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COCONINO COUNTY CLERK OF THE BOARD



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RESOLUTION NO. 2020-08

A RESOLUTION OF THE BOARD OF SUPERVISORS OF COCONINO COUNTY, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR SIGN PANEL REPLACEMENT ON I-40 IN BELLEMONT (MP 182 – 187)

WHEREAS, the Arizona Department of Transportation (ADOT) is the maintaining agency for Interstate 40 (I-40) which passes through Coconino County, and

WHEREAS, Coconino County is seeking to eliminate confusion over similar road names in the Bellemont area to improve the emergency response times, and

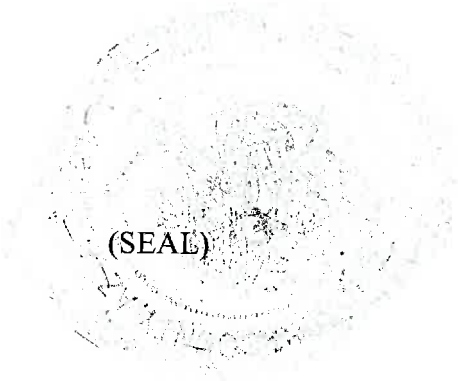
WHEREAS, Coconino County has requested that the name of Transwestern Road which crosses over I-40 at the Bellemont Interchange be changed to Hughes Avenue, and

NOW, THEREFORE, BE IT RESOLVED that the Coconino County Board of Supervisors of Arizona, hereby:

1. Approves the Intergovernmental Agreement with ADOT for Sign Panel Replacement on I-40 in Bellemont (MP 182-187) in the amount of \$60,000 for the fabrication and installation of road name signs; and
2. Certifies that the County of Coconino will comply with all appropriate state regulations, policies, guidelines, and requirements as they relate to the Intergovernmental Agreement; and
3. Certifies that the County of Coconino has the full amount of funds required in the amount of \$60,000 for the fabrication and installation of road name signs along I-40 reflecting the name change of Transwestern Road to be Hughes Avenue; and
4. Appoints the County Manager and County Public Works Director as agents of Coconino County to execute and submit all documents including but not limited to applications, agreements, amendments, billing statements, and so on which maybe necessary for the completion of the aforementioned project.

PASSED AND ADOPTED by the Coconino County Board of Supervisors in Flagstaff, Arizona this 28th day of January 2020.

AYES: 4
NOES: 0
ABSENT: 1



COCONINO COUNTY BOARD OF SUPERVISORS

Lena Fowler for
Lena Fowler, Chair

ATTEST:

Kimberly Dyer
Clerk of the Board

APPROVED AS TO FORM:

Rose W...
Deputy County Attorney

ADOT CAR No.: IGA 19-0007465-I
AG Contract No.: P0012019002903
Project Location/Name: I-40 EB and WB,
MP 182 to MP 187
Type of Work: Sign Panel Replacement
ADOT Project No.: M712901X
CFDA No.: 20.205 - Highway Planning and
Construction
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
COCONINO COUNTY

THIS AGREEMENT is entered into this date February 20, 2020, 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 COCONINO COUNTY, acting by and through its BOARD OF SUPERVISORS (the "County"). The State and the County 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 County is empowered by A.R.S. § 11-251 to enter into this Agreement and has by resolution, a copy of which is attached and made a part of, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.
3. The State will design, fabricate and install nine sign panels along Interstate 40 (I-40), on the eastbound (EB) and westbound (WB) lanes from milepost (MP) 182 to MP 187, (the "Project"). The County will update the name of the crossroad located at MP 185.12 from Transwestern Road to Hughes Avenue and the Project will update State owned signage to reflect the name change. The County will pay \$60,000.00 toward the Project.

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

II. SCOPE OF WORK

1. The Parties agree:
 - a. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.
2. The State will:
 - a. Execute this Agreement, and be the County's designated agent for the Project.
 - b. After execution of this Agreement, invoice the County for \$60,000.00, the County's costs associated with the Project
 - c. Prepare and provide the design, material fabrication, and other such services required for the completion of the Project
 - d. Notify the County of final inspection and acceptance of all the Project improvements, and be responsible for the maintenance of the signs.
3. The County will:
 - a. Designate the State as the County's authorized agent for the Project.
 - b. Within 30 days of receipt of an invoice from the State, pay to the State \$60,000.00 for the County's costs associated with the Project.
 - c. Review the design documents required for the design of the Project and provide comments to the State as appropriate.
 - d. Complete the Project prior to June 30, 2020.

