

June 23, 2023

MEMORANDUM TO: Honorable Mayor and City Council

THRU: Charles P. Potucek, City Manager
Victoria Yarbrough, Assistant City Manager

FROM: Sharon G. Flissar, P.E., Director of Public Works

SUBJECT: Request for Agenda Item Placement
Resolution 2023-055, Approving an Intergovernmental Agreement with the Arizona Department of Transportation for the Theater Drive Improvements Between 7th Street and Carmichael Avenue

Recommendation:

The City Manager recommends approval.
The Assistant City Manager recommends approval.
The Director of Public Works recommends approval.

Background:

The Sierra Vista Metropolitan Planning Organization (SVMPO) submitted several local projects for potential appropriations in the Fiscal Year 2024 State budget. One of the submitted projects was Theater Drive improvements between 7th Street and Carmichael Avenue. Developed as a joint City of Sierra Vista and Cochise County priority, the Theater Drive project will improve pedestrian and bicycle access, standardize the roadway cross section, incorporate drainage improvements, and add on-street parking on Theater Drive in the historic West End of Sierra Vista. The appropriation request was successful, and the City of Sierra Vista was awarded \$1,800,000 for the project. This intergovernmental agreement (IGA) will allow the State to issue payment to the City of Sierra Vista in the amount of \$1,800,000.

Subsequent to this IGA, the City of Sierra Vista will work with Cochise County to plan next steps with this project since ownership of the roadway is split between the City and the County. Both City and County representatives were involved in the conceptual design process to develop the cross section and proposed amenities along the corridor.

Budget Appropriation:

None

RESOLUTION 2023-055

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING THE CITY TO APPROVE AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, the City of Sierra Vista shares ownership of the Theater Drive corridor with Cochise County; and

WHEREAS, Theater Drive is a collector roadway which lacks a consistent roadway profile, drainage improvements, and pedestrian and bicycle amenities; and

WHEREAS, the City and County collaboratively developed a conceptual design for improvements along Theater Drive;

WHEREAS, the Sierra Vista Metropolitan Planning Organization submitted Theater Drive for a potential State of Arizona appropriations request; and

WHEREAS, Laws 2023, 1st Regular Session, Chapter 135 (Senate Bill 1722), Section 10 appropriated funding from the State general fund for highway projects, including a \$1,800,000 appropriation for the Theater Drive project; and

WHEREAS, the Arizona Department of Transportation has initiated an intergovernmental agreement to provide payment to the City of Sierra Vista in the amount of \$1,800,000 for the Theater Drive project.

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

SECTION 1

That the settled policy of the City Council approving intergovernmental agreements, be, and hereby is, reaffirmed.

SECTION 2

That the intergovernmental agreement between the Arizona Department of Transportation and the City of Sierra Vista be, and hereby, is approved.

SECTION 3

That the City Manager, City Clerk, City Attorney or their duly authorized officers and agents are hereby authorized and directed to take all further steps necessary to carry out the purposes and intent of this Resolution and finalize and sign the agreement.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 11th DAY OF JULY 2023.

Clea McCaa II
Mayor

Approval as to Form:

Attest:

Nathan J. Williams
City Attorney

Jill Adams
City Clerk

Prepared by: Sharon G. Flissar, P.E., Director of Public Works

ADOT CAR No.: IGA 23-0009269-I
AG Contract No.: P0012023000959
Project Location/Name: Theater Drive
Corridor Improvements between 7th
Street and Carmichael Avenue
Type of Work: Corridor Improvements
TIP/STIP No.: NA
Budget Source: 2024 Legislative Appropriation
Transportation Projects: General Fund (Laws 2023,
1st Regular Session, Chapter 135 Senate Bill 1722)
Appropriation No.: 2024 DT56210

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SIERRA VISTA

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 SIERRA VISTA, acting by and through its MAYOR and CITY COUNCIL (the “City” or “Local Agency”). The State and the Local Agency 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 Local Agency is empowered by A.R.S. § 48-572 to enter into this Agreement and has by resolution, if required, 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 Local Agency.
3. Laws 2023, 1st Regular Session, Chapter 135 (Senate Bill 1722), Section 10 appropriated funding from the State general fund for highway projects. ADOT will issue a warrant in the amount of \$1,800,000.00 appropriated to the Local Agency for Theater Drive corridor improvements between 7th Street and Carmichael Avenue, (the “Project”).
4. The foregoing Recitals shall be incorporated into this Agreement.

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

II. SCOPE OF WORK

1. The Parties agree:
 - a. After this Agreement is executed, the State will issue a warrant to the Local Agency in the amount of \$1,800,000.00 for the Project.
 - b. The Local Agency will complete the Project in accordance with Laws 2023, 1st Regular Session, Chapter 135 (Senate Bill 1722), Section 10.
 - c. After Project completion, submit written certification to localpublicagencysection@azdot.gov that the Project was completed in accordance with Laws 2023, 1st Regular Session, Chapter 135 (Senate Bill 1722), Section 10.

III. MISCELLANEOUS PROVISIONS

1. Effective Date. This Agreement shall become effective upon signing and dating of all Parties.
2. 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.
3. Cancellation. This Agreement may be cancelled at any time up to 30 days before the appropriated funds are issued, 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 Local Agency terminates this Agreement, the State shall in no way be obligated to complete or maintain the Project.
4. Indemnification. The Local Agency shall indemnify, defend, and hold harmless the State, any of its departments, agencies, boards, commissions, 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 Local Agency, 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 Local Agency'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 Local Agency which may be legally imputed to the State by virtue of the State's ownership or possession of land. The Local Agency's obligations under this paragraph shall survive the termination of this Agreement.
5. Governing Law. This Agreement