

ADOT CAR No.: IGA/JPA **15-0005706-I**
AG Contract No.: P0012016003182
Project: System Enhancements – Safety
s Improvements-
Section: Elliot-Kyrene @ UPRR DOT
741-575S
Federal-aid No TMP-0(246)T
ADOT Project No.: T004201D 01U 01X
TIP/STIP No.:
**CFDA No.: 20.205 - Highway Planning
and Construction**
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF TEMPE

THIS AGREEMENT is entered into this date _____, 2016, 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”) and the CITY OF TEMPE 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 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. Congress has authorized appropriations for installing automatic warning signals, automatic gate arms, concrete crossings, pavement markings, and other railroad crossing related appurtenance.
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 the Federal Highway Administration (FHWA) and funds for the Project are available.
5. The work encompassed in this effort relates to improvements at the intersection of Elliot Rd and Kyrene Rd in the immediate area of the railroad crossing UPRR DOT #741-575S in the City of Tempe. The attached Exhibit A is intended to identify work that is eligible for Section 130 federal reimbursement and also work that needs to be paid solely by the City. The City will design, furnish, secure right-of-way and easements, and install the following: a) raised medians, curb and gutter and paving shown in Exhibit A (94.3% of the eligible 20% of the total cost shall be reimbursed from Section 130 federal funds) b.) sidewalks re-routed around railroad signal (reimbursed at 100% from Section 130 federal funds); and c.) new traffic pre-emption equipment for the intersection connected to the railroad signal house (reimbursed at 100% from Section 130 federal funds). Eligible Signal work; traffic pre-emption equipment, railroad signals and related improvements is reimbursed at 100%. The City will obtain permits and coordinate underground trenching work necessary for the construction of items a, b, and c above. In addition , the City will also construct sidewalks and medians and obtain easement and Temporary Construction

Easements (TCE) from Union Pacific Railroad (UPRR) for work identified as not eligible for Section 130 reimbursements in Exhibit A. The City will maintain the roadway under this Agreement, collectively hereinafter referred to as the "Project".

6. The Parties hereto agree to and acknowledge the following conditions: a) the estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project, b) the Parties shall perform their responsibilities consistent with this Agreement, and c) any change or modification to the Project will only occur with the mutual written consent of both Parties. The estimated cost of the Project is as follows:

T0042 01D

Preliminary Engineering and Design:

Design Traffic Pre-emption-Work by City @ 100.0% FHWA Funded	\$ 15,000.00
Non Section 130 Eligible-Design Civil Improvements-Work by City No FHWA reimbursement	\$ 48,000.00
Section 130 Eligible-Design Civil Improvements-Work by City @ 94.3% FHWA Funded	\$ 11,316.00
@ 5.7% City "In-Kind" Match	\$ 684.00
Subtotal:	\$ 12,000.00

T0042 01U

Utility Coordination – Signal Work:

Utility coordination and potholing-Work by City @ 100.0% FHWA Funded	\$ 25,000.00
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T0042 01R

Right of Way Acquisition - Signal Work:

ROW Acquisition @ 100% FHWA Funded - Work Completed by City	\$ 20,000.00
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T0042 01C

Construction:

Section 130 eligible raised medians, paving and curb-Work by City @ 94.3% FHWA Funded	\$ 75,440.00
@ 5.7% City "In-Kind" Match	\$ 4,560.00
Subtotal:	\$ 80,000.00
Non Section 130 eligible raised medians, paving and curb-Work by City No FHWA reimbursement	\$ 320,000.00
Sidewalk re-routed for RR signal-Work by City @ 100.0% FHWA Funded	\$ 50,000.00
Traffic pre-emption equipment and underground trenching-Work by City @ 100.0% FHWA Funded	\$ 100,000.00
Striping obliteration and restripe-Work by City No FHWA reimbursement	\$ 20,000.00
15% Construction Engineering Costs-Work by City @ 94.3% FHWA Funded	\$ 31,888.00
@ 5.7% City "In-Kind" Match	\$ 1,928.00
Subtotal:	\$ 33,816.00

5% Contingency Costs-Work by City	
@ 94.3% FHWA Funded	\$ 10,629.00
@ 5.7% City "In-Kind" Match	<u>\$ 643.00</u>
Subtotal:	\$ 11,272.00

(Additional Costs):

Project Coordination and Environmental Clearance-Work by ADOT	
@ 94.3% FHWA Funded	\$ 23,575.00
@ 5.7% City Match	<u>\$ 1,425.00</u>
Subtotal:	\$ 25,000.00

Total Estimated Project Cost **\$ 643,088.00**

Total Federal Funds	\$ 362,848.00
Total In-Kind Match	\$ 7,815.00
Total estimated City funds due	\$ 1,425.00

The Parties acknowledge that the final bid amount may exceed the initial estimate(s) shown above, 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 bid 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. The **City** acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all actual costs exceeding the final bid amount.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Execute this Agreement and prior to performing or authorizing any work, invoice the City for the City's share of Project costs, estimated at **\$1,425.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

b. Upon receipt of the City's estimated share of the Project costs, on behalf of the City, prepare and provide all pertaining documents required by FHWA to qualify certain Projects for and to receive federal funds, incorporating comments from the City as appropriate. Such documents may consist of, but are not specifically limited to, environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement.

c. Submit all required documentation to FHWA with the recommendation that the maximum federal funds programmed for the Project be approved.

d. If such Project is approved by FHWA and the funds are available for the Project, the State with the aid and consent of FHWA will authorize the UPRR Railroad Company to proceed with the work covered by the State Railroad Agreement and will request the maximum federal funds available.

e. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of Scope of Work called for in this Agreement, the State shall not be obligated to

incur any expenditure, on behalf of the City, in excess of the amount referenced herein, unless and until so authorized in writing by the City and approved by the FHWA.

f. Not be obligated to maintain said Project should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City will:

a. Designate the State as authorized agent for the City for the Project, if such project is approved by the FHWA and project funds are available for the design and construction of the Project.

b. Within thirty (30) days of receipt of an invoice from the State pay the City's share of the Project costs, estimated at **\$1,425.00**. Be responsible for any difference between the estimated and actual costs of the Project.

c. Review design plans, specifications and other such documents and services required for the construction bidding and construction of the Project and provide comments to the State as appropriate.

d. Incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any requested changes to the scope of work of the Project, such changes require State and FHWA approval. Be responsible for any contractor claims for additional compensation caused by Project delays attributable to the City. Payment for these costs shall be made within thirty (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 ROW Manual: 8.02 Responsibilities, 8.03 Prime Functions, 9.07 Monitoring Process and 9.08 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.

f. Not permit or allow any encroachments upon 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.

g. Grant the State, its agents and/or contractors, without cost, the right to enter City rights-of-way, as required, to conduct any and all construction and preconstruction related activities, including without limitation, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

h. Enter into an agreement with the design consultant which states that the design consultant shall provide services as required and requested throughout the design and construction phases of the Project.

i. Upon completion of the Project, be responsible to provide for at its own cost and as an annual item in its budget, proper maintenance, such maintenance (exclusive of maintenance by the Railroad Company of its facilities), includes, but is not limited to, traffic signals, signs, islands, curbs, and markings necessary for the purpose of regulating, warning and guiding traffic, as applicable to the Project.

j. Be responsible to mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work.

k. By such regulation and ordinances as can be provided, be responsible to regulate parking and not permit vehicles to be left on the street in any manner other than at any parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

l. Pursuant to 23 USC 102(b), repay all federal funds reimbursements for preliminary engineering costs on the Project if it does not advance to right-of-way acquisition or construction within ten (10) years after federal funds were first made available.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project and related deposits or reimbursement, except 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 construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the City will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that should the City terminate this Agreement, the State shall in no way be obligated to maintain said 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 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. The cost of design, construction and construction engineering work under this Agreement is to be covered by the federal funds set aside for this Project, up to the maximum available. The City acknowledges that the actual costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the City agrees to pay the difference between actual costs and the federal funds received.

5. 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.

6. The cost of the project under this Agreement includes applicable indirect costs approved by the FHWA, as applicable.

7. 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. The City acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend \$500,000.00 or more (prior to 12/26/14) and \$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. 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 (9) 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

9. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

10. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

11. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.

12. 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 herein by reference regarding "Non-Discrimination".

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 hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

15. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.

16. The Parties hereto 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, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

City of Tempe
Attn: Andrew Ching
31 East 5th Street
Tempe, Arizona 85261
(480) 350-8221
(480) 350-8915 Fax

For Project Administration:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

City of Tempe
Attn: Ken Jones
31 East 5th Street
Tempe, Arizona 85261
(480) 350-8221
(480) 350-8915 Fax

For Financial Administration:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

City of Tempe
Attn: Andrew Ching
31 East 5th Street
Tempe, Arizona 85261
(480) 350-8221
(480) 350-8915 Fax

18. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and 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 TEMPE

STATE OF ARIZONA

Department of Transportation

By _____
MARK W. MITCHELL
Mayor

By _____
STEVE BOSCHEN, P.E.
ITD Director

ATTEST:

By _____
Brigitta M. Kuiper
City Clerk

ATTORNEY APPROVAL FORM FOR THE CITY OF TEMPE

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 TEMPE, 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 _____, 2016.

City Attorney