III. 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. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and all related deposits and/or reimbursements are made. Any provisions for maintenance shall be perpetual, unless assumed by another competent entity.
4. This Agreement may be cancelled at any time prior to the installation of the sign panels for the Project and after 30 days written notice to the other Party. It is understood and agreed that, in the event the County terminates this Agreement, the County shall be responsible for all costs incurred by the State up to the time of termination. It is further understood and

agreed that in the event the County terminates this Agreement, the State shall in no way be obligated to complete or maintain the Project.

5. To the extent permitted by law, the County shall indemnify, defend, save, and hold harmless the indemnitees from any liabilities and costs related to any Claim, regardless of whether there is fault on the part of the County, the indemnitees, or third parties, with the sole exception that this indemnity does not apply to any Claim that is based solely on the alleged willful misconduct of the indemnitees.

This indemnity specifically includes the requirement that the County shall indemnify the indemnitees for the negligence of any or all of the indemnitees.

For the purpose of this indemnity clause,

- (a) "Indemnitees" means the State, and any of its departments, agencies, employees, officers, agents, and contractors;
 - (b) "Claim" means any claim, demand, lawsuit, administrative proceeding, or action of any kind related to alleged damage to person or property; arising in whole or in part out of the existence, the construction, or operation of the County facility.
 - (c) "Liabilities" includes all damages, cost to repair and any and all obligations.
 - (d) "Costs" includes all expenses that are incurred in relation to a Claim, including but not limited to defense costs, attorneys, witnesses, expert witness fees, and litigation related expenses.
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 County 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 County acknowledges 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 County 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 County 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 State 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 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.

13. In the event of any controversy, which may arise out of this Agreement, the Parties agree to abide by arbitration as is set forth for public works contracts if required by A.R.S. § 12-1518.
14. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
15. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01.¹
16. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
17. 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

Coconino County
 Attn: Tim Dalegowski
 5600 E. Commerce Avenue
 Flagstaff, AZ 86004
 928.679.8344
timdalegowski@coconino.az.gov

For Project Administration:

Arizona Department of Transportation
 Traffic Maintenance
 ATTN: Jerome Choy
 2104 S. 22nd Ave MD013R
 Phoenix, AZ 85009
 602-712-6627
jchoy@azdot.gov

Coconino County
 Attn: Tim Dalegowski
 5600 E. Commerce Avenue
 Flagstaff, AZ 86004
 928.679.8344
timdalegowski@coconino.az.gov

For Financial Administration:

Arizona Department of Transportation
 Traffic Maintenance
 ATTN: Jerome Choy
 2104 S. 22nd Ave MD013R
 Phoenix, AZ 85009
jchoy@azdot.gov


Coconino County
 Attn: Jeremy Floyd
 5600 E. Commerce Avenue
 Flagstaff, AZ 86004
 928.679.8305
jfloyd@coconino.az.gov

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 *Jordahl v. Brnovich*, 336 F.Supp.3d 1016 (D.Ariz. 2018) 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.

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.

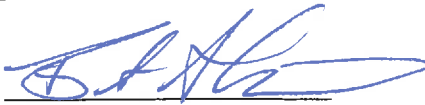
IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

COCONINO COUNTY


By  for
LENA FOWLER, Chair
Board of Supervisors

STATE OF ARIZONA

Department of Transportation

By 
BRENT CAIN, PE
Division Director

ATTEST:

By 
LINDSAY DALEY
Clerk of the Board

ATTORNEY APPROVAL FORM FOR THE COCONINO COUNTY

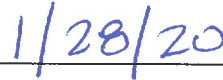
I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the COCONINO COUNTY, an agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.



ROSE WINKLER

Deputy County Attorney



Date



MARK BRNOVICH
ATTORNEY GENERAL

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

DAWN NORTHUP
DIVISION CHIEF COUNSEL
Eli D. Golob
ASSISTANT ATTORNEY GENERAL
DIRECT LINE: 602-542-8842
E-MAIL: ELI.GOLOB@AZAG.GOV

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012019002903 (**ADOT IGA/JPA 19-0007465-I**), an Agreement between public agencies, the State of Arizona and Coconino County, has been reviewed pursuant to A.R.S. §§ 11-951 through 11-954 and 28-401, 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 20, 2020

MARK BRNOVICH
Attorney General

ELI D. GOLOB
Assistant Attorney General
Transportation Section

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