IGA File No.: **07-167-I**
AG Contract No.: P001-2007-004041-6
Project: Bridge Inspection
Section: Scottsdale, City of
TRACS No.: MAINTAGR
Budget Source Item No.: N/A
C.O.S. Contract No. 2010-032-COS

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF SCOTTSDALE

THIS AGREEMENT is entered into this date February 26th 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 SCOTTSDALE, (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 § 11-251 and 11-951 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 State must inspect, or cause to be inspected, all highway bridges located on public roads, with some exceptions. The NBIS outline requirements for inspection frequency and procedures that each State's must follow, including routine, in-depth, underwater and fracture critical member inspections, load rating, and scour plans of action. Compliance with of the NBIS is a required component in order to be eligible for Federal-Aid Highway Bridge funding.

4. A local agency has the authority to perform NBIS inspections on its Public bridges. Currently, some local agencies throughout the State perform such inspections. 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 City's bridge inspections through adjusting the percentage of Federal bridge funding allocated to off-system Highway Bridges.

7. The State and the City wish to enter into an agreement whereby City authorizes State to perform NBIS inspections on bridges owned or controlled by the City.

THEREFORE, in consideration of the mutual covenants expressed herein, 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 City according to the NBIS.

b. Communicate with City on a timely basis and inform City of the start date of the bridge inspection; and offer to meet with the designated representatives of City to discuss the inspection.

c. Forward the copies of completed bridge inspection report documents to the City in a timely manner, if other activities are undertaken by the State, forward the copies of the relevant documents generated for these tasks to the City.

d. Record the updated Bridge Inspection data in the ADOT database and transmit annually to the Federal Highway Administration (FHWA).

e. The State will not carry out any recommended maintenance or repair activities for City bridges.

2. The City will:

a. Allow and authorize the State to inspect NBI inventoried bridges owned by City according to NBIS.

b. Grant the State any necessary Rights of Entry or permits at no fee for the completion of the State's tasks under this Agreement.

c. Provide the State all the necessary relevant information and documents such as copies of bridge plans, average daily traffic counts, known deficiencies of the existing structures and additions/deletions to its bridge inventory.

d. 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.

e. Provide traffic control at no fee during the bridge inspections by the State when necessary.

f. Once City performs the recommended repair work, forward the information and the completion date to the State.

III. MISCELLANEOUS PROVISIONS

1. State may carry out its activities under this Agreement through consultants.

2. The State will not carry out any maintenance or repair activities for local agency bridges.

3. On its own discretion, the City may accompany State or Consultant bridge inspection teams to the bridge site and actively participate in the inspection or be an observer.

4. The City may obtain a second opinion at City's 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 filing with the Secretary of State.

7. This Agreement is perpetual, except for the provisions for termination or cancellation in the Agreement.

8. Either Party may terminate this Agreement upon thirty 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:

Arizona Department of Transportation Joint Project Administration 205 S. 17th Avenue, Mail Drop 637E Phoenix, Arizona 85007 (602) 712-7124 (602) 712-3132 Fax	Scottsdale, City of Attn: Rodney Ramos Street Operations, CY 207 City of Scottsdale 9191 E. San Salvador Dr. Scottsdale, Arizona 85258 Phone (480) 312-5641 Fax (480) 312-27-38

12. This Agreement is subject to all applicable provisions of the Americans with Disability 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".

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 as a result of termination under this paragraph.

14. The Parties to this Agreement shall comply with Executive Order Number 2005-30 – Ensuring Compliance with Federal Immigration laws by State Employers and Contractors 4320. **For the purposes of this paragraph the State is not an employer.**

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

a. That each contractor and subcontractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. 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 that is subject to penalties up to and including termination of the Agreement.

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

16. Pursuant to A.R.S. Sections 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 A.R.S. Section 35-391 or and 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.

17. 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 SCOTTSDALE

By _____
W.J. "JIM" LANE
Mayor

ATTEST:

By _____
CAROLYN JAGGER
Clerk

STATE OF ARIZONA
Department of Transportation

By _____
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

September 2, 2009-ly

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JPA 07-167

ATTORNEY APPROVAL FORM FOR THE CITY OF SCOTTSDALE

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY, 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 3rd day of February, 2010

APPROVED AS TO FORM:

Bruce Washburn, City Attorney
By: Katherine M. Cooper
Assistant City Attorney

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TERRY GODDARD
Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
Writer's Direct Line:
602.542.8849
Facsimile: 602.542.3646
E-mail: Joe.Acosta@azag.gov

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. P0012007004041-6 (**IGA/JPA 07-167-I**), an Agreement between public agencies, i.e., The State of Arizona and City of Scottsdale, 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: February 26, 2010

TERRY GODDARD
Attorney General

JOE ACOSTA, JR.
Assistant Attorney General
Transportation Section

JA:mjf:733915
Attachment