

ADOT CAR No.: IGA 19-0007558-I
AG Contract No.: P001 2019 003572
Project Location/Name: I-10 Deck Park
Tunnel, Hance Park
Type of Work: Maintenance
Federal-aid No.: NA
ADOT Project No.: F0293 01C
TIP/STIP No.: NA
CFDA No.: 20.205 - Highway Planning and
Construction
Budget Source Item No.:

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF PHOENIX

THIS AGREEMENT is entered into this date _____, pursuant to the 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 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 A.R.S. § 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 A.R.S. § 48-572 to enter into this Agreement and has by ordinance, a copy of which is attached and made a part hereof, authorized the City to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The City is making improvements to Margaret T. Hance Park above the Interstate 10 (I-10) Deck Park Tunnel, (the "Project" or "Hance Park"). The Project includes, but is not limited to, reconstruction and construction of planters, landscaping, irrigation, sidewalks, pathways, shade structures, garden, playground areas, tree bosque, stage/amphitheater, restrooms, food and beverage structures, and water features. This Agreement will establish maintenance and operational responsibilities of Hance Park and the I-10 Deck Park Tunnel.
4. The Project's boundaries are delineated in Exhibit A, attached and incorporated herein to this Agreement.
5. In conjunction with the Project, the City will administer construction of necessary joint repair work above the tunnel, funding and joint repair work details are addressed in IGA 19-0007557-I.

6. This Agreement does not cancel or supersede any existing agreements but will take precedence in the event any questions arise pertaining to maintenance responsibilities.

THEREFORE, the Recitals set forth above are incorporated into this Agreement and in consideration of the mutual terms expressed herein, it is agreed as follows:

II. DESIGN AND CONSTRUCTION

1. The Parties agree:
 - a. The Project will be performed, completed, accepted and paid for in accordance with the approved requirements of the Project plans and specifications.
 - b. The City will temporarily convert certain areas to turf grass within the Project area. The City will continue to maintain the turf grass until commencement of Phase 1 of the Project, at which time the turf grass will be removed and the final intended improvements will be installed.
2. The State will:
 - a. Issue, in accordance with the established procedures of the State's Central District Permit Office, a permit for the initial construction of the Project and separate permits for related pre-construction activities (such as pot-holing, utility work, survey etc.). Permits will be issued when appropriate insurance documents are provided as required by ADOT Risk Management.
 - b. Review the design documents required for construction of the Project and provide comments to the City.
 - c. Participate in design and construction meetings as required. Coordinate with the City regarding the construction schedules of all State projects that affect this Project. Within available resources, operate State facilities in a manner that minimizes negative impacts to the City.
 - d. Not incur any costs for the Project, either foreseen or unforeseen.
3. The City will:
 - a. Submit an encroachment permit application with all required documentation to the State's Central District Permit Office for the initial construction of the Project, and separate encroachment permit applications for related pre-construction activities as needed. Provide appropriate insurance with each encroachment permit. Submit an encroachment permit application for any new construction or installation.
 - b. Prepare and provide the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project and incorporate comments from the State as appropriate.

- c. Coordinate with the State to address any potential temporary or permanent impacts to the State's drainage system, catch basins, culverts, etc., related to the City's Project. Be responsible for any/all Project related modifications and/or construction elements within the State's right of way to accommodate the City's Project, including any/all related costs to the State.
- d. Minimize moisture or drainage intrusion into the underlying infrastructure for supporting I-10 Deck Park Tunnel by installing flow sensors on the irrigation system that monitor anticipated flow and soil sensors to monitor the moisture content of the soil as part of the Project surface improvements. If excess flow is detected, shut off the water supply until any potential leaks are identified and corrected, if the soil moisture content is too high, adjust the irrigation system to reduce the amount of irrigation being used.
- e. Conduct coordination, design and construction progress meetings as required. Coordinate with the State, or its representatives, relative to the construction schedule of the Project.
- f. Be responsible for all Project costs.
- g. After completion of all phases of the Project, accept the Project as complete and in accordance with the Project's Contract Documents. Coordinate a final inspection meeting regarding the improvements with State representatives to assure that the constructed improvements function properly.

