

RESOLUTION NO. 22-29

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AUTHORIZING THE CITY OF APACHE JUNCTION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA FOR THE 2022 IRONWOOD DRIVE PAVED SHOULDERS SAFETY IMPROVEMENT PROJECT.

WHEREAS, the City of Apache Junction("City") and the State of Arizona Department of Transportation ("ADOT") desire to enter into an Intergovernmental Agreement ("IGA") for a safety improvement project on Ironwood Drive between Elliot Road and Baseline Avenue (the "Project"); and

WHEREAS, the City acquired federal-aid funds to construct the Project; and

WHEREAS, the State and the City have identified systematic improvements within the City as being eligible under this program; and

WHEREAS, the State shall be the designated agent for the City; and

WHEREAS, pursuant to A.R.S. § 11-952(A), public entities may enter into IGAs with other municipalities and governmental entities for joint or cooperative activities; and

WHEREAS, the parties have crafted the attached written agreement in the form of an IGA which formalizes the arrangement; and

WHEREAS, the attached written IGA (designated as ADOT No. IGA/JPA 22-0008656-I) sets forth the financial and administrative conditions for the Project; and

WHEREAS, federal aid funds will contribute \$1,900,477.00 with the City's contribution being \$138,171.00 for design and construction project costs; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION ARIZONA, AS FOLLOWS:

- 1) The mayor and city council approve the attached form of the IGA set forth in Attachment A; and the mayor is hereby authorized to sign the agreement on behalf of the city.
- 2) The city manager and/or his designee is authorized and directed to take all steps necessary to carry out the purpose and intent of this resolution and to fulfill all the duties required under the IGA.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, THIS ____ DAY OF _____, 20__.

SIGNED AND ATTESTED TO THIS ____ DAY OF _____, 20__.

WALTER "CHIP" WILSON
Mayor

ATTEST:

JENNIFER PENA
City Clerk

APPROVED AS TO FORM:

RICHARD J. STERN
City Attorney

ADOT CAR No.: IGA 22-0008656-I
AG Contract No.: P001 00xxxx
Project Location/Name: Ironwood Drive;
Elliot Ave - Baseline Ave
Type of Work: Pave Shoulders & Rumble
Strips
Federal-aid No.: HSIP-APJ-0(221)T
ADOT Project No.: T0375 01D/03D/01C
TIP/STIP No.: APJ23-071D, APJ24-071C
CFDA No.: 20.205 - Highway Planning and
Construction
Budget Source Item No.:

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF APACHE JUNCTION

THIS AGREEMENT ("Agreement") is entered into this date _____, pursuant to the 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 APACHE JUNCTION, 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. § 28-401 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 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 work proposed under this Agreement consists of the design, construction and installation of paved shoulders and rumble strips along Ironwood Drive from Elliot Avenue to Baseline Avenue (the "Project"). The Project cost, shown in Exhibit A, is estimated at \$2,038,618.00, which includes federal aid and City funds. The State will advertise, bid and award, and administer the design and construction phase 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 City and authorization of 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 Federal Highway Administration (FHWA) and funds for the Project are available.

THEREFORE, the Recitals set forth above and Exhibit A, attached hereto and made part hereof, are incorporated into this Agreement and in consideration of the mutual terms expressed herein, it is agreed 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 cost estimate may exceed the initial estimate identified in Exhibit A, and in such case, the Town is responsible for and agrees to pay, the difference prior to bid advertisement.
 - c. The final Project amount may exceed the initial estimate(s) identified in Exhibit A, and in such case, the City 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 and returned to the State. The City acknowledges it remains responsible for actual costs and agrees to pay according to the terms of this Agreement.
 - d. The City and ADOT will each separately file a Notice of Intent (NOI) under the Construction General Permit (CGP) with the Arizona Department of Environmental Quality (ADEQ) before construction begins, if applicable to the Project.
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 City's designated agent for the Project.
 - b. After this Agreement is executed, and prior to performing or authorizing any work, invoice the City for the initial Project Development Administration (PDA) costs, estimated at \$30,000.00 and the City's share of the Project design costs, estimated at \$15,561.00. If PDA costs exceed the estimate during the development of design, notify the City, obtain concurrence prior to continuing with the development of design, and invoice as determined by ADOT and the City for additional costs to complete PDA for the Project. After the Project costs are finalized invoice or reimburse the City for the difference between actual costs and the amount the City has paid for PDA and design costs.
 - d. After receipt of the PDA costs and the City's estimated share of the Project design costs, on behalf of the City, prepare and provide all documents pertaining to the design and post-design of the Project, incorporating comments from the City, 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 activities; preparation of reports, design plans, maps, specifications and cost estimates and other related tasks essential to the design development of the Project.

