A.G. Contract No.: KR05-0437TRN
ECS File No.: JPA 05-035
Project No.: TEA-FLA-0-408
Section: West Rio De Flagstaff
Project: Multiuse Pathway
TRACS No.: SL549
Budget Source Item No.: Local

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF FLAGSTAFF

THIS AGREEMENT is entered into this date October 12, 2005, pursuant to 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 FLAGSTAFF, acting by and through its MAYOR and CITY COUNCIL (the "City").

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated 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. 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, State and FHWA, including actual construction engineering (CE) and administration costs.

4. The interest of the State for this Project is in the acquisition of Federal funds for the use and benefit of the City and is authorized as the designated agent. Funds expended for the Project, are authorized by reason of Federal Law and Regulations.

5. The work embraced in this Agreement is for the design, construction and maintenance of a Pedestrian Bridge over Milton Avenue, and a multiuse pathway to Walnut Street, hereinafter referred to as the "Project". The City will be responsible for the design, bidding, construction administration, and maintenance of the Project.

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

NO. 27779
Filed with the Secretary of State
Date Filed: 10-12-05
Secretary of State
By:

Construction TRACS No.: SL549 01C

Estimated Federal Aid Funds @ 94.3%	$500,000.00
Estimated City Funds @ 5.7%	$ 30,223.00
Estimated City Funds @ 100%	$319,777.00
***Total Estimated Cost of Project**	**$850,000.00**

*(Includes construction, construction engineering administration and incidentals)

II. SCOPE OF WORK

1. The State shall:

a. Agree to be the City's authorized agent for the Project and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designates the City to self-administer the construction of the Project.

c. Upon start of construction, make payments to the City for the direct actual cost of the construction of the Project, plus construction engineering, within thirty-days (30) after receipt and approval of an invoice.

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

2. The City shall:

a. With the aid and consent of the FHWA and the state using Arizona Procurement Procedures, proceed to advertise for and procure construction services in accordance with ARS Title 34, receive and open bids, subject to the concurrence of the FHWA and the State. Enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications. The City may procure construction and construction services under any of the following project delivery methods:

- Design-bid-build
- Construction manager at risk
- Design build
- Job order contracting

b. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the construction engineering (CE) and administration cost provided by the City up to 94.3% of the construction cost. Construction administration costs not participated in by FHWA shall be borne by the City.

c. Consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

d. Upon start of construction, invoice the State for the estimated 94.3% Federal Aid construction and construction administration costs addressed under this Agreement. The City is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not.

e. Upon completion of the Project, provide for at its own cost and as an annual item in its budget, perpetual and proper maintenance of the Project.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans and specifications, reports and the engineering in connection therewith, the construction of the improvements contemplated, cost over-runs and construction claims, procurement and/or bidding and/or advertising for construction and construction services. The City will require its contractor(s) to name the State and ADOT as an additional insured in the contractor(s) insurance policies. The City will also require its contractors to name the State as an additional indemnitee in the City's contracts with its contractor(s). It is understood and agreed that the State's participation is confined solely to securing Federal Aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that, to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees, shall include the event of any action, court costs, expenses or litigation or attorneys' fees.

2. The cost of the construction and the construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion described or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

3. This Agreement shall remain in full force and effect until completion of the work; provided, however, that any provisions in this Agreement for electrical power and maintenance shall be perpetual, unless assumed by another governmental City.

4. This Agreement shall become effective upon filing with the Secretary of State.

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

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. 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.

8. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) 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 contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract 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 or for any damages as a result of termination under this paragraph.

10. 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. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
(602) 712-7525

City of Flagstaff
Attn: David Wilcox, City Manager
211 West Aspen Avenue
Flagstaff, AZ 86001
(928) 774-5281

11. Pursuant to Arizona Revise 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.

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

CITY OF FLAGSTAFF

By _____
JOE DONALDSON
Mayor

ATTEST:

By _____
MARGIE BROWN
City Clerk

STATE OF ARIZONA
Department of Transportation

By _____
SUSAN TELLEZ
Contract Administrator

G:05-035-Flagstaff-West Rio De Flagstaff-Multiuse Path-11August2005-slc

JPA 05-035

APPROVAL OF THE CITY OF FLAGSTAFF

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF FLAGSTAFF, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 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 22nd day of August, 2005.

