

ADOT CAR No.: IGA 22-0008568-I
AG Contract No.: P001 2022 000724
Project Location/Name: County 24th St
Extension; Avenue F - Avenue H
Type of Work: Construct New Road
ADOT Project No.: T0360 01D 01C
TIP/STIP No.: SL22-01C
CFDA No.: 20.205 – Highway Planning
and Construction
Budget Source Item No.: HURF Exchange

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF SAN LUIS

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 SAN LUIS, 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 § 28-334 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 Arizona Revised Statutes § 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 City desires to utilize HURF Exchange funding for the construction of roadway grading, roadway base, asphaltic concrete, signing and marking of County 24th Street Extension from Avenue F to Avenue H, hereinafter referred to as the “Project.” The primary purpose of this Project is the improvement of the efficiency, reliability and safety of the traveling public.
4. The Project is located on a major collector functional classification on the federal aid system. The Yuma Metropolitan Planning Organization (YMPO) has confirmed the Project’s eligibility for federal Surface Transportation Block Grant Program (STBGP) funds for areas with population of 200,000 or less according to the most recent annual population estimates produced by the Arizona Department of Administration.
5. All phases of the Project are programmed in the approved, fiscally-constrained portion of the applicable Transportation Improvement Program (TIP) as “HURF Exchange.”

6. No phase of the Project has previously been funded with any category of federal aid funding.
7. No phase of the Project is currently programmed with any category of federal aid funding.
8. The City has represented to the State that it will be able to, and will, meet the schedule requirements of this Agreement.

THEREFORE, the Recitals set forth above are incorporated into this Agreement and in consideration of the mutual terms expressed herein, it is agreed as follows:

II. DEFINITIONS AND ACRONYMS

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| Apportionments | Surface Transportation Block Grant Program funds provided by ADOT on a discretionary basis to Arizona COGs and MPOs. |
| AFIS | The Arizona Financial Information System administered by the Arizona Department of Administration. |
| Authorization | The approval by the State of the use of HURF Exchange funding for a Project phase. |
| Change in Scope | Any change to a Project or Project phase which increases the footprint or adds or decreases features to a Project (for example: pedestrian bridge, roundabout, traffic signal, etc.). |
| COG | Council of Governments |
| Date of Authorization | The date on which the State approves the use of HURF Exchange funding for a Project phase. This is also the date on which HURF Exchange funded costs for the Project phase may begin to be incurred. |
| Eligible Costs | Costs directly associated with the design, acquisition or right of way, and construction of the Project, including necessary safety items. Other items unavoidably required for the primary purpose of the Project, which is to improve the efficiency and safety of motor vehicle travel on the roadway, may be considered part of the eligible costs. These items may include utility relocation, sidewalks, ADA ramps and safety features. |
| Federal Highway Administration (FHWA) | A division of the US Department of Transportation specializing in highway transportation. |
| Final Project Phase Amount | Total cost of the Project phase based on the contract, less any ineligible costs but including a reasonable amount for construction engineering and contingency. For Project phases performed using the City's own forces, the Final Project Phase Amount is the amount for the respective phase as estimated in the "Project Cost Estimate" in the HURF Exchange Cost and Schedule tool workbook. |

