

ADOT CAR No.: IGA /JPA 16-0006289-I
AG Contract No.: P001 2017 001105
Project Location/Name: Superstition Blvd
Type of Work: Construct Roundabout
Federal-aid No.: HSIP-088-A(201)A
ADOT Project No.: H830801C
TIP/STIP No.: 16214
CFDA No.: 20.205
Budget Source Item No.: HSIP

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF APACHE JUNCTION

THIS AGREEMENT is entered into this date _____, 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 APACHE JUNCTION, acting by and through its MAYOR and 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 to enter into this Agreement and has 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 State will design, advertise, award and administer construction of intersection improvements at State Route 88 (SR 88) and Superstition Boulevard and at the intersection of SR 88 and Idaho Road, (the ‘Project’). The Project includes roundabout construction, installation of the intersection lighting system, and landscape and irrigation at the SR 88 and Superstition Boulevard intersection. The Project also includes pavement preservation, Americans with Disabilities Act (ADA) facility upgrades, and installation of video traffic signal detection equipment at the SR 88 and Idaho Road intersection. The State will obtain federal funds for the construction costs associated with the Project. The City will be responsible for electrical energy

costs and maintenance as depicted in exhibits A & B. The State will, by Resolution, bring into the State system the necessary rights-of-way needed for the Project. After final acceptance of the Project, the State will abandon ownership, jurisdiction, and maintenance responsibilities of right-of-way as depicted in Exhibit C. The City agrees to waive the requirements of Arizona Revised Statutes § 28-7209.

5. Prior to any construction of future visual enhancements to the roundabout the City will comply with established procedures of the State's Central District Permit Office.
6. The Parties will 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 Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.

THEREFORE, in consideration of the mutual terms expressed in this Agreement, 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. After signing and execution of this Agreement, by Resolution of the State's Transportation Board, bring into the State system the necessary rights-of-way needed for the Project.
 - c. Prepare and provide the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project and incorporate comments from the City as appropriate.
 - d. With FHWA authorization, proceed to administer construction: advertise, receive and open bids, award, and enter into a contract with the firm for the construction of the Project. Administer contract(s) for the Project and make all payments to the contractor(s).
 - e. After final acceptance of the Project, with approval by Resolution of the State's Transportation Board, abandon and transfer ownership, jurisdiction, and maintenance responsibilities of right-of-way as depicted in Exhibit C.
 - f. After acceptance by the City of ownership, jurisdiction, and maintenance responsibilities of right-of-way depicted in Exhibit C, be granted continued right of entry approval to access crossroads as necessary to perform landscape establishment and/or right-of-way monumentation.
 - g. Issue, per established procedures of the State's Central District Permit Office, a valid blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance

work to be provided by the City within the State's rights-of-way. Process any other Encroachment Permits that may be needed to work within the State's right-of-way to effectively meet the obligations set forth for the City in this Agreement. The State agrees all activities that are reasonably required to be performed by the City under this Agreement shall be set forth in and covered by the appropriate Encroachment Permit.

- h. Notify the City of final inspection and acceptance of all the Project improvements, and be responsible for the project lighting operation and maintenance as depicted in Exhibit B.
- i. Issue the City a permit for roundabout enhancements, upon approval of design and the City's permit application for future visual enhancements to the roundabout.

2. The City will:

- a. Designate the State as the City's authorized agent for the Project.
- b. Waive the requirements of Arizona Revised Statutes Section § 28-7209.
- c. Review the design documents required for construction of the Project and provide comments to the State as appropriate.
- d. Investigate and document utilities within the Project limits; submit findings to ADOT determining prior rights or no prior rights; approve an easement within the final right-of-way to re-establish the prior right location for those utilities with prior rights.
- e. Not permit or allow any encroachments upon or private use of the public 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. Automatically grant to the State by execution of this agreement, its agents and/or contractors, without cost, the temporary right to enter public rights-of-way, as required, to conduct any and all construction and preconstruction related activities for the Project, on, to and over said public rights-of-way.
- g. Request and maintain, per established procedures of the State's Central District Permit Office, a valid blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance work provided by the City within the State's rights-of-way. Agree to obtain separate permits for any new construction or installations in accordance with the Central District established procedures. The City agrees all activities performed by the City under this Agreement shall be set forth in and covered by the appropriate Encroachment Permit.
- h. After final acceptance of the Project by the State and approval by Resolution of the State's Transportation Board, accept ownership, jurisdiction, and maintenance responsibilities of right-of-way as depicted in Exhibit C.

- i. After acceptance of ownership, jurisdiction, and maintenance responsibilities, continue to grant the State, its agents and/or contractors, without cost, right of entry approval to access crossroads, to perform landscape establishment and/or right-of-way monumentation.
- j. After final inspection and acceptance of the Project is complete assume responsibility of the electrical energy costs at its sole expense and maintenance responsibilities as depicted in Exhibits A & B.
- k. After approval by the State, obtain a valid Encroachment Permit prior to any construction of future visual enhancements to the roundabout in accordance with established procedures of the State's Central District Permit Office.
- l. Be responsible for any and all construction costs, maintenance costs of all components associated with future visual enhancements including but not limited to lighting, landscape and irrigation, and restore any Project disturbed area to pre-visual enhancement conditions at the City's sole expense.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project. 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 City terminates this Agreement, the City shall 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 City 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 sole 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. 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.
5. The cost of the project under this Agreement includes indirect costs approved by FHWA, as applicable.
6. 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.
7. 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 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
SingleAudit@azdot.gov
8. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.
9. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
10. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.
11. 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 in this Agreement by reference regarding "Non-Discrimination".
12. 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.

13. In the event of any controversy, which may arise out of this Agreement, the Parties agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.
14. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.
15. The Parties shall comply with the applicable requirements of Arizona Revised Statutes §35-393.01.
16. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
17. 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, AZ 85007
 602.712.3132 Fax
JPABranch@azdot.gov

City of Apache Junction
 Attn: Emile Schmid, P.E., City
 Engineer
 575 E. Baseline Avenue
 Apache Junction, AZ 85119
 480.982.1055
eschmid@ajcity.net

For Project Administration:

Arizona Department of Transportation
 Project Management Group
 Attn: Troy Sieglitz
 1611 W. Jackson Street, Mail Drop
 Phoenix, AZ 85007
 602.712.2211
TSieglitz@azdot.gov

City of Apache Junction
 Attn: Emile Schmid, P.E., City
 Engineer
 575 E. Baseline Avenue
 Apache Junction, AZ 85119
 480.982.1055
eschmid@ajcity.net

For Financial Administration:

Arizona Department of Transportation
 Project Management Group
 205 S. 17th Avenue, Mail Drop 614E
 Phoenix, AZ 85007
TSieglitz@azdot.gov

City of Apache Junction
 Attn: Donna Meinerts, Finance
 Department Director
 300 E. Superstition Blvd.
 Apache Junction, AZ 85119
 480.474.5467
DMeinerts@ajcity.net

18. In accordance with Arizona Revised Statutes § 11-952 (D) attached and incorporated in this Agreement 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 APACHE JUNCTION

STATE OF ARIZONA

Department of Transportation

By _____
JEFF SERDY
Mayor

By _____
STEVE BOSCHEN, P.E.
Division Director

ATTEST:

By _____
KATHY CONNELLY
City Clerk

ATTORNEY APPROVAL FORM FOR THE CITY OF APACHE JUNCTION

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 APACHE JUNCTION, 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 _____, 2017.

RICHARD J. STERN
City Attorney