

**ADOT File No.: IGA/ JPA.: 16-0005860-I
Amendment No. One: 19-0007238-I**
AG Contract No.: P001 2016 001490
Project Location/Name: Lincoln Dr. - 32nd
Street to Scottsdale Rd.
Type of Work: Construct New Sidewalks
Federal-aid No.: PVY-0(204)T
ADOT Project No.: T0081 01D/01C
TIP/STIP No.: PVY16-440 & PVY19-740
CFDA No.: 20.205 - Highway Planning and
Construction
Budget Source Item No.: N/A

**AMENDMENT NO. ONE
TO
INTERGOVERNMENTAL AGREEMENT**

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF PARADISE VALLEY

THIS AMENDMENT NO. ONE to INTERGOVERNMENTAL AGREEMENT (the “Amendment No. One”), is entered into this date _____, pursuant to 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 TOWN OF PARADISE VALLEY, acting by and through its MAYOR and TOWN COUNCIL (the “Town”). The State and the Town are collectively referred to as the “Parties.”

WHEREAS, the INTERGOVERNMENTAL AGREEMENT, IGA/JPA 16-0005860-I, A.G. Contract No. P001 2016 001490, was executed on December 1, 2016, (the “Original Agreement”);

WHEREAS, the State is empowered by A.R.S § 28-401 to enter into this Amendment No. One and has delegated to the undersigned the authority to execute this Amendment No. One on behalf of the State;

WHEREAS, the Town is empowered by A.R.S § 9-240 to enter into this Amendment No. One and has by resolution, a copy of which is attached and made a part of, resolved to enter into this Amendment No. One and has authorized the undersigned to execute this Amendment No. One on behalf of the Town; and

NOW THEREFORE, in consideration of the mutual terms expressed herein, the purpose of this Amendment No. One is to revise Project costs. The Parties desire to amend the Original Agreement as follows:

I. RECITALS

Section I. Paragraph 7. is revised as follows:

7. The federal funds will be used for the construction of the Project, including the construction engineering and administration cost (CE). The estimated Project costs are as follows:

T0081 01D (ADOT Project Development Administration (PDA) Cost, formerly known as Project Management & Design Review (PMDR), non-federal aid):

PDA costs @ 100% Town funding*	\$ 30,000.00
PDA Federal-aid funds @ 94.3%	\$ 4,715.00
PDA Town's match @5.7%	\$ <u>285.00</u>
Subtotal - PDA	\$ 35,000.00

T0081 01C (construction):

Federal-aid funds @ 94.3%	\$ 2,263,200.00
Town's match @5.7%	\$ <u>136,800.00</u>

Subtotal - Construction** **\$2,400,000.00**

TOTAL Estimated Project Cost **\$2,435,000.00**

Total Estimated Town's Funds **\$ 167,085.00**

Total Federal Funds **\$2,267,915.00**

The Parties acknowledge that the final Project costs may exceed the revised estimate(s) shown above, and in such case, the Town is responsible for, and agrees to pay, any and all actual costs exceeding the revised estimate. If the final bid amount is less than the revised estimate, the difference between the final bid amount and the revised estimate will be de-obligated or otherwise released from the Project. The Town acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all actual costs exceeding the final bid amount.

* (Included in the Town's Estimated Funds)

** (Includes 15% CE (this percentage is subject to change, any change will require concurrence from the Town) and 5% project contingencies)

Consistent with the Original Agreement, the Town has been invoiced for and paid \$30,000.00. The Town will pay the remaining \$285.00 for the Town's share of PDA within 30 days of receipt of an invoice.

II. SCOPE OF WORK

Section II, Paragraphs 1.d. is revised, as follows:

1. The State will:
 - d. After completion of design and prior to bid advertisement, invoice the Town for the actual PDA costs, as applicable, and the Town's share of the Project construction costs, estimated at \$136,800.00. After the Projects costs for construction are finalized, the State will either invoice or reimburse the Town for the difference between estimated and actual costs; and de-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

Section II, Paragraphs 2.c. is revised, as follows:

2. The Town will:
 - c. After completion of design, within 30 days of receipt of an invoice from the State and prior to bid advertisement, pay to the State, any outstanding PDA costs and the Town's share of the Project construction costs, estimated at \$136,800.00. Be responsible for and pay the difference between the estimated and actual construction costs of the Project, within 30 days of receipt of an invoice.

III. MISCELLANEOUS PROVISIONS

Section III, Paragraphs 19. and 20. are added, as follows:

19. The Town acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
20. The Parties shall ensure that all contractors comply with the applicable requirements of A.R.S §35-393.01.¹

EXCEPT AS AMENDED, ALL OTHER terms and conditions of the Original Agreement remain in full force and effect.

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 in *Jordahl* 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.

THIS AMENDMENT NO. ONE shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

IN ACCORDANCE WITH A.R.S § 11-952 (D) attached and incorporated in this Amendment No. One 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 Amendment No. One and that the Amendment No. One is in proper form.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. One the day and year first above written.

TOWN OF PARADISE VALLEY

STATE OF ARIZONA
Department of Transportation

By _____
JERRY BIEN-WILLNER
Mayor

By _____
STEVE BOSCHEN, PE
Division Director

ATTEST:

By _____
DUNCAN MILLER
Town Clerk

ATTORNEY APPROVAL FORM FOR THE TOWN OF PARADISE VALLEY

I have reviewed the above referenced Amendment No. One to the Original Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the TOWN OF PARADISE VALLEY, an agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 11-951 through 11-954 and declare this Amendment No. One to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

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

DATED this _____ day of _____, 2019.

Town Attorney