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| Final Voucher | The final accounting of the Project, prepared by ADOT after the Project is fully complete. |
| Fully executed IGA | An IGA which has received all required approvals and opinions and has been signed by all parties. |
| HURF | The state of Arizona taxes motor fuels and collects a variety of fees and charges relating to the registration and operation of motor vehicles on the public highways of the state. These collections include gasoline and use-fuel taxes, motor-carrier taxes, vehicle-license taxes, motor vehicle registration fees and other miscellaneous fees. These revenues are deposited in the Arizona Highway User Revenue Fund (HURF) and are then distributed to the cities, towns and counties and to the State Highway Fund. These taxes represent a primary source of revenues available to the state for highway construction, improvements and other related expenses. |
| HURF Exchange funding | State Highway Funds which are exchanged for federal Surface Transportation Block Grant Program funds for areas of under 200,000 population and under 5,000 population pursuant to Arizona Revised Statutes §28-6993.G. HURF Exchange funding will be credited to the applicable COG or MPO at 90% of the amount of the federal Surface Transportation Block Grant Program funds programmed for the Project in the TIP. |
| HURF Exchange Project Forms | The forms in Attachment One, prescribed by ADOT and to be used by the City for HURF Exchange Projects, completed, approved and signed as required. The forms include: <ul style="list-style-type: none"> • HURF Exchange Project Scoping Form • HURF Exchange Project Cost Estimate • HURF Exchange Project and Draw Schedule • HURF Exchange Draw and Final Reimbursement Invoice |
| IGA | Intergovernmental agreement |
| Ineligible costs | Costs which are not eligible. Ineligible costs include, but are not limited to, the following: <ul style="list-style-type: none"> • Maintenance, which is scheduled or unscheduled work that is performed to preserve existing infrastructure, in reaction to an event (crash) or season (potholes), or work requiring regular reoccurring attention, such as fence repair, culvert cleanouts, etc. • Scoping. • Costs incurred prior to date of finance authorization. • Any items outside of the Project right of way. • Utility relocation which is not directly and unavoidably caused by the HURF Exchange Project. |

- Betterments of utilities.
- Any other costs which are not eligible costs as defined above.

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| LPA | Local Public Agency Section of ADOT |
| Maintenance | Scheduled or unscheduled work that is performed to preserve existing infrastructure, in reaction to an event (such as an accident) or season (such as potholes), or work requiring regular reoccurring attention, such as fence repair, culvert cleanouts, and other ongoing work. |
| MPO | Metropolitan Planning Organization |
| Obligation | The application of State Highway Funds on a Project phase in AFIS. |
| Obligation Authority (OA) | The amount of apportionments which may be obligated in a federal fiscal year. ADOT provides obligation authority, on a discretionary basis, to COGs/MPOs. |
| Substantial completion | <p>The Project is substantially complete when all of the following, as applicable, have occurred:</p> <p>(A) All lanes of traffic of the completed Project are finished and accepted and traffic can move unimpeded through the Project at the posted speed;</p> <p>(B) All signage is in place and accepted;</p> <p>(C) All guardrails, drainage devices, ditches, excavation and embankment have been accepted; and</p> <p>(D) The only work left for completion is incidental, away from the paved portion of the road, and does not affect the safety or convenience of the traveling public.</p> |
| Surface Transportation Block Grant Program (STBGP) | A category of funding under the federal aid highway program. The subcategories of STBGP applicable to the HURF Exchange program are Under 200,000 population and Under 5,000 population. One hundred percent (100%) of the amount of Surface Transportation Block Grant Program apportionments and obligation authority programmed for the Project in the TIP will be charged to the applicable COG or MPO in exchange for HURF Exchange funding. |
| TIP | Transportation Improvement Program |

III. SCOPE OF WORK

1. The City has represented to the State that it will be able to complete the Project phases according to the Funding Transfer and Authorization Schedule table below.

| Funding Transfer and Authorization Schedule Table | | | | |
|--|------------------------|---|---|--|
| Project Phase(s) Programmed in TIP Intended as HURF Exchange | Fiscal Year Programmed | STBGP Apportionments and OA Charged to COG/MPO* | HURF Exchange Funding Credited to COG/MPO | Deadline to Submit Authorization Request to ADOT |
| Design | | | | |
| Right of Way | | | | |
| Construction | 2022 | \$1,345,760.00 | \$1,211,184.00 | 5-15-22 |
| Other: | | | | |
| TOTAL | | \$1,345,760.00 | \$1,211,184.00 | |
| *STBGP apportionments <u>and</u> obligation authority will be charged to the COG/MPO at 100% of this amount. | | | | |

2. The State will:
 - a. Make the following funding transfers prior to the authorization of each Project phase:
 - (1) Transfer 100% of the applicable STBGP apportionments and obligation authority for the respective Project phase from the applicable COG/MPO to the State.
 - (2) Transfer State Highway Funds to the COG/MPO in the amount of 90% of the applicable STBGP apportionments and obligation authority for the respective Project phase.

