

ADOT CAR No.: IGA 24-0009698-I  
AG Contract No.: P0012024001728  
Project Location/Name: Yuma Multi-  
Modal Transportation Center  
Type of Work: MMTC Development  
Federal-aid No.: NA  
ADOT Project No.: T0580 01C  
TIP/STIP No.: YU-22-11  
CFDA No.: 20.205 - Highway Planning and  
Construction  
Budget Source Item No.: AZ SMART

## **INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF YUMA

**THIS AGREEMENT** ("Agreement") is entered into this date \_\_\_\_\_, pursuant to the Arizona Revised Statutes ("A.R.S.") §§ 11-951 through 11-954, as amended, among 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 MAYOR and CITY COUNCIL (the "City"). The State and the City are each individually referred to as a "Party" and are collectively referred to as the "Parties."

### **I. RECITALS**

1. The State is empowered by A.R.S. §§ 28-339 and 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. §§ 28-339 and 48-572 to enter into this Agreement and has by resolution, if required, 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 City.
3. The federal Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58 (November 15, 2021), created multiple new federal grant programs for surface transportation purposes to be administered by the US Department of Transportation. IIJA is currently authorized through September 30, 2026. Congress may extend IIJA prior to passing a new long-term highway program authorization, and these extensions may extend the September 30, 2026 deadline.
4. The Arizona State Match Advantage for Rural Transportation funds (AZ SMART Funds) was established by the Arizona State Legislature in Laws 2022, Chapter 322 House Bill 2872 which became effective on September 24, 2022 to assist eligible cities, towns, counties and ADOT in applying for and winning Federal Grants for surface transportation projects.

5. The City was awarded AZ SMART Funds for match on the federal grant. The match funds which may be paid or reimbursed are restricted to those identified in the executed federal Grant Agreement (GA).
6. The City is the successful direct recipient of a 2021 Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant to transform the Hotel Del Sol into a Multi-Modal Transportation Center (MMTC) for the Yuma Region (the "Project"). The purpose of this Agreement is for the State to reimburse the City an amount not to exceed \$3,537,057 of eligible AZ SMART match funds for the Project, as shown on Exhibit A, and for the City to accept the abandonment of right of way of the east-bound frontage road (Gila Ridge Road) along Interstate 8 (I-8), approximately 2.5 miles, between the Engineering Stations, as depicted in Exhibit B.
7. After execution of this Agreement and with the approval of the State Transportation Board, the State will abandon ownership, jurisdiction, and maintenance responsibilities of the area shown in Exhibit B to the City. The City agrees to waive the requirements of A.R.S. § 28-7209.
8. The foregoing Recitals and all Exhibits referred to in and attached are incorporated into this Agreement.

**In consideration of the mutual terms expressed herein, the Parties agree as follows:**

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## **II. SCOPE OF WORK**

1. The Parties agree:
  - a. To adhere to A.R.S. § 28-339.
  - b. The City will enter into a GA with FHWA that identifies the RAISE grant requirements, as shown on Exhibit C. The City will provide the GA and any changes made in the GA to ADOT in a timely manner which may require an amendment to this Agreement.
  - c. The City will coordinate with the State as requested by ADOT on the Project documents, reports, and activities.
2. The State will:
  - a. Within 30 days after receipt, review, and approval of invoice(s) and documentation of payment for Project costs, reimburse the City for eligible match on costs incurred, at the applicable prorata match detailed in the GA, in an amount not to exceed \$3,537,057, the amount of the AZ SMART Funds approved and programmed for the Project.
  - b. After execution of this Agreement and with approval by Resolution of the State Transportation Board, abandon and transfer ownership, jurisdiction, and maintenance responsibilities of the area as depicted in Exhibit B.

3. The City will:
  - a. Submit to ADOT for review, approval, and reimbursement, at least quarterly and no more than monthly, an invoice(s) on ADOT's Payment Report Form, Exhibit D, and documentation of payment for eligible costs incurred for the Project, less the City's prorata match, not to exceed \$3,537,057, the amount of AZ SMART Funds approved and programmed for the Project. Any costs incurred prior to the date of obligation of the federal grant are not eligible for reimbursement from the AZ SMART Fund.
  - c. Enter into agreements with and make all payments directly to the required consultants and/or professional services for the Project.
  - d. Submit to ADOT the Closeout Letter, as shown on Exhibit E, with the final invoice request.
  - e. Waive the requirements of A.R.S. § 28-7209.
  - f. After execution of this Agreement and with approval by Resolution of the State Transportation Board, accept ownership, jurisdiction, and maintenance responsibilities of the area depicted in Exhibit B.

### **III. MISCELLANEOUS PROVISIONS**

1. Effective Date. This Agreement shall become effective upon signing and dating of all Parties.
2. Amendments. Any change or modification to this Agreement will only occur with the mutual written consent of all Parties.
3. Duration. 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.
4. Cancellation. This Agreement may be cancelled at any time by any Party prior to the exchange of any AZ SMART Funds and after 30 days' prior written notice to the other Party. It is understood and agreed that, in the event the City terminates this Agreement, the City shall be responsible for all costs paid by the State up to the time of termination. It is further understood and agreed that in the event the City terminates this Agreement, the State shall have no further obligations to reimburse AZ SMART Funds to the City.
5. Indemnification. The City shall indemnify, defend, and hold harmless the State, any of its departments, agencies, boards, commissions, 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.

6. Liability. ADOT assumes no liability or financial responsibility for AZ SMART Fund Projects or the information submitted by the City. The City is solely responsible for complying with all applicable laws, rules and regulations, for any additional funding required to complete the Project(s) and for any claims due to delays, change orders or any other circumstances.
7. Federal Funding Accountability and Transparency Act. 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.
8. Single Audit. The City acknowledges compliance with federal laws and regulations and may be subject to the CODE OF FEDERAL REGULATIONS, TITLE 2, PART 200 (also known as The Uniform Grant Guidance). Entities that expend \$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 in accordance with §200.331 Subpart F. 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 months of the sub recipient fiscal year end.  

ADOT – FMS  
 Attn: Cost Accounting Administrator  
 206 S 17<sup>th</sup> Ave. Mail Drop 204B  
 Phoenix, AZ 85007  
[SingleAudit@azdot.gov](mailto:SingleAudit@azdot.gov)
9. Governing Law. This Agreement shall be governed by and construed in accordance with Arizona laws.
10. Conflicts of Interest. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
11. Records. The Applicant is required to retain all books, accounts, reports, files and other records relating to this Agreement for a period of five years after the date of the final payment of AZ SMART Funds from ADOT. Such records shall be produced by the City, electronically or at the State office as set forth in this Agreement, at the request of ADOT or the State Auditor General.
12. Audit. All books, accounts, reports, files and other records relating to this Agreement shall be subject to inspection and audit. The State may refer Projects to the State Auditor General or ADOT's Internal Audit unit in cases of suspected misuse of AZ SMART Funding.
13. Title VI. The Applicant acknowledges and will comply with Title VI of the Civil Rights Act of

1964.

14. Non-Discrimination. 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, as amended by Executive Order 2023-01, issued by the Governor of the State of Arizona and incorporated by reference regarding "Non-Discrimination."
15. 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.
16. Arbitration. 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.
17. E-Verify. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
18. Contractor Certifications. The City shall certify that all contractors comply with the applicable requirements of A.R.S. §§ 35-393.01 and 35-394.
19. Other Applicable Laws. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
20. Notices. 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 Group  
205 S. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, AZ 85007  
[JPABranch@azdot.gov](mailto:JPABranch@azdot.gov)

City of Yuma  
Attn: David Wostenberg  
155 West 14<sup>th</sup> Street  
Yuma, AZ 85364  
928.373.4520  
[David.wostenberg@yumaaz.gov](mailto:David.wostenberg@yumaaz.gov)

**For Project Administration:**

Arizona Department of Transportation  
Southwest District  
205 S. 17<sup>th</sup> Avenue, Mail Drop 614E  
Phoenix, AZ 85007

City of Yuma  
Attn: David Wostenberg  
155 West 14<sup>th</sup> Street  
Yuma, AZ 85364  
928.373.4520  
[David.wostenberg@yumaaz.gov](mailto:David.wostenberg@yumaaz.gov)

**For Financial Administration:**

Arizona Department of Transportation  
Southwest District  
205 S. 17<sup>th</sup> Avenue, Mail Drop 614E  
Phoenix, AZ 85007

City of Yuma  
Attn: David Wostenberg  
155 West 14<sup>th</sup> Street  
Yuma, AZ 85364  
928.373.4520  
[David.wostenberg@yumaaz.gov](mailto:David.wostenberg@yumaaz.gov)

21. Revisions to Contacts. Any revisions to the names and addresses above may be updated administratively by any Party and shall be in writing.
22. Legal Counsel Approval. In accordance with A.R.S. § 11-952 (D), the written determination of each Party's legal counsel providing that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form is set forth below.
11. Electronic Signatures. This Agreement may be signed in an electronic format including DocuSign.
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**Remainder of this page is intentionally left blank.**

**(Signatures begin on the next page)**

**IN WITNESS WHEREOF**, the Parties have executed this Agreement to be effective upon the full completion of signing and dating by all Parties to this Agreement.

**CITY OF YUMA**

By \_\_\_\_\_ Date \_\_\_\_\_  
**JOHN D. SIMONTON**  
City Administrator

ATTEST:

By \_\_\_\_\_ Date \_\_\_\_\_  
**LYNDA BUSHONG**  
City Clerk

I have reviewed the above referenced Intergovernmental Agreement among 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 A.R.S. §§ 11-951 through 11-954 and A.R.S. §§ 28-339 and 48-572 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 remaining Parties, to enter into this Agreement. Approved as to Form:

By \_\_\_\_\_ Date \_\_\_\_\_  
**RICHARD FILES**  
City Attorney

**ARIZONA DEPARTMENT OF TRANSPORTATION**

By \_\_\_\_\_ Date \_\_\_\_\_  
**AUDRA MERRICK**  
Infrastructure Delivery and Operations Division  
Division Director

This Agreement between public agencies, the State of Arizona and the City of Yuma, has been reviewed pursuant to A.R.S. §§ 11-951 through 11-954 and A.R.S. §§ 28-339 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.

By \_\_\_\_\_ Date \_\_\_\_\_  
Assistant Attorney General



**EXHIBIT A**  
**Cost Estimate**

**T0580 01C**

The Project costs are estimated as follows:

**\* Grant Match:**

AZ SMART Funds @ 100%	<u>\$ 3,537,057</u>
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<b>Total Federal Funds</b>	<b>\$ 3,537,057</b>
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\* AZ SMART match funds are reimbursable; as a result ADOT will not invoice the Local Agency for the AZ SMART funds.