Timothy J. LeMarteria (for)

City Attorney

RESOLUTION NO. 2005-84

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA ("STATE") AND THE CITY OF FLAGSTAFF ("CITY") FOR THE DESIGN, CONSTRUCTION AND MAINTENANCE OF A PEDESTRIAN BRIDGE OVER MILTON AVENUE AND A MULTI-USE PATHWAY LOCATED ON THE NORTH SIDE OF THE BURLINGTON NORTHERN SANTA FE ("BNSF") RAILWAY MAIN LINE FROM THE RIO DE FLAG TO WALNUT STREET.

WHEREAS, Congress has authorized appropriations for, but not limited to, twelve (12) eligible categories of transportation enhancement projects through programs administered by the Federal Highway Administration ("FHWA"); and

WHEREAS, the City has selected such a project as a pedestrian bridge over Milton Avenue and a multi-use pathway to be located on the north side of the BNSF Railway main line from the Rio de Flag to Walnut Street("Project"); and

WHEREAS, the Project will provide the City with a Flagstaff Urban Trail System connection from the Flagstaff Townsite neighborhood to the downtown area of the City by providing a safe crossing of Milton Avenue near the intersection of Milton Avenue and east State Route 66; and

WHEREAS, the State desires to participate with the City in the Project by submitting a program containing the Project to the FHWA with the recommendation that the Project be approved for construction and funding; by requesting the maximum authorized Federal funds available for the Project; and by conveying such funds to the City for the direct actual cost of the construction of the Project, plus construction engineering, within thirty (30) days after receipt and approval of an invoice; and

WHEREAS, the City desires to participate with the State in the Project by providing complete construction plans and specifications for the Project; by advertising for and procuring construction services in accordance with Arizona Revised

Statutes Title 34, including either administering bids, and awarding the Project to the lowest responsible bidder and entering into contract with the lowest responsible bidder, or by procuring construction and construction services and entering into contract under any of the alternative project delivery methods of construction known as manager-at-risk, design build or job order contracting; by administering and supervising Project construction in accordance with the plans and specifications; by providing matching funds in the total estimated amount of $350,000 for the Project; and by providing for the proper and perpetual maintenance of all Project improvements upon Project completion; and

WHEREAS, the City and the State desire to enter into an intergovernmental agreement ("IGA") setting forth the responsibilities of the City and the State in their participation in the Project; and

WHEREAS, the City and the State's Department of Transportation desire to obtain City Council approval for the City's entry into the IGA; and

WHEREAS, the City and the State are authorized by Arizona Revised Statutes §§ 11-951 through 954, 48-572 and 28-401, to enter into the IGA; and

WHEREAS, the City Council has reviewed the proposed IGA and finds that it is in the best interests of the City to enter into the IGA with the State.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That the Intergovernmental Agreement between the City and the State submitted as an attachment to the Staff Summary Report in support hereof, be hereby approved, and the Mayor be authorized and directed to execute the Intergovernmental Agreement on behalf of the City of Flagstaff.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 20th day of September, 2005.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

(for)
CITY ATTORNEY

Item No. 10A

CITY OF FLAGSTAFF
STAFF SUMMARY REPORT

To: The Honorable Mayor and City Council

From: James Duval, Senior Project Manager 226-4859
Community Dev. Dept., Capital Improvements

Date: August 31, 2005

Meeting Date: September 20, 2005

Title: Consideration of Resolution 2005 – 84: A resolution approving an intergovernmental agreement between the State of Arizona and the City of Flagstaff for participation, construction and maintenance of a multi-use pathway located on the north side of the BNSF Railway mainline from the Rio de Flag to Walnut Street.

Recommended Action:

Read Resolution 2005 – 84 by title only.

Adopt Resolution 2005 – 84.

ACTION SUMMARY:

Adoption of Resolution 2005- 84 commits the City to design, contracting, construction, construction administration and maintenance of the multi-use path on the north side of the BNSF Railway Mainline tracks from the Rio de Flag to Walnut Street, including a new pedestrian bridge over Milton Road, and authorizes the reimbursement of up to $500,000 in grant funded construction and construction administration costs.