III. OPERATIONS AND MAINTENANCE

1. The Parties understand and agree:
 - a. The City is responsible for maintenance of Hance Park and the State is responsible for the structural integrity and maintenance of the I-10 Deck Park Tunnel.
 - b. The State is the owner and controls property rights and interests of the I-10 and the I-10 Deck Park Tunnel used by the City and hereby allows the City to manage, maintain, program, and operate Hance Park through a State issued encroachment permit.
 - c. The City will be responsible for all City signage and the State will be responsible for all State signage.
 - d. Where the sound/screen walls delineate the areas between jurisdictional responsibilities, both Parties will maintain the surface of the wall facing each Party's area of maintenance responsibility, which will include graffiti removal, painting and minor surface repair.
 - e. The City will be responsible for any and all homeless encampment cleanup within the park boundaries, in accordance with the City's Park Policy.

- f. The City will preserve access points at all four I-10 Deck Park Tunnel vent shafts and underneath the Central Avenue Bridge for ADOT, its agents and/or contractors. The locations at all four I-10 Deck Park Tunnel vent shafts will be used to access equipment that needs to be maintained on a periodic basis and some maintenance may require multiple vehicles. The location underneath the Central Avenue Bridge is the main point of delivery for the 12 kilovolt (KV) service that provides power to the tunnel for both the freeway lighting and the eight vent fans. Ensure access points can support and accommodate multiple fleet size vehicles and truck/trailer access for large equipment replacements.
 - g. If through installation, use, or routine maintenance, the property of either the City or the State in the area referenced by this Agreement is disturbed or damaged, the Party responsible will, at its own expense, and in a manner acceptable to the owner, restore or repair the facility in as good a condition as before such damage or disturbance. If such restoration, repair, or replacement is not completed within a sufficient time, or such repair or replacement does not meet the owners duly adopted standards, the owner shall have the right to perform the necessary restoration, repair, or replacement, either through its own forces or through a hired contractor after the owner has communicated with the other Party. The non-compliant Party shall reimburse the owner for its expenses within 30 days of receipt of an invoice.
 - h. The State will coordinate with the City to address any potential temporary or permanent impacts to Hance Park infrastructure and operation due to any I-10 Deck Park Tunnel related structural repairs or major maintenance activities. In these cases, the City will restore Hance Park features disturbed to pre-situational conditions. The State may participate in a portion of the restoration costs as ultimately determined through the Issue Escalation Ladder, as shown in Table 1, Section IV below.
 - i. Should any future water intrusion result from Hance Park, the City will be solely responsible for costs to cure damages to facilities.
 - j. All lease agreements will be addressed separately through the ADOT Right of Way Group, Property Management Section.
2. The State will:
- a. Issue, in accordance with the established procedures of the State's Central District Permit Office, a permit on a yearly basis for routine maintenance and emergency work. Routine maintenance and emergency work will be defined within the permit. Permits will be issued when appropriate insurance documents are provided as required by ADOT Risk Management.
 - b. Coordinate and communicate with the City at least 30 days in advance with all State infrastructure repairs and renovations to minimize Hance Park operation disruptions, except in emergencies.
 - c. Coordinate with and notify the City of maintenance activities scheduled to occur at any of the four I-10 Deck Park Tunnel vent shafts or underneath the Central Avenue Bridge. ADOT will require daily access under the Central Avenue Bridge to access the tunnel

control room. Although large maintenance activities are infrequent, if step down transformers or electrical switch gear require repair or replacement, ADOT will use the access point under the Central Avenue Bridge. Certain maintenance activities may require this location to support the parking of multiple fleet size vehicles and truck/trailer access for large equipment replacements. Emergency work will not require coordination, however the State will notify the City of emergency conditions that may affect operations or public safety.

