

ADOT CAR No.: IGA /JPA 15-0005667-I
AG Contract No.: P0012015003516
Project Name: PHB with lighting striping and
signage
Project Location: 8th Street and 21st
Avenue Yuma
Federal-aid No.: YUM-0(218)T
ADOT Project No.: T0032 01D 01C
TIP/STIP No.: COY-16-01D-01C
**CFDA No.: 20.205 - Highway Planning
and Construction**
Budget Source Item No.: NA

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF YUMA

THIS AGREEMENT is entered into this date _____, 2016, 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” or “ADOT”) and the CITY OF YUMA, acting by and through its CITY COUNCIL (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 §§ 48-572 and 11-952 and Article III, Section 13 of the Yuma City Charter, 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. Congress has established the Highway Safety Improvement Program (HSIP) as a core federal-aid for the specific purpose of achieving a significant reduction in traffic fatalities and serious injuries on public roads. The State, the Federal Highway Administration (FHWA) and the City have identified systematic improvements within the City as eligible for this funding.
4. The improvements proposed in this Agreement, include design, construction and installation of a Pedestrian Hybrid Beacon (PHB) 200 feet west of the 8th Street and 21st Avenue intersection with integrated lighting, signage and striping, referred to as the “Project”. The State will advertise, bid, award and administer the design and construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications and terms and conditions.
5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and authorization such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City for the Project, if the Project is approved by FHWA and funds for the Project are available.

6. The Parties shall perform their responsibilities consistent with this Agreement and any change or modification to the Project will only occur with the mutual written consent of both Parties.

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

T003201D (design):

Federal-aid funds @ 100% (capped)	<u>\$ 105,000.00</u>
Subtotal –Design*	\$ 105,000.00

T0032 01C (construction):

Federal-aid funds @ 100% (capped)	<u>\$ 172,349.00</u>
Subtotal – Construction**	\$ 172,349.00
TOTAL Estimated Project Cost	\$ 277,349.00
Total Federal Funds	\$ 277,349.00

* (Includes ADOT Project Management and Design Review (PMDR) costs)

** (Includes 15% CE and 5% Project contingencies)

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

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the City's designated agent for the Project.

b. On behalf of the City, prepare and provide all pertaining documents for the design of the Project; review and approve documents required by FHWA to qualify certain projects for and to receive federal funds, incorporating comments from the City, as appropriate. Such documents may consist of, but are not specifically limited to, environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; review right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement.

c. Submit all required documentation pertaining to the Project to FHWA with the recommendation that the maximum federal funds programmed for the design of this Project be approved.

Should costs exceed the maximum federal funds available it is understood and agreed that the **City** will be responsible for any overage.

d. Submit all required documentation to FHWA with the recommendation that the maximum federal funds programmed for construction of this Project be approved. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

e. With FHWA authorization, proceed to administer construction, advertise for, receive and open bids, award and enter into a contract(s) with a firm(s) for the construction of the Project. If the bid amounts exceed the construction cost estimate, obtain City concurrence prior to awarding the contract. Once awarded, invoice the City for the difference between estimated and actual costs, if applicable.

f. Be granted, without cost, the right to enter City rights-of-way, as required, to conduct any and all construction and preconstruction related activities, including without limitation, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

g. Enter into an agreement with the design consultant which states that the design consultant shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project. Upon completion of the construction phase of the Project, provide an electronic version of the record drawings to the City.

h. Notify the City that the Project has been completed and is considered acceptable, coordinating with the City as appropriate to turn over full responsibility of the Project improvements. De-obligate or otherwise release any remaining federal funds from the construction phase of the Project within 90 days of final acceptance.

i. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City will:

a. Designate the State as authorized agent for the City for the Project.

b. Review design plans, specifications and other such documents and services required for the construction bidding and installation of the Project, including design plans and documents required by FHWA to qualify projects for and to receive federal funds. Provide design review comments to the State as appropriate.

c. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, not covered by federal funding. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the City is responsible for these costs, payment for these costs shall be made within 30 days of receipt of an invoice from the State.

d. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and that all obstructions or unauthorized encroachments of any nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction, in accordance with The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended; 49 CFR 24.102 Basic Acquisition Policies; 49 CFR 24.4 Assurances, Monitoring and Corrective Action, parts (a) & (b) and ADOT ROW Manual: 8.02 Responsibilities, 8.03 Prime Functions, 9.06 Monitoring Process and 9.07 Certification of Compliance.

Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the City, if applicable.

e. Not permit or allow any encroachments upon or private use of the right-of-way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

f. Grant the State, its agents and/or contractors, without cost, the right to enter City rights-of-way, as required, to conduct any and all construction and preconstruction related activities, including without limitation, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

g. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any City requested changes to the scope of work of the Project, such changes will require State and FHWA approval. Be responsible for any contractor claims for additional compensation caused by Project delay attributable to the City. Payment for these costs will be made to the State within 30 days of receipt of an invoice from the State.

h. Upon notification of Project completion, agree to accept, maintain and assume full responsibility of the Project in writing

III. MISCELLANEOUS PROVISIONS

1. 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. This Agreement may be cancelled at any time prior to the award of the Project contract 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 will 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.

2. 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.

3. The State shall include Section 107.13 of the 2008 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated to this Agreement by reference, in the State's contract with any and all contractors, of which the City shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the City.

4. The cost of design, construction and construction engineering work under this Agreement is to be covered by the federal funds set aside for this Project, up to the maximum available. The City acknowledges that the actual costs may exceed the maximum available amount of federal funds, or that

certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the City agrees to pay the difference between actual Project costs and the federal funds received.

5. Section 107.13 of the 2008 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated to this Agreement by reference, shall be included in the State's contract with any and all contractors.

6. Should the federal funding related to this Project be terminated or reduced by the federal government, or Congress rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for any past, current or future expenses under this Agreement.

7. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.

8. 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 will provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.

9. The City acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend \$500,000.00 or more (prior to 12/26/14) and \$750,000.00 or more (on or after 12/26/14) of federal assistance (federal funds, federal grants, or federal awards) are required to comply by having an independent audit. Either an electronic or hardcopy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine (9) months of the sub recipient fiscal year end.

ADOT – FMS

Attn: Cost Accounting Administrator

206 S 17th Ave. Mail Drop 204B

Phoenix, AZ 85007

SingleAudit@azdot.gov

10. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

11. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

12. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.

13. 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 herein by reference regarding "Non-Discrimination".

14. 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.

15. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

16. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.

17. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended. In the event that any provision of this Agreement or portion thereof is held invalid, illegal or unenforceable, such, provision or portion thereof shall be severed from this Agreement and shall have no effect on the remaining provisions of this Agreement, which shall remain in full force and effect.

18. 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 Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

City of Yuma
Attn: City Administrator
One City Plaza
Yuma, Arizona 85364
(928) 373-4500
administration@yumaaz.gov

For Project Administration:

Arizona Department of Transportation
Statewide Project Management
205 S. 17th Avenue, Mail Drop 102A
Phoenix, Arizona 85007
(602) 712-7468

City of Yuma
Attn: Arturo Garcia
One City Plaza
Yuma, Arizona 85364
(928) 374-4520
Arturo.Garcia@yumaaz.gov

For Financial Administration:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124

City of Yuma
Attn: Finance Director
One City Plaza
Yuma, Arizona 85364
(928) 373-5067
Pat.Wicks@yumaaz.gov

19. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein 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 YUMA

STATE OF ARIZONA

Department of Transportation

By _____
GREGORY K. WILKINSON
City Administrator

By _____
STEVE BOSCHEN, P.E.
IDO Assistant Director

ATTEST:

By _____
LYNDA L. BUSHONG
City Clerk

ATTORNEY APPROVAL FORM FOR THE CITY OF YUMA

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF YUMA, 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 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 _____ day of _____, 2016.

Steven W. Moore, City Attorney