

ADOT CAR No.: IGA /JPA 17-0006450-I
AG Contract No.: P001 2017 002584
Project Name: Bridge Inspection
ADOT Project No.: MAINTAGR
CFDA No.: 20.205
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF PHOENIX

THIS AGREEMENT is entered this date July 27, 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 PHOENIX, 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 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 and has authorized the undersigned to execute this Agreement on behalf of the City.
3. By order of 23 United States Code 151, the Federal Highway Administration (FHWA) in coordination with the American Association of State Highway and Transportation Officials (AASHTO) has implemented bridge inspection standards under 23 Code of Federal Regulations 650 subpart C, the National Bridge Inspection Standards (NBIS). The NBIS requires that the State must inspect, or cause to be inspected, all highway bridges located on public roads, with some exceptions. The NBIS outlines requirements for inspection frequency and procedures that each State must follow, including routine, in-depth, underwater and fracture critical member inspections, load rating, and scour plans of action. Compliance with the NBIS is a required component to be eligible for Federal-Aid Highway Bridge funding.
4. A local agency has the authority to perform NBIS inspection on its Public bridges. Currently, some local agencies throughout the State perform such inspections and are required to comply with NBIS. This agreement does not preclude a local agency from requesting to perform NBIS inspections on its public bridges.
5. The Parties wish to promote consistent inspection methodologies throughout the State.

6. The State will cover the cost of the City owned bridge inspections through adjusting the percentage of Federal bridge funding allocated to, on and off-system Highway Bridges.
7. The State and the City wish to enter an agreement whereby the City authorizes the State to perform NBIS inspections on bridges owned or controlled by the City.

THEREFORE, in consideration of the mutual terms expressed in this Agreement, it is agreed as follows:

II. DEFINITIONS

NBI Inventoried Bridge:

A structure including supports erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of openings for multiple boxes; it may also include multiple pipes, where the clear distance between the openings is less than half of the smaller contiguous opening.

National Bridge Inspection Standards (NBIS):

Federal regulations establishing requirements for inspection procedures, frequency of inspections, qualifications of personnel, inspection reports, and preparation and maintenance of a State bridge inventory. The NBIS apply to all structures defined as bridges located on all public roads.

Public Road:

Any road under the jurisdiction of and maintained by a public authority and open to public travel.

III. SCOPE OF WORK

1. The State will:
 - a. Inspect NBI inventoried bridges owned by the City per the NBIS.
 - b. Communicate with the City on a timely basis and inform the City of the start date of the bridge inspection; and offer to meet with the designated representatives of the City to discuss the inspection.
 - c. Forward the copies of completed bridge inspection report documents and database information consistent with AASHTO BrM to the City within 90 days of the field inspection, if other activities are undertaken by the State, forward the copies of the documents generated for these tasks to the City.
 - d. Record the updated Bridge Inspection data in the City of Phoenix BrM database and transmit annually to the Federal Highway Administration (FHWA).

- e. Not be responsible for carrying out any recommended maintenance or repair activities for City bridges.
 - f. Comply with all the City's safety regulations in addition to OSHA and ADOSH.
 - g. Cover the fees and time associated with all permit and rights of entry onto railroad right-of-way and/or Central Arizona Project (CAP) right-of-way and Maricopa County Flood Control District (MCFCD) right-of-way.
 - h. Provide traffic control and boat access as needed.
2. The City will:
- a. Allow and authorize the State to inspect NBI inventoried bridges owned by the City according to NBIS.
 - b. Provide the State the previous bridge inspection reports and other documents necessary to perform the inspections.
 - c. Notify the State of all new or existing structures that may meet the NBI inventoried bridge definition. Also, notify the State of any NBI inventoried bridge removal, transfer, or change of ownership.
 - d. Once the City performs the recommended repair work, forward the information and the completion date to the State.
 - e. Not permit or allow any encroachments upon 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.
 - f. Automatically grant to the State by execution of this agreement, its agents and/or contractors, without cost, the temporary right to enter City rights-of-way, as required, to conduct any and all bridge inspections and related activities for the NBIS inspections, on, to and over said public rights-of-way.

IV. MISCELLANEOUS PROVISIONS

- 1. The State may carry out its activities under this Agreement through consultants.
- 2. The State will not carry out any maintenance or repair activities for City bridges.
- 3. At its own discretion, the City may accompany State or Consultant bridge inspection team to the bridge site and actively participate in the inspection or be an observer.