DISCUSSION:

Background/History:

The statewide transportation enhancement program administered by the Arizona Department of Transportation has provided funding for many trails projects built or currently under design by the City of Flagstaff, Coconino County and NAU. It is standard practice for transportation enhancement projects that ADOT enters into agreements with the local government for maintenance of the facility and reimbursement of grant eligible costs. This project is scheduled to begin construction in the spring of 2006 and expected to be completed by end of summer 2006.

Council awarded the Consultant Agreement for the design of Phase I of this project to Turner Engineering Inc. of Flagstaff Arizona on March 2, 2004. The consultant services agreement provides for the development of the project to the 30% level. Phase I includes the Design Concept Report, identifies trail alignment alternatives, will facilitate one public meeting, recommend bridge structural elements, and determine required right-of-way acquisition, preliminary cost estimates and construction schedules. Phase I is anticipated to be complete by fall of 2005.

Phase II will develop complete plans and specifications suitable for construction. The project was split into two phases due in part to a lengthy project schedule, property acquisition issues, and budget/funding considerations. Phase II consultant services are planned to be awarded by Change Order to Turner Engineering in the fall off 2005 with final design and contract documents anticipated to be complete by spring of 2006.

Key Considerations:

This project was approved by the 2004 Round 11 Transportation Enhancement Program and is funded in part by Federal Highway Administration and administered by the State of Arizona. The Joint Project Agreement authorizes the State to reimburse the City for grant eligible costs in the amount of $500,000. The total cost estimate of construction and construction administration is estimated to be $850,000.

Community Benefits and Considerations:

This project will provide the community with a FUTS link from the Flagstaff Townsite neighborhood to the downtown area of the City by providing a safe and legal crossing of Milton Avenue near the intersection of Milton and east Route 66.

This link will provide a multiuse path along the north side of the BNSF Railroad from the Rio de Flag to Walnut Street and include a grade-separated crossing over Milton Road via a bridge immediately north of the existing BNSF underpass. This FUTS segment will ultimately connect with the West Village to Walnut FUTS section at its terminus near Walnut Street. The West Village to Walnut segment is proposed to provide a crossing under the BNSF Railroad to connect the westerly portion of the city to the downtown area.

Community Involvement:

There has been no specific public involvement relating to this Joint Project Agreement (JPA). The project has been reviewed by the Flagstaff Bicycle Advisory Committee and was given high priority in the 1991 Flagstaff Bicycle Plan. The project has been shown as a primary system link in the Flagstaff Area Regional Land Use and Transportation Plan and the Flagstaff Urban Trail System Master Plan. In addition, the project has been included in the 5-Year Capital Improvements Program and approved by the City Council.

Financial Implications:

The City has secured a grant through the 2004 Round 11 Transportation Enhancement Program in the amount of $500,000. Authorization of the JPA will allow the City to invoice for construction and construction administration up to this amount.

X The West Village to Rio FUTS Project is funded by the 2000 Transportation Tax Multi-Modal Program and is budgeted in the amount of $214,135 for FY 05/06 (acct. no. 051-75-59-632).

Options and Alternatives:

1. Approve Intergovernmental Agreement with ADOT (JPA 05-035).
2. Reject the Intergovernmental Agreement and find other non-federal funds for the project.

Attachments/Exhibits:

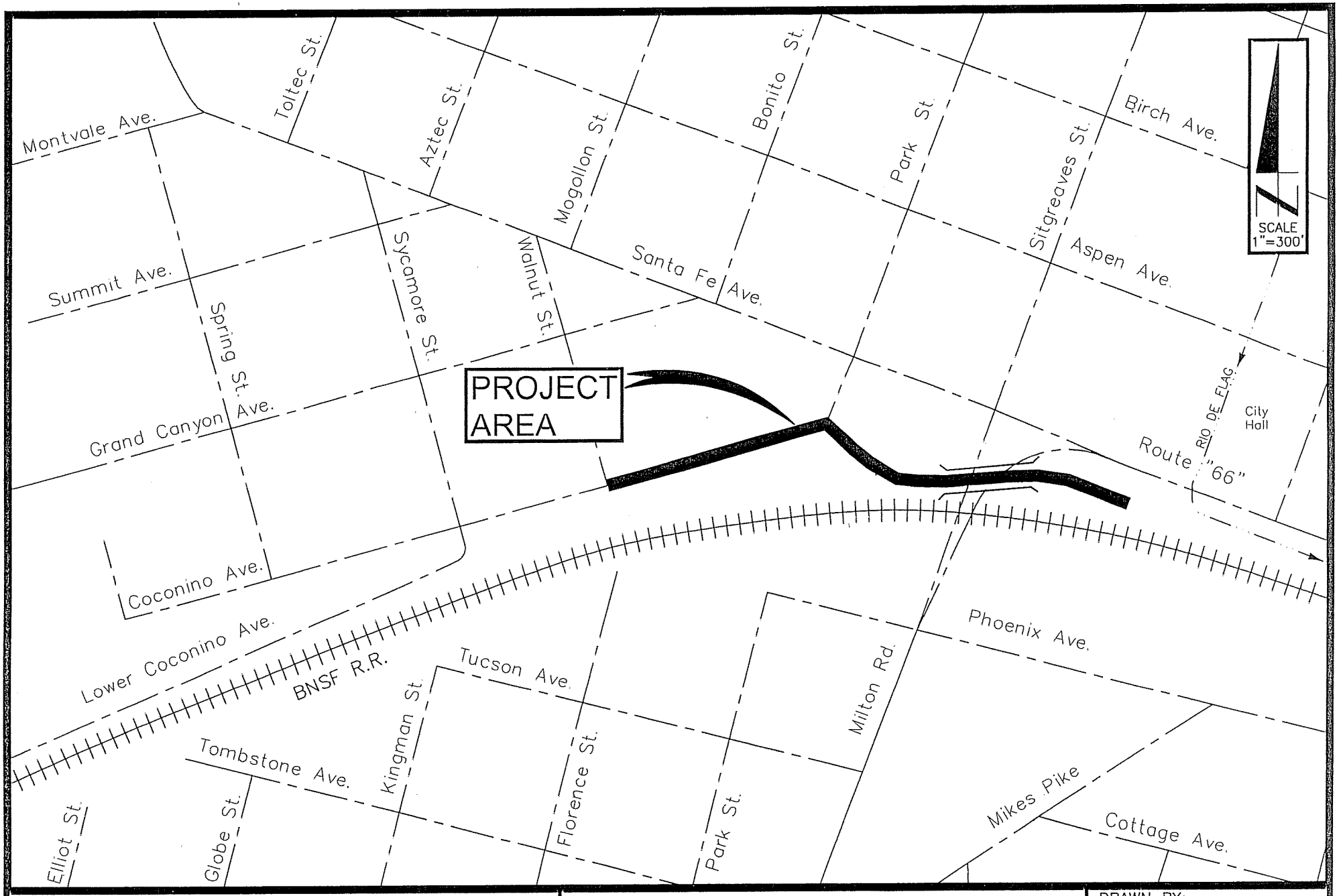
1. Vicinity Map
2. Resolution 2005 – 84
3. Intergovernmental Agreement

Mark A Jamison

Department Head

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
	BIDS/PURCHASES			FINANCE/BUDGET	9/7/05
SBK	GRANTS/CONTRACTS	9/2/05	MM	IGAS	9.7.05
MH	LEGAL	9/6/05		RaB	9/1/05

DATE OF COUNCIL APPROVAL: 9-20-05 MB



TITLE : WALNUT TO RIO FUTS

LOCATION MAP

03-02027-(051-75-59-632)

City of Flagstaff

CAPITAL IMPROVEMENTS SECTION

DRAWN BY: B. CAYTON

DATE: JULY, 2005

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STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION
MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: 602-542-8859
Fax: 602-542-3646

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR05-0437TRN (**JPA 05-035**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, 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 September 30, 2005.

TERRY GODDARD
Attorney General

JEFFREY T. MURRAY
Assistant Attorney General

JTM:dgr
Attachment
927189