- e. 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 design and construction. 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 City will be responsible for any overage.
 - f. After completion of design and prior to bid advertisement, invoice the City for the actual PDA costs, as applicable, and the City's share of the Project construction costs, estimated at \$92,610.00.00. After the Project costs for construction are finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs. De-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.
 - g. After receipt of the actual PDA costs, if applicable, and the City's estimated share of the Project construction costs, including the difference between the final and the initial construction cost estimates, 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 City will be responsible for any overage.
 - h. After receipt of FHWA authorization, proceed to advertise for, receive and open bids award and enter into a contract with the firm for the construction of the Project. If the bid amounts exceed the construction cost estimate, obtain City concurrence prior to awarding the contract. After the Project is awarded, invoice the City for the difference between estimated and actual costs, if applicable.
 - i. Notify the City of completion and final acceptance of the Project. At such time, file a Notice of Termination (NOT) with ADEQ transferring CGP responsibilities to the City, and provide a copy to the City indicating that the State's maintenance responsibility of the Project is terminated, as applicable.
 - j. Notify the City of completion and final acceptance of the Project; coordinate with the City and turn over full responsibility of the Project improvements.
 - k. Not be obligated to maintain the Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.
3. The City will:
- a. Designate the State as the City's authorized agent for the Project.
 - b. Within 30 days of receipt of an invoice from the State, pay the initial PDA costs, estimated at \$30,000.00 and the City's share of Project design costs, estimated at

\$15,561.00. Agree to be responsible for actual PDA costs, if during the development of design, PDA 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. After completion of design, within 30 days of receipt of an invoice from the State and prior to bid advertisement, pay to the State, any outstanding PDA costs, the City's share of the Project construction costs, estimated at \$92,610.00, and if applicable, the difference between the final and initial construction cost estimates. Be responsible for and pay the difference between the estimated and actual construction costs of the Project, within 30 days of receipt of an invoice.
- e. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, that are 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.
- f. 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 City, if applicable.
- g. As applicable, 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 the FHWA approved and certified ADOT Right of Way Procedures Manual and that they will comply with current FHWA requirements whether or not the requirements are included in the FHWA approved ADOT Right of Way Procedures Manual. (23 CFR 710.201)
- h. 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 City 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.

- i. Automatically grant to the State, by execution of this Agreement, its agents and/or contractors, without cost, the temporary right to enter City rights of way, as required, to conduct any and all construction and preconstruction related activities for the Project, on, to and over said City rights of way. This temporary right will expire with completion of the Project.
- j. 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.
- k. 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.
- l. After notification of final acceptance by the State, assume and maintain full responsibility of the Project, including Storm Water Pollution Prevention Plans (SWPPP) inspections, maintenance, and required documentation, until final stabilization is reached. Provide the NOI number to the State and the Contractor, accept CGP responsibilities at time of transfer, and file an NOT with ADEQ when final stabilization is reached, as applicable.
- m. After completion and final acceptance of the Project, agree to maintain and assume full responsibility of the Project and all Project components.

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 the Project will only occur with the mutual written consent of both 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. Any and all obligations of maintenance hereunder shall remain perpetual and shall survive any termination hereof and the assignment or assumption of this Agreement or the Project by another competent jurisdiction or entity.
- 4. **Cancellation.** This Agreement may be cancelled at any time up to 30 days before the award of the Project contract, so long as the cancelling Party provides at least 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 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.