These transfers will be made only after, and are conditioned upon, completion of the prior phase, if any, and receipt of an authorization request and required documents for the phase to which the transfer applies.
 - b. After completion of the above transfers for each Project phase, give authorization, obligate State Highway Funds, and notify the City that the phase may be advertised, consultants or contractors may be selected, or work can begin.
 - c. After receipt of the final itemized budget and final Project phase amount for each Project phase, review and adjust the amount authorized and obligated in AFIS, as necessary, to be equivalent to the Final Project Phase Amount.
 - d. If the Final Project Phase Amount is:
 - (1) Less than the amount obligated for that phase, release any excess HURF Exchange funding in AFIS and return it to the COG/MPO for reprogramming.

- (2) Greater than the amount of HURF exchange funding obligated, the City is solely responsible for the difference.
- e. Pay State Highway Funds to the City for eligible costs for each obligated Project phase as follows:
 - (1) First 30% - Prior to the start of work and within 30 days approval of an invoice from the City.
 - (2) Second 30% - Within 30 days of approval of an invoice and copies of Project phase invoices received and paid by the City which demonstrate the work has progressed, or is progressing, to 30% completion.
 - (3) Third 30% - Within 30 days of approval of an invoice and copies of further Project phase invoices received and paid by the City which demonstrate the work has progressed, or is progressing, to 60% completion.
 - (4) Final 10% of each phase, except the final phase, will be reimbursed to the City by the State within 30 days of approval of invoice, copies of final Project phase invoices received and paid by the City which demonstrate the phase is completed. For the final phase, the final 10% will be reimbursed within 30 days of the completion of the final voucher. Upon payment of the final 10%, no further invoices will be accepted or paid.
- f. After each subsequent phase is authorized and upon payment of the final invoice from the City for the preceding phase, close the preceding phase in AFIS and return any remaining funds to the applicable COG/MPO for reprogramming.
- g. After all phases have been completed, conduct a final Project walk-through in conjunction with the City, the applicable COG/MPO and FHWA as required.
- h. Prepare a final voucher for the Project upon completion of all phases, and return any remaining funds to the applicable COG/MPO for reprogramming.
- 3. The City will:
 - a. Utilize the HURF Exchange funding only for the Project and phase(s) which are the subject of this Agreement.
 - b. Adhere to the Project schedule in Section III.1.
 - c. Begin work, initiate selection of consultants or contractors or advertise the Project, as applicable, within 60 days of the date of authorization.
 - d. Approve and expend any funds required for the Project in excess of the HURF Exchange funding to ensure the Project is successfully completed on schedule.
 - e. Pay the final 10% of Project costs, to be reimbursed by ADOT within 30 days of the completion of the final voucher.

- f. Submit an authorization request for each HURF Exchange Project phase to the ADOT Project Manager (PM) which includes the following documents, updated as necessary for each successive Project phase:

- (1) HURF Exchange Project Cost Estimate form;
- (2) HURF Exchange Project and Draw Schedule;
- (3) A map indicating the location, functional class and limits of the Project;
- (4) A copy of the TIP reflecting the HURF Exchange programming; and
- (5) Other documents as may be required by the State.

Include an Invoice for first 30% progress payment with the authorization request if the Project phase is being performed with the City's own forces.

- g. Within sixty (60) days of the selection of consultant or award of a contract for each Project phase, submit to the ADOT PM:

- (1) The final Project phase scope with itemized costs;
- (2) The final schedule, including the dates the work will start and end and the anticipated dates of each progress payment request; and
- (3) The final itemized budget with Final Project Phase Amount.

- h. If the Final Project Phase Amount is greater than the amount of HURF exchange funding obligated, be solely responsible for the difference.

