

ADOT File No.: IGA 23-0009048-I
Amendment No. One: 25-0011102-I
AG Contract No.: P0012023000292
Project Name/Location: City of Yuma; 4
City Wide Locations
Type of Work: Upgrade Pavement
Markings
Federal-aid No.: HSIP-YUM-0(226)T
ADOT Project No.: T0419 01D 03D
TIP/STIP No.: YU-23-09
CFDA No.: 20.205 - Highway Planning and
Construction
Budget Source Item No.: 101670

**AMENDMENT NO. ONE
TO
INTERGOVERNMENTAL AGREEMENT**

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF YUMA

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 “CITY OF YUMA”, acting by and through its MAYOR and CITY COUNCIL (the “City” or “Local Agency”). The City and State are collectively referred to as the “Parties.”

WHEREAS, the INTERGOVERNMENTAL AGREEMENT, IGA 23-0009048-I, A.G. Contract No. P0012023000292, was executed on March 3, 2023, (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 City is empowered by A.R.S. § 48-572 to enter into this Amendment No. One and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Amendment No. One and has authorized the undersigned to execute this Amendment No. One on behalf of the City; and

NOW THEREFORE, in consideration of the mutual terms expressed herein, the purpose of this Amendment No. One is to revise the Project description and the Parties responsibilities; Exhibit A is revised and replaced accordingly. The Parties desire to amend the Original Agreement, as follows:

Sections I and II of the Original Agreement are restated in their entirety:

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 City is empowered by A.R.S. § 48-572 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. The work proposed under this Agreement consists of the design of wider thermoplastic pavement markings (from 4-inch to 6-inch) on approximately 21.30 miles of arterial streets (the "Project"). The Project cost, shown in Exhibit A, is estimated at \$705,390, which includes federal aid. The State will administer the design. The City will advertise, bid and award, and administer the construction of the Project.
4. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the Local Agency and authorization of such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the Local Agency for the Project, if the Project is approved by Federal Highway Administration (FHWA) and funds for the Project are available.
5. The foregoing Recitals and Exhibit A shall be incorporated into this Agreement.

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

II. SCOPE OF WORK

1. The Parties agree:
 - a. The Project will be completed, accepted, and paid for in accordance with the requirements of the Project plans and specifications.
 - b. The final Project amount may exceed the initial estimate(s) identified in Exhibit A, and in such case, the Local Agency is responsible for, and agrees to pay, any and all actual costs exceeding the initial estimate. If the final Project 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. De-obligated federal aid will be returned to the State. The Local Agency acknowledges it remains responsible for actual costs and agrees to pay according to the terms of this Agreement.

2. The State will:

- a. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the Local Agency's designated agent for the Project.
- b. If Project Development Administration (PDA) or design costs exceed the estimate during the development of design, notify the Local Agency, obtain concurrence prior to continuing with the development of design, and invoice as determined by ADOT and the Local Agency for additional PDA costs to complete the design the Project. If design costs exceed the estimate prior to completion of design, invoice the Local Agency for Project costs exceeding design. After the Project costs are finalized invoice or reimburse the Local Agency for the difference between actual costs and the amount the Local Agency has paid for PDA and design.
- c. Submit all required documentation pertaining to the Project to FHWA with the recommendation that the maximum federal funds programmed for this Project be approved for scoping/design. After receipt of FHWA authorization, proceed to advertise for and enter into contract(s) with the consultant(s) for the design and post-design of the Project. Should costs exceed the maximum federal funds available it is understood and agreed that the Local Agency will be responsible for any overage.
- d. Prepare and provide all documents pertaining to the design and post-design of the Project, incorporating comments from the Local Agency, as appropriate. Review and approve documents required by FHWA to qualify the Project for and to receive federal funds. Perform tasks that may consist of, but are not limited to, preparation of environmental documents; analysis and documentation of environmental categorical exclusion determinations; geologic materials testing and analysis; right of way related oversight and stewardship activities; preparation of reports, design plans, maps, specifications and cost estimates and other related tasks essential to the design development of the Project.
- e. After completion of design and receipt of actual PDA costs, if applicable, 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 Local Agency will be responsible for any overage.

