and has delegated to the undersigned the authority to execute this Amendment No. Two on behalf of the State;

WHEREAS, the City is empowered by A.R.S § 48-572 to enter into this Amendment No. Two and has by resolution, a copy of which is attached and made a part of, resolved to enter into this Amendment No. Two and has authorized the undersigned to execute this Amendment No. Two on behalf of the City; and

NOW THEREFORE, in consideration of the mutual terms expressed herein, the purpose of this Amendment No. Two is to revise Project costs. The Parties desire to amend the Original Agreement and Amendment No. One, as follows:

I. RECITALS

Section I, Paragraph 7. is revised, as follows:

7. The federal funds will be used for the scoping/design and construction of the Project, including the construction engineering and administration cost ("CE"). The estimated Project costs are as follows:

SZ183 01D (ADOT Project Development Administration (PDA) Cost, non-federal-aid):

PDA Costs	\$ 10,000.00
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SZ183 03D (scoping/design):

Federal-aid funds @ 94.3%	\$ 169,740.00
City's match @ 5.7%	<u>\$ 10,260.00</u>

Subtotal – Scoping/Design*	\$ 180,000.00
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SZ183 01C (construction):

Federal-aid funds @ 94.3%	\$ 2,435,203.00
City's match @ 5.7%	<u>\$ 147,197.00</u>

Subtotal – Construction**	\$ 2,582,400.00
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Estimated TOTAL Project Cost	\$ 2,762,400.00
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Summary:

Total Estimated City Funds	\$ 157,457.00
Total Federal Funds	\$ 2,604,943.00

* (Includes ADOT Project Development Administration costs)

** (Includes 15% CE and 5% Project contingencies)

The Parties acknowledge that the final Project costs may exceed the initial estimate(s) shown above, and in such case, the City is responsible for, and agrees to pay, any and all, actual costs exceeding the initial estimate. If the final bid 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 City acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all actual costs exceeding the final bid amount.

The City has been approved to receive additional federal-aid for the construction phase of this Project. Consistent with the Original Agreement and Amendment No. One, the City has been invoiced and paid \$10,000.00 for PDA costs, \$10,260.00 for design costs, and \$305,087.00 toward construction for a total of \$325,347.00. The City's revised estimated share for construction is \$147,197.00. The State has received an overpayment of \$157,890.00 from City; of this overpayment, \$9,972.00 will be used to pay for additional PDA and design costs. After the Project costs are finalized, the State will either invoice or

reimburse the City for the difference between actual costs and the amount the City has already paid.

II. SCOPE OF WORK

(NO CHANGES)

III. MISCELLANEOUS PROVISIONS

Section III, Paragraph 18. is revised, and 20. Is added as follows:

18. The Parties shall ensure that all contractors comply with the applicable requirements of A.R.S §35-393.01.¹
20. 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.

EXCEPT AS AMENDED, ALL OTHER terms and conditions of the Original Agreement and Amendment No. One remain in full force and effect.

¹ In *Jordahl v. Brnovich et al.*, Case No. 3:17-cv-08263 (D. Ariz.), the U.S. District Court entered a preliminary injunction that enjoins the State from enforcing A.R.S. § 35-393.01(A) (the "Anti-Israel Boycott Provision"). That statute states that: "[a] public entity may not enter into a contract with a company to acquire or dispose of services, supplies, information technology or construction unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel." Unless and until the District Court's injunction in *Jordahl* is stayed or lifted, the Anti-Israel Boycott Provision (A.R.S. § 35-393.01(A)) is unenforceable and the State will take no action to enforce it.

THIS AMENDMENT NO. TWO shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

IN ACCORDANCE WITH A.R.S § 11-952 (D) attached and incorporated in this Amendment No. Two 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 Amendment No. Two and that the Amendment No. Two is in proper form.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. Two the day and year first above written.

CITY OF APACHE JUNCTION

STATE OF ARIZONA
Department of Transportation

By _____
JEFF SERDY
Mayor

By _____
STEVE BOSCHEN, PE
Division Director

ATTEST:

By _____
KATHY CONNELLY
City Clerk

ATTORNEY APPROVAL FORM FOR THE CITY OF APACHE JUNCTION

I have reviewed the above referenced Amendment No. Two to the Original Agreement and Amendment No. One between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF APACHE JUNCTION, an agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 11-951 through 11-954 and declare this Amendment No. Two 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 Amendment No. Two.

DATED this _____ day of _____, 2019.

City Attorney