5. Indemnification. 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.
6. Third-Party Indemnification. The State shall include Section 107.13 of the 2021 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated into 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.
7. Programmed Federal Funds. The cost of design, construction and construction engineering work under this Agreement is to be covered by the federal funds programmed for this Project, up to the maximum available. The City acknowledges that actual Project costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by FHWA as eligible for federal funds. Therefore, the City agrees to pay the difference between actual costs of the Project and the federal funds received.
8. Termination of Federal Funding. 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.
9. Indirect Costs. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.
10. 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.
11. Title VI. The City acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
12. 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 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
SingleAudit@azdot.gov

13. Governing Law. This Agreement shall be governed by and construed in accordance with Arizona laws.
14. Conflicts of Interest. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
15. Inspection and Audit. The City shall retain all books, accounts, reports, files and other records relating to this Agreement which shall be subject at all reasonable times to inspection and audit by the State for five years after completion of the Project. 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.
16. 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 issued by the Governor of the State of Arizona and incorporated in this Agreement by reference regarding "Non-Discrimination."
17. 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.
18. 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.
19. E-Verify. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
20. Anti-Israel Boycott Act. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01.
21. Other Applicable Laws. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

22. 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. 17th Avenue, Mail Drop 637E
Phoenix, AZ 85007
JPABranch@azdot.gov

City of Apache Junction
Attn: Raquel Schatz
575 E Baseline Ave
Apache Junction, AZ 85119
480.474.8549
RSchatz@ajcity.nt

For Project Administration:

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

City of Apache Junction
Attn: Raquel Schatz
575 E Baseline Ave
Apache Junction, AZ 85119
480.474.8549
RSchatz@ajcity.nt

For Financial Administration:

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

City of Apache Junction
Attn: Raquel Schatz
575 E Baseline Ave
Apache Junction, AZ 85119
480.474.8549
RSchatz@ajcity.nt

23. Revisions to Contacts. Any revisions to the names and addresses above may be updated administratively by either Party and shall be in writing.
24. 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.
25. Electronic Signatures. This Agreement may be signed in an electronic format using DocuSign.
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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 APACHE JUNCTION

By _____ Date _____
WALTER "CHIP" WILSON
Mayor

ATTEST:

By _____ Date _____
JENNIFER PENA
City Clerk

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 A.R.S. §§ 11-951 through 11-954 and A.R.S. § 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 State to enter into this Agreement. Approved as to Form:

By _____ Date _____
City Attorney

ARIZONA DEPARTMENT OF TRANSPORTATION

By _____ Date _____
BRENT A. CAIN, PE
Division Director

By _____ Date _____
STEVE BOSCHEN, PE
Division Director

A.G. Contract No. _____ (ADOT IGA 22-0008656-I), an Agreement between public agencies, the State of Arizona and City of Apache Junction, 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 Agreement.

By _____ Date _____
Assistant Attorney General

EXHIBIT A**Cost Estimate****T0375 01D/03D/01C**

The Project costs are estimated as follows:

ADOT Project Development Administration (PDA) Cost, non-federal-aid

| | |
|---------------------|-------------|
| City's costs @ 100% | \$30,000.00 |
|---------------------|-------------|

Scoping/Design:

| | |
|---------------------------|---------------|
| Federal-aid funds @ 94.3% | \$ 257,439.00 |
| City's match @ 5.7% | 15,561.00 |

| | |
|--------------------------------------|----------------------|
| Subtotal – Scoping/Design/PDA | \$ 303,000.00 |
|--------------------------------------|----------------------|

Construction:*

| | |
|---------------------------|-----------------|
| Federal-aid funds @ 94.3% | \$ 1,643,008.00 |
| City's match @ 5.7% | 92,610.00 |

| | |
|--------------------------------|------------------------|
| Subtotal – Construction | \$ 1,735,618.00 |
|--------------------------------|------------------------|

| | |
|-------------------------------------|------------------------|
| Estimated TOTAL Project Cost | \$ 2,038,618.00 |
|-------------------------------------|------------------------|

| | |
|-----------------------------------|----------------------|
| Total Estimated City Funds | \$ 138,171.00 |
|-----------------------------------|----------------------|

| | |
|----------------------------|------------------------|
| Total Federal Funds | \$ 1,900,477.00 |
|----------------------------|------------------------|

* (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)