- i. Invoice ADOT for eligible costs for each obligated Project phase as follows using the HURF Exchange Draw and Final Reimbursement Invoice:

- (1) First 30% - Prior to the start of work.
- (2) Second 30% - A minimum of 30 days but not more than 60 days prior to when the funds will be required. The invoice must be accompanied by documents which demonstrate the work has progressed, or is progressing, to 30% completion including:
 - i. Copies of Project phase invoices, pay requests, estimates and other cost records received by the City and indicating payment status, or, if the City is performing the work with its own forces, a summary of costs expended, and
 - ii. A status report related to the Project phase schedule.
- (3) Third 30% - A minimum of 30 days but not more than 60 days prior to when the funds will be required. The invoice must be accompanied by documents which

demonstrate the work has progressed, or is progressing, to 60% completion, including:

- i. Copies of further Project phase invoices, pay requests, estimates and other cost records received by the City and indicating payment status, or if the City is performing the work with its own forces, a summary of costs expended, and
 - ii. A status report related to the Project phase schedule.
 - j. After all phases have been completed, participate in the final Project walk-through in conjunction with ADOT, the applicable COG/MPO and FHWA as required.
 - k. Within 15 business days of substantial completion of the construction phase, notify the ADOT PM to schedule a final Project walk-through.
 - l. Within 60 days of completion of the construction phase, submit the close out package to the ADOT PM which includes:
 - (1) An invoice for the final 10%;
 - (2) Copies of warrants or checks reflecting total costs paid by the City for construction;
 - (3) The Project Acceptance letter from the City to the contractor; and
 - (4) A close-out letter to ADOT.
 - m. Be responsible for complying with any federal requirements applicable to the Project.
 - n. If the City files a condemnation action, the City shall request an order of immediate possession.
 - o. Repay all HURF Exchange payments to ADOT if the Project is not constructed within two years of the completion of design and obtaining all rights of possession of right of way parcels. Upon receipt of an invoice from ADOT, the City shall pay the full amount within 30 days, as provided in paragraph III.4.d of this Agreement.
 - p. After completion and final acceptance of the Project, agree to maintain and assume full responsibility of the Project and all Project components.
4. The Parties agree:
- a. The HURF Exchange program is offered at ADOT's discretion. ADOT reserves the right to discontinue the HURF Exchange program at any time. Such termination will not affect the validity of this Agreement.
 - b. A fully executed IGA does not guarantee funding or constitute permission to begin work. The City must request and receive authorization and a Notice To Proceed from the ADOT PM for each Project phase in advance of starting work.

- c. No Change in Scope is authorized under this Agreement. If the City desires a Change in Scope, a formal amendment to the Agreement is required, signed by both Parties.
- d. If the construction phase is not complete within two years from the completion of design, or if all phases of the project are not completed within three years from the date of the initial obligation of HURF Exchange funding, whichever is earlier, this Agreement will terminate and the City will be required to repay all HURF Exchange advances and reimbursements received to date. The two year period will be calculated as two years from the date the close out letter for the design phase was received by ADOT. Termination under this section will be executed as follows:
 - (1) Thirty days prior to termination, the State will send a letter to the City and ADOT Project Manager, indicating:
 - i. The close out package required in section III.3.n was not received by ADOT within two years of the completion of design or three years from the date of the initial obligation of HURF Exchange funding, whichever is earlier; and
 - ii. The steps necessary to avoid termination of this Agreement.
 - (2) If the close out package is not received by ADOT within 30 days of the date of the letter:
 - i. Any funding remaining on the Project will be de-obligated and returned to the respective COG/MPO for reprogramming on another Project;
 - ii. No further invoices will be accepted from, and no additional payments will be made to, the City for the Project; and
 - iii. The City must repay to ADOT all funds which have been previously paid by ADOT under this Agreement, including all current and previous phases.
 - iv. The State will send an invoice to the City for all HURF Exchange funding advanced or reimbursed for each phase of the Project with the due date by which such funds must be repaid to ADOT.
- e. Expenditures incurred prior to the date of authorization of the applicable phase are not eligible for HURF Exchange.
- f. The amount obligated for each Project phase will be adjusted to the Final Project Phase Amount.
- g. If there is no billing activity in AFIS for 180 days, the City shall provide documentation which justifies the Project phase is still active to the State within 10 days of request. If the City cannot demonstrate such justification, the Project phase will be de-obligated as follows:
 - (1) Thirty days prior to de-obligation, the State will send an email to the City and ADOT Project Manager, providing notification of the funds available on the Project phase,

number of days since the last billing activity in AFIS and the steps necessary to remove the Project phase from pending de-obligation status.

- (2) If the Project phase is not closed or billing activity generated within 30 days of the date of the email, any remaining funding will be de-obligated and returned to the respective COG/MPO for reprogramming on another Project. No further invoices will be accepted from, and no additional payments will be made to, the City for the applicable Project phase.
 - (3) Upon de-obligation of funds from the inactive Project phase, the ADOT Chief Financial Officer will send a letter to the City with notification of the date of de-obligation, the treatment of the de-obligated funds and, if applicable, an invoice for any funding which must be repaid to ADOT or FHWA with the due date(s).
- h. All HURF Exchange submissions and invoices are to be submitted to the assigned ADOT PM.
 - i. Any HURF Exchange funds de-obligated or released from Project phases will be returned to the applicable COG/MPO for reprogramming.

IV. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until all payments contemplated under the Agreement have been made, unless specifically otherwise contemplated in this Agreement.
2. This Agreement may be cancelled at any time prior to the exchange of any HURF funds 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, HURF Exchange Program will no longer be available for use by the City for this project.
3. 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.

4. ADOT assumes no liability or financial responsibility for HURF Exchange Projects. The City is solely responsible for complying with all applicable laws, rules and regulations, for any additional funding required to complete the Project and for any claims due to delays, change orders or any other circumstances.
5. The City is required to retain all records related to a HURF Exchange Project for a period of five years after the date of the final payment of HURF Exchange funding from ADOT.
6. All HURF Exchange Projects are subject to audit. The State may refer Projects to the State Auditor General or ADOT's Internal Audit unit in cases of suspected misuse of HURF Exchange funding.
7. ADOT reserves the right to refuse to enter into further HURF Exchange transactions with the City if the City owes repayment of previous HURF Exchange funding or has misused HURF Exchange funds.
8. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.
9. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
10. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
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. The City acknowledges and will comply with Title VI of the Civil Rights Act of 1964.
13. 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.
14. 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 Arizona Revised Statutes § 12-1518.
15. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.
16. The City must comply with all applicable anti-discrimination laws and regulations.

17. The Parties shall certify that all contractors comply with the applicable requirements of Arizona Revised Statutes §35-393.01.
18. 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 San Luis
Attn: Eulogio Vera, Director of
Public Works
PO Box 1170
San Luis, AZ 85349
948.341.8577
evera@sanluisaz.gov

For Project Administration:

Arizona Department of Transportation
Local Public Agency Section
205 S. 17th Avenue, Suite 291
Phoenix, AZ 85007
602.712.4173

City of San Luis
Attn: Eulogio Vera, Director of
Public Works
PO Box 1170
San Luis, AZ 85349
948.341.8577
evera@sanluisaz.gov

For Financial Administration:

Arizona Department of Transportation
Financial Management Services, Resource
Administration
205 S. 17th Avenue, Mail Drop 200B
Phoenix, AZ 85007

City of San Luis
Attn: Monica Castro, Finance
Director
PO Box 1170
San Luis, AZ 85349
928.341.8553
mcastro@sanluisaz.gov

19. Any revisions to the names and addresses above may be updated administratively by either Party and shall be in writing.
20. 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.
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IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective upon the signing and dating of all Parties.

CITY OF SAN LUIS

By _____ Date _____
GERARDO SANCHEZ
MAYOR

ATTEST:

By _____ Date _____
SONIA CORNELIO
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 SAN LUIS, an agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 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 _____

STEVE BOSCHEN, PE

Division Director

A.G. Contract No. P001 2022 000724 (ADOT IGA 22-0008568-I), an Agreement between public agencies, the State of Arizona and the City of El Mirage, 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