GILBERT
ARIZONA

9

Council Communication

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: MIKE GILLESPIE, P.E., TOWN ENGINEER

THROUGH: GREG TILQUE, DEVELOPMENT SERVICES DIRECTOR
MARC SKOCYPEC, ASSISTANT TOWN MANAGER

MEETING DATE: APRIL 19, 2012

SUBJECT: APPROVAL OF INTERGOVERNMENTAL AGREEMENT WITH ARIZONA DEPARTMENT OF TRANSPORTATION FOR ACCESS TO THEIR COLLISION DATABASE, CONTRACT NO. 2013-2106-0015.

STRATEGIC INITIATIVE: Infrastructure

This agreement supports the infrastructure initiative by identifying and implementing measures to more efficiently access and evaluate collisions in the Town in order to improve traffic safety at intersections and streets.

LEGAL REVIEW	FINANCIAL REVIEW
☑ Complete	☐ Complete
☐ N/A	☑ N/A

RECOMMENDED MOTION

A MOTION TO APPROVE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE ARIZONA DEPARTMENT OF TRANSPORTATION AND THE TOWN OF GILBERT FOR ACCESS TO THEIR COLLISION DATABASE.

BACKGROUND/DISCUSSION

The Engineering Services Division is implementing an electronic database of all traffic collisions within the Town to better monitor and analyze the performance of our transportation system. By reviewing the collision reports by the responding police officers, we can analyze the circumstances and environmental conditions of the collision, look for trends in the type and severity of collisions, and identify measures

that could be taken to reduce the potential for further collisions. This data also allows us to identify high collision locations in the Town and to prioritize capital improvements needed at those locations.

The Engineering Services Division has compiled this electronic database of collisions in the Town based on records from the Gilbert Police Department. In order to make sure the data in our system is complete, we need access to the Arizona Department of Transportation (ADOT) collisions database known as ALISS. This database includes all collisions in the State on all routes including local and state highways and freeways. In some cases, we do not have information on collisions at freeway ramps on local streets and the ADOT database will provide that data. In addition, the ADOT database has additional details not currently available in the Town's information and additional reporting capabilities that our system does not have.

The Intergovernmental Agreement was reviewed for form by Phyllis Smiley.

FINANCIAL IMPACT

There is no financial impact to the Town. Access to this data is at no cost to the Town.

STAFF RECOMMENDATION

Staff recommends approval of this Intergovernmental Agreement between the Arizona Department of Transportation and the Town of Gilbert.

Respectfully submitted,

Michael A. Gillespie, PE
Town Engineer
michael.gillespie@gilbertaz.gov

Attachments and Enclosures: Intergovernmental Agreement

Arizona Department of Transportation

Intermodal Transportation Division

205 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janice K. Brewer
Governor

John S. Halikowski
Director

Jennifer Toth
State Engineer

DATA ACCESS / EXCHANGE AGREEMENT

ADOT File No **JPA/IGA 12-001**

Date: Contract No. 2013-2106-0015

Name of Department: **Town of Gilbert, AZ**

Doing Business As: **As Above**

Business Address: **50 East Civic Center Drive**
Gilbert, AZ 85296

Mailing Address: **As Above**

Telephone Number: **(480) 503-6841**

Town of Gilbert (AGENCY) hereby requests authorization for connectivity to the Arizona Department of Transportation's (ADOT) (check all that apply):

☒ ALISS Database to submit electronic crash records.

☐ ALISS Database to access and retrieve crash data.

☒ Safety Data Mart to query, analyze and retrieve crash data.

Town of Gilbert (AGENCY) is authorized to enter into this Agreement pursuant to § 48-572

The AGENCY (as defined below) hereby requests authorization for connectivity to the ALISS Database and/or AIDW Safety Data Mart of the Arizona Department of Transportation, Intermodal Transportation Division (ITD). The AGENCY's specific access capabilities are set forth and further described in the attached Addendum, which shall be considered a part of this Agreement between the AGENCY and ADOT.

The AGENCY understands and agrees that it shall only access the ALISS Database and/or the AIDW Safety Data Mart in accordance with the terms and conditions set forth herein. If at any time ADOT believes the AGENCY is using such access in an unauthorized or unlawful manner, ADOT reserves the right, in its sole discretion, to immediately terminate this Agreement.

This Database Access Agreement complies with GITA Statewide Standard P740-S741, Standard 4.7.3.

Definitions

"ADOT" means the Arizona Department of Transportation.