4. The City may obtain a second opinion at City expense whenever it does not agree with the State's findings and recommendations for bridge maintenance or repairs. A second opinion shall be obtained by hiring qualified bridge inspection engineers to perform an inspection per NBIS and accepted bridge inspection procedures and practices and submit the completed bridge inspection documents to the State for review and acceptance. The State will make a final recommendation.
5. The Parties to this Agreement agree that neither party shall be indemnified or held harmless by the other party. However, the Parties further agree that each party shall be responsible for its own negligence. Neither the State, nor any of its officers, employees, or contractors shall be liable for any damage occurring to the City structure nor liability for any damages liability to third party unless the State or its officers, employees, or contractors cause the damages.
6. This Agreement shall become effective upon dating and signing of a Determination Letter by the Arizona Attorney General's office.
7. This Agreement is perpetual, except for the provisions for termination or cancellation in the Agreement.
8. Either Party may terminate this Agreement upon 30 days written notice.
9. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
10. The Parties agree to submit any disputes arising under this Agreement to binding arbitration before the American Arbitration Association; except that if there are any parties involved in the dispute other than the State and local agency, venue shall lie in Maricopa County Superior Court, Phoenix, Arizona.
11. 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 Agreement Section
205 S. 17th Avenue, Mail Drop 637E
Phoenix, AZ 85007
JPABranch@azdot.gov

City of Phoenix
Attn: Juan Giron
200 W. Washington St, 5th Floor
Phoenix, AZ 85003
602.495.0124

For Program Administration:

Infrastructure Delivery and Operations
Bridge Group
205 S. 17th Ave, Mail Drop 613E
Phoenix, AZ 85007

City of Phoenix
Attn: Juan Giron
200 W. Washington St, 5th Floor
Phoenix, AZ 85003
602.495.0124

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 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

- 13. Non-Availability of Funds: Fulfillment of the obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance 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 because of termination under this paragraph.
- 14. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.
- 15. The Parties shall comply with the applicable requirements of Arizona Revised Statutes §35-393.01.
- 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 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 PHOENIX

STATE OF ARIZONA

Department of Transportation

By *Ray Dovalina*
 RAY DOVALINA, P.E.
 Street Transportation Director

DocuSigned by:
Steve Boschen
 3C8F38DDDC8C4A2...
 STEVE BOSCHEN, P.E.
 Division Director

ATTEST:

By *Ben Lane*
 CRIS MEYER Ben Lane for
 ACTING City Clerk



Approved as to form
Julie Kuehn
 ACTING City Attorney

2017 JUL 25 AM 8:54
 CITY CLERK DEPT.

IGA /JPA 17-0006450-I

ATTORNEY APPROVAL FORM FOR THE CITY OF PHOENIX

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 PHOENIX, 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

ORDINANCE S-43809

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) TO PERFORM BRIDGE INSPECTIONS ON CITY-OWNED STRUCTURES IN THE PUBLIC RIGHTS-OF-WAY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as

follows:

SECTION 1. The City Manager or his designee is authorized to enter into an IGA with ADOT to perform bridge inspections on City-owned structures in the public rights-of-way. The City will use ADOT's on-call consultants to perform the federally mandated inspections on structures classified under the National Bridge Inventory. There is no fee for utilizing ADOT's consultants.

PASSED by the Council of the City of Phoenix this 6th day of July, 2017.

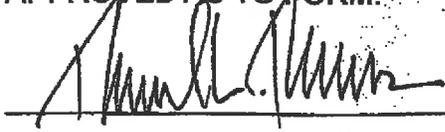

ACTING MAYOR

ATTEST:

 City Clerk



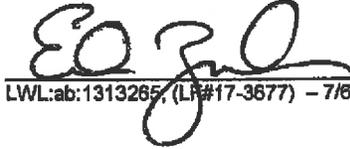
APPROVED AS TO FORM:



Acting City Attorney



REVIEWED BY:



City Manager

LWL:ab:1313285 (LP#17-3677) - 7/6/17



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
STATE GOVERNMENT DIVISION /
TRANSPORTATION SECTION

DAWN NORTHUP
DIVISION CHIEF COUNSEL
SUSAN E. DAVIS
ASSISTANT ATTORNEY GENERAL
DIRECT LINE: 602-542-8855
E-MAIL: SUSAN.DAVIS@AZAG.GOV

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012017002584 (ADOT IGA/JPA 17-0006450-I), an Agreement between public agencies, the State of Arizona and the City of Phoenix, has been reviewed pursuant to A.R.S. §§ 28-401 and 48-572, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: July 27, 2017

MARK BRNOVICH
Attorney General

A handwritten signature in cursive script that reads "Susan Davis".

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED/sr/6104315