3. The Local Agency will:

- a. Designate the State as the Local Agency authorized agent for the Project.
- b. Agree to be responsible for actual PDA and design costs, if during the development of design, such costs exceed the initial estimate. Be responsible and pay for the difference between the estimated and actual PDA and design costs of the Project within 30 days of receipt of an invoice.
- c. Review design plans, specifications, cost estimates and other such documents required for the construction bidding and construction of the Project, including scoping/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.
- d. Be responsible for all costs not covered by federal funding that are incurred in performing and accomplishing the work as set forth under this Agreement. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the Local Agency is responsible for these costs; payment for these costs shall be made within 30 days of receipt of an invoice from the State.
 - e. Certify that all necessary rights of way have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever 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 Right of Way Procedures 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 Local Agency, if applicable.
 - f. Certify that the City has adequate resources to discharge the City's real property related responsibilities and ensures that its Title 23-funded projects are carried out using their ADOT approved and certified Local Agency Right of Way Manual and that the City will comply with current FHWA requirements whether or not the requirements are included in their ADOT approved Local Agency Right of Way Manual (23 CFR 710.201).
 - g. Not permit or allow any encroachments on or private use of the right of way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the Local Agency shall take all necessary steps to remove or prevent any such encroachment or use. Provide a copy of encroachment permits issued within the Project limits to the State.
 - h. Investigate and document utilities within the Project limits; submit findings to ADOT determining prior rights or no prior rights; approve a location within the final right of way to re-establish the prior right location for those utilities with prior rights.
 - i. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any Local Agency 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 Local Agency. Payment for these costs will be made to the State within 30 days of receipt of an invoice from the State.

III. MISCELLANEOUS PROVISIONS

(NO CHANGES)

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

THIS AMENDMENT NO. ONE shall become effective upon the full completion of signing and dating by all Parties to this Amendment No. One.

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 Amendment No. One and that the Amendment No. One is in proper form is set forth below.

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

CITY OF YUMA

By _____ Date _____
JOHN D. SIMONTON
Acting City Administrator

ATTEST:

By _____ Date _____
LYNDA L. BUSHONG
City Clerk

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 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. § 48-572 and declare this Amendment No. One 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 Amendment No. One.
Approved as to Form:

By _____ Date _____
RICHARD FILES
City Attorney

ARIZONA DEPARTMENT OF TRANSPORTATION

By _____ Date _____
AUDRA MERRICK, PE
Infrastructure Delivery and Operations Division
Division Director

By _____ Date _____
GREG BYRES, PE
Deputy Directory for Transportation
State Engineer

This Amendment No. One to the Original 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. § 28-401, 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 Amendment No. One.

By _____ Date _____
Assistant Attorney General

EXHIBIT A
City of Yuma; 4 City Wide Locations
Cost Estimate

IGA:23-0009048-I
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The Project costs are estimated as follows:

	Original	Amend #1*		AMENDED TOTAL
Executed Date:	March 3, 2023	<i>Pending</i>		
<u>ADOT Project Development Administration (PDA) Cost:</u>				
Federal-aid funds @ 100%	<u>\$ 30,000</u>			<u>\$ 30,000</u>
<u>Scoping/Design:</u>				
Federal-aid funds @ 100%	<u>\$ 106,500</u>			<u>\$ 106,500</u>
<u>Construction:**</u>				
Federal-aid funds @ 100%	<u>\$ 568,890</u>			<u>\$ 568,890</u>
Estimated TOTAL Project Cost	\$ 705,390			\$ 705,390

*Construction will be administered by Yuma

**Includes 15% construction engineering (CE) and administration cost (this percentage is subject to change, any change will require concurrence from the City) and 5% Project contingencies