"ALISS" means the Accident Location, Identification and Surveillance System.

"Authorized individuals" means those persons who are employed or contracted by AGENCY to perform the activities authorized hereunder.

"Connectivity" means to make and/or maintain a computer connection with ADOT for the purpose of performing the activities authorized under this agreement.

"AGENCY" means **Town of Gilbert**
"Encrypt" means to scramble computerized information to secure data by using special algorithms for transmission or other purposes.

"Personal Information" means information that identifies an individual, including without limitation an individual's name, photograph, social security number, driver license number, physical description, race, ethnic origin, sexual orientation, income, blood type, DNA code, fingerprints, marital status, religion, home address, home telephone number, education, financial matters, and medical or employment history readily identifiable to a specific individual but does not include information on vehicular accidents, driving violations, and driver's status.

"RACF" means Resource Access Control Facility, which is a software security product that protects information by controlling access to it.

"Secure location" means an area designated specifically for authorized individuals to access ADOT's database(s) and to which all unauthorized individuals shall be prohibited from entering.

"Sensitive Information" means any state information either in detail or aggregate that may be prejudicial or harmful to the state and its citizens.

Location of Activities

AGENCY may conduct authorized activities only at those locations which have been pre-approved by ADOT such as their place of business that adheres to the other guidelines outlined in this Agreement. ADOT reserves the right, in its sole discretion, to disapprove of location.

Equipment

AGENCY shall obtain computer equipment and software that is compatible with the information systems and connectivity requirements of ADOT, and which will allow access only to the specific database(s) listed in the Addendum to this Agreement.

Data Security

AGENCY shall provide a secure location for all computer equipment used to access ADOT's database(s).

AGENCY shall provide access to ADOT's ALISS Database and/or Safety Data Mart only to AGENCY personnel or contractors who are authorized individuals, and to no one else. If at any time ADOT believes that an authorized individual is using such access inappropriately, ADOT reserves the right to immediately terminate that individual's database access and/or to terminate AGENCY authorization under this Agreement.

AGENCY shall comply with all ADOT policies, procedures and directives regarding security and database access, including any future amendments thereto. All subcontractors utilized to perform the activities authorized by this Agreement must abide by the same security and access requirements as AGENCY.

AGENCY must disclose and obtain ADOT approval of any existing and/or contemplated strategic alliances, partnerships, Intergovernmental Agreements or subcontracting arrangements that AGENCY has or will enter into which involve the processing and/or use of ADOT data acquired pursuant to this Agreement.

AGENCY, its officers, agents, employees, contractors and representatives shall not, without the prior written approval of ADOT, disclose, distribute, or utilize in any manner not expressly authorized under this Agreement, any personal or sensitive information which is connected or otherwise associated with or accessed pursuant to this Agreement, either during the term of this Agreement or subsequent to any termination of this Agreement.

AGENCY shall maintain all hard copy information and electronic data related to this Agreement in a secure location at all times.

Data Privacy

AGENCY shall not utilize its computer connections with ADOT for any purpose other than the purpose(s) specified in the Addendum to this Agreement.

Network Security

AGENCY understands and agrees that any and all personal or sensitive information that it stores or transmits over external or public computer networks, such as the Internet, must be encrypted.

AGENCY computers that are permanently or intermittently connected to internal computer networks must have an ADOT approved, password-based, access control system in order to access ADOT's database(s). This requirement applies to computers with direct connections to data centers, as well as AGENCY "wide area network." Regardless of the network connections, all AGENCY computers which are used to access ADOT information must employ approved, password-based, access control systems.

All in-bound connections to AGENCY computers from external networks must also be protected. All access control systems must utilize user-identifications (i.e. RACF ID's) and passwords unique to each user, as well as user-privilege restriction mechanisms. Password sharing is prohibited.

Non-exclusivity

This Agreement shall not preclude ADOT from entering into the same or similar Agreement with other public or private entities, including those performing identical or similar functions as AGENCY.