- d. Excluding any and all emergency maintenance work, defer to the City interactions with the City's facilities and their non-profit occupants on or near the Project for matters of Hance Park operation, improvement, or renovation.
- e. Maintain all storm drain siphons within State highway rights of way within Hance Park, of which the State is the primary user.
- f. Maintain the structural integrity of existing and future sound/screen walls constructed within the State's rights of way.

3. The City will:

- a. Submit an encroachment permit application with all required documentation to the State's Central District Permit Office for routine maintenance and emergency work. Provide appropriate insurance for the encroachment permit once, then annually for the maintenance and emergency work, to keep that permit valid. Notify the State's Central District Permit Office of any emergency maintenance work affecting the State right of way immediately. Submit an encroachment permit application for any new construction or installation.
- b. Maintain sidewalks, pathways, ADA ramps, pedestrian underpasses, restrooms, shade structures, any equipment, and drainage features feeding into the State's drainage system to City maintenance standards unless State maintenance standards take precedence. Maintenance of the defined areas will include routine maintenance activities, including but not limited to: sweeping, crack sealing, removal of spills, graffiti removal, litter and trash removal, repair of the surface/base of damaged pavement presenting a safety hazard, cracking and/or buckling of sidewalk, and weed control.
- c. Maintain Hance Park parking lots and driveways, routine maintenance activities include but are not limited to: sweeping, crack sealing, removal of spills, graffiti removal, repair of pot-holes, routine maintenance of signing and striping, leveling and/or patching of asphalt concrete pavement with premix, pavement markings, seal coating and/or flush coating of oxidized pavement, litter and trash removal, repair of the surface/base of damaged pavement presenting a safety hazard, and weed control.
- d. Provide landscape maintenance in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses, and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning, and replanting, as required to maintain the landscaping and the irrigation installed as part of the Project, including all testing,

adjusting, repairing, and operation of the irrigation system, and shall furnish all electrical power and water to operate the irrigation system, at its sole expense.

- e. Perform routine maintenance of drainage basins and catch basins (including vector control), consistent with the City maintenance and operations levels within the Project limits.
- f. Coordinate with the State to address any potential temporary or permanent impacts to the State's drainage system, catch basins, culverts, etc., related to any/all new construction by the City. Be responsible for any/all new construction related modifications and/or construction elements within the State's right of way to accommodate the City's new construction, including any/all related costs to the State.
- g. Operate, monitor, and maintain Hance Park surface improvements to minimize moisture or drainage intrusion into the underlying infrastructure for supporting I-10 Deck Park Tunnel. If excess flow is detected, shut off the water supply until any potential leaks are identified and corrected, if the soil moisture content is too high, adjust the irrigation system to reduce the amount of irrigation being used.
- h. Maintain, operate, and pay all Hance Park utilities (electric, water, sewer, etc.) associated with, and not limited to landscape, buildings, and lighting within Hance Park.
- i. Program and operate Hance Park for the recreational enjoyment of park users including but not limited to allowing large and small public events, passive and active play, health and wellness programs, public art installations and exhibits, and a variety of recreational, cultural, and/or education programs and events within the Hance Park boundaries; obtaining all required permits from the State. The City will police its allowed activities above to assure no damage is done to the underlying structure(s).

IV. ISSUE RESOLUTION

1. Any dispute regarding the interpretation of any provision of this Agreement, shall be resolved using the following escalation ladder, to attempt to resolve all disputes at the lowest possible level. The levels of resolution, lowest to highest are as follows:

Table 1
Issue Escalation Ladder

Level	State Representative	City Representative
First	Engineering Administrator	Downtown Deputy Director
Second	Senior Division Administrator	Parks and Recreation Director
Highest Level	IDO Director	Assistant to the City Manager – Street Transportation Department

2. If the dispute is not resolved, it then will advance to arbitration per A.R.S. § 12-1518, as applicable.

V. MISCELLANEOUS PROVISIONS

1. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.
2. Any change or modification to the Project will only occur with the mutual written consent of both Parties.
3. This Agreement is automatically renewing, for successive periods of five-year terms, from the effective date, and may be amended upon mutual written consent of both Parties, provided however, that this Agreement may be cancelled at any time, with 90 days written notice. If the City initiates a cancellation of this Agreement, the State is not obligated to complete the Project or maintain Hance Park and may require that a portion or the entire park be removed at the City's sole expense.
4. The City shall indemnify, defend, and hold harmless the State, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as the "State") from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the City, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. The City's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the State, except the obligation does apply to any negligence of the City which may be legally imputed to the State by virtue of the State's ownership or possession of land. The City's obligations under this paragraph shall survive the termination of this Agreement.
5. The City shall require its contractors to indemnify, defend, and hold harmless the State, from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including any attorneys' fees and/or litigation expenses, which may be brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the contractor, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incident to the performance of the work, or arising out of Workmen's Compensation claims, Unemployment Compensation claims, or Unemployment Disability Compensation claims of employees of the contractor and/or its subcontractors or claims under similar such laws or obligations. The contractor's obligation under this subsection shall not extend to any liability to the extent caused by the negligence of the State, or its employees, except the obligation does apply to any negligence of the contractor which may be legally imputed to the State by virtue of its ownership or possession of land.

6. The Parties warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the City shall provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.
7. The Parties acknowledge and will comply with Title VI of the Civil Rights Act Of 1964.
8. This Agreement shall be governed by and construed in accordance with Arizona laws.
9. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
10. The City shall retain all books, accounts, reports, files and other records relating to the Agreement for five years after completion of the Project. These documents shall be subject at all reasonable times to inspection and audit by the State. Such records shall be produced by the City at the request of ADOT.
11. 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 by reference regarding "Non-Discrimination."
12. Non-Availability of Funds: Every obligation of the Parties 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 either Party at the end of the period for which the funds are available. No liability shall accrue to the Parties in the event this provision is exercised, and the Parties shall not be obligated or liable for any future payments as a result of termination under this paragraph.
13. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
14. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01.
15. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
16. All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered electronically, 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
Parks and Recreation Department
Attn: Cynthia Aguilar, Acting
Parks and Recreation Director
200 W. Washington Street, 16th Fl
Phoenix, AZ 85003
602.495-5225
Cynthia.Aguilar@phoenix.gov

For Project Administration:

Arizona Department of Transportation
Central Maintenance District
2140 W. Hilton, MD E700
Phoenix, AZ 85009
602.712.6664
602.712.3116 FAX

City of Phoenix
Office of the City Engineer
Attn: Jarod Rogers, Principal
Landscape Architect/Project
Manager
200 W. Washington Street, 5th Fl
Phoenix, AZ 85003
602.534.2160
Jarod.Rogers@phoenix.gov

For Maintenance Related Issues:

Arizona Department of Transportation
Central Maintenance District
Maintenance Engineer
2140 West Hilton Avenue, Mail Drop
PM00
Phoenix, Arizona 85009
602.712.6664
602.712.6983 FAX

City of Phoenix
Parks and Recreation Department
Attn: Cynthia Aguilar, Acting
Parks and Recreation Director
200 W. Washington Street, 16th Fl
Phoenix, AZ 85003
602.495-5225
Cynthia.Aguilar@phoenix.gov

For Emergency Related Issues:

Arizona Department of Transportation
Traffic Operations Center
2302 W. Durango
Phoenix, AZ 85009
602.712.6591, M-F, 8:00 am to 5:00 pm
602.257.1563, outside regular business
hours

17. Any revisions to the names and addresses above may be updated administratively by either Party and shall be in writing.
 18. In accordance with A.R.S. § 11-952 (D), attached and incorporated in this Agreement 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 PHOENIX
ED ZUERCHER, City Manager

STATE OF ARIZONA
Department of Transportation

By _____
CYNTHIA AGUILAR
Acting Parks and Recreation Director

By _____
STEVE BOSCHEN, PE
Division Director

ATTEST:

By _____
DENISE ARCHIBALD
City Clerk

APPROVED AS TO FORM:

By _____
Acting City Attorney