Notification

AGENCY shall assign a contact person for problem resolution and notification of procedural changes. AGENCY shall advise ADOT within two business days of any change in its designated contact person. All notices or demands upon either party shall be in writing and an original shall be delivered in person, or sent by mail addressed as follows:

To ADOT at:

Intermodal Transportation Division
Traffic Records Section
ATTN: John Riemer
206 S. 17th Ave, Mail Drop 064R
Phoenix, AZ 85007-3233

To AGENCY at:

Town of Gilbert
50 East Civic Center Drive
Gilbert, AZv85296
Contact: Michael A. Gillespie
Town Engineer
Phone (480) 503-6841
Fax (480) 503-6170

Records

The AGENCY shall maintain a log or register of all ADOT records it requests and all ADOT records it obtains by virtue of the access provided herein. The AGENCY shall retain this log or register either manually or electronically for a period of five years after the date of request and receipt of the records. All other books, papers, records, data, and accounting records relating to this Agreement ("Records") shall be maintained by AGENCY for a period of five (5) years, or such greater or lesser time as may be required by federal or state law, rule, or the ADOT Records Retention Schedule. The Records shall be subject to inspection and audit by ADOT for five years after termination or completion of this Agreement. The Records shall be produced at the offices designated by ADOT.

It is further agreed that ownership of all records relating to this Agreement resides exclusively with ADOT, except for data retrieved pursuant to this Agreement.

Compliance

AGENCY shall comply with all of the terms set forth in this Agreement, together with all applicable state statutes, rules, and regulations. AGENCY shall also comply with all relevant ADOT policies, procedures and directives that ADOT provides to AGENCY throughout the course of this Agreement. All AGENCY subcontractors are held to the same compliance standards, and any failure to comply on the part of the subcontractor will be deemed a failure on the part of AGENCY.

Non-compliance

If AGENCY fails to comply with the terms of this Agreement, or with any applicable law, rule or regulation, ADOT reserves the right to take any remedial action that it deems necessary and appropriate, including without limitation the suspension, cancellation, revocation, or termination of this Agreement. In case of a violation of law, the Agreement shall immediately terminate.

Amendment and Modification of Agreement

AGENCY shall review and approve in writing any modification of the Agreement. Upon the amendment of any applicable law, rule or regulation, the Agreement shall automatically be modified to reflect such amendment. Any modification of the Agreement shall be incorporated herein and shall be subject to all other provisions of this Agreement. AGENCY may submit a written request to ADOT if there are any changes it desires be made to the Agreement, and such a request shall be approved or denied at ADOT's sole discretion.

Termination

Either party may terminate this Agreement for convenience or cause upon thirty (30) days prior written notice to the other party. Upon any termination of this Agreement, AGENCY shall, at ADOT's request, remove and deliver to ITD all electronic data stored on any electronic storage devices and shall immediately return all other data and information received in connection herewith to ADOT.

This Agreement is subject to cancellation by the Governor pursuant to A.R.S. §38-511. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract of any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation under this section by any department or agency of the state or its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.

Waiver/Severability

AGENCY agrees that a waiver of any provision of this Agreement shall not act as a waiver of any other provision of this Agreement. If a provision of this Agreement is for any reason declared invalid, illegal, or unenforceable, that declaration shall not affect the remainder of the provisions of the Agreement.

Duration

This Agreement shall commence upon approval by the Assistant Division Director, Executive Services Group and execution by both parties, and shall thereafter continue in effect for a term of three (3) years, unless previously terminated or canceled as provided herein. Upon expiration of this three-year period, the parties may mutually agree to extend the term of the Agreement for another three (or fewer) years by entering into a "Joint Letter of Renewal."

Liability

ADOT assumes no financial obligation or liability under this Agreement. The AGENCY assumes full responsibility for any liability which arises out of this Agreement. Any damages arising from carrying out or resulting from, in any respect, the terms of this Agreement or any modification thereof shall be the liability of the AGENCY and that to the extent permitted by law, the AGENCY hereby agrees to indemnify, defend and otherwise save and hold harmless the State of Arizona and ADOT, and any of their departments, agencies, officers or employees from any and all losses and associated costs 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, misrepresentation, directives, instruction or event arising out of the performance or non performance of any provisions of this Agreement by the State of Arizona or ADOT, or any of their departments, agencies, officers and employees, or their independent contractors, the AGENCY, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State of Arizona or ADOT, any of their departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

Certification

On behalf of AGENCY identified below, I hereby request approval of this Agreement. I certify that all of the information set forth herein by AGENCY is true and accurate, and that any records or information obtained from ADOT's database(s) and system(s) pursuant to this Agreement will be used solely for the purpose(s) specified in the Addendum to this Agreement, and for no other purposes. I further certify that I have the authority to execute this Agreement on behalf of AGENCY. I understand that AGENCY must abide by the provisions of this Agreement if approved by the Assistant Division Director, Executive Services Group and executed by both parties.

Mandatory Provisions for Arizona State Agencies

None of the provisions of the Agreement may be waived, changed of altered except in writing signed by both parties.

Notwithstanding any provision of the Agreement to the contrary, ADOT is not authorized to indemnify the AGENCY.

Every payment obligation of the ADOT under this Agreement is conditioned upon the availability of funds allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by ADOT or any other agency of the State of Arizona at the end of the period for which funds are available. No liability shall accrue to ADOT or any other agency of the State of Arizona in the event this provision is exercised, and neither ADOT nor any other agency of the State of Arizona shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

AGENCY shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulations, including the American with Disabilities Act. AGENCY shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

Scrutinized Business Operations. Pursuant to A.R.S. 35-391.06 and 35-393.06, the AGENCY certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in A.R.S. 35-391 or 35-393, as applicable. If the State of Arizona or ADOT determines that the AGENCY submitted a false certification, ADOT may impose remedies as provided by law including terminating this Agreement.

Compliance requirement for A.R.S. 41-4401 – immigration laws and E-Verify requirement.

- The AGENCY 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. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)

- A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breech of the contract and the AGENCY may be subject to penalties up to and including termination of the Agreement.

- ADOT retains the legal right to inspect the papers of any employee who works on the Agreement to ensure that the AGENCY or subcontractor is complying with the above-mentioned warranty.

Joint Venturer – Except as otherwise provided by law, in the performance of duties and activities under this Agreement, the parties hereto will be acting in their individual governmental capacities and not as agents, employees, partners, joint ventures, or associates of each other. The officers, employees, agents, or subcontractors of one party shall not be deemed or construed to be the employees or agents of the other party. Each party shall remain responsible for the supervision of their respective staff and students and shall maintain adequate insurance coverage as required by law.

AGENCY assigns to ADOT any claim for overcharges resulting form antitrust violations to the extent that such violations concern materials or services supplied by third parties to AGENCY toward fulfillment of this Agreement.

This Agreement shall be construed in accordance to the laws of the State of Arizona.
The parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. 12-1518 except as may be required by other applicable statutes.

The parties may execute this Agreement in two or more counterparts, each of which shall be deemed an original and together which shall constitute one and the same document.

Town of Gilbert

_____
Signature

John Lewis
_____
Name Printed

Town Mayor
_____
Title

_____
Date

For ADOT USE ONLY

Received this date _____. Signed _____

AUTHORIZATION

On behalf of the Arizona Department of Transportation, the authorization requested by **Town of Gilbert** pursuant to this Agreement (including the attached Addendum) is hereby approved.

DATED THIS _____ DAY OF _____, 20_____.

Intermodal Transportation Division / Traffic Engineering

_____
Dallas Hammit, P.E
Deputy State Engineer, Intermodal Transportation Division
Arizona Department of Transportation

AGREEMENT ADDENDUM

THIS ADDENDUM is made and entered into pursuant to A.R.S. §§28-401 et seq. and with GITA Statewide Standard P740-S741, Standard 4.7.3, as part of the foregoing Data Access / Exchange Agreement between the Arizona Department of Transportation (ADOT) and the **Town of Gilbert** (AGENCY).

Subject to ADOT's right to terminate as set forth in this Agreement:

I. ADOT <grants/~~does not grant~~> AGENCY authorization to access its ALISS Database via approved direct program-to-program interactions over an approved persistent connection and to thereby submit electronic crash records information contained in such databases according to the terms and conditions stated in this Agreement. Electronic crash records shall be submitted no more than once per day.

II. ADOT <~~grants~~/does not grant> AGENCY authorization to access its ALISS Database via an approved secure gateway and with two-factor authentication to retrieve pertinent crash records data including vehicle information according to the terms and conditions stated in this agreement.

III. ADOT <grants/~~does not grant~~> AGENCY authorization to access its Safety Data Mart via an approved secure gateway and with user identifications and passwords unique to each user to run queries and retrieve crash data strictly for the purposes of safety analysis and in accordance with the terms and conditions stated in this agreement. Data query and retrieval may be done on an as-needed basis.

The foregoing Agreement and Addendum are mutually agreed to:

Intermodal Transportation Division /Traffic Engineering	**Town of Gilbert**
Signature	Signature
Dallas Hammit, P.E.	John Lewis
Name Printed	Name Printed
Deputy State Engineer	Town Mayor
Title	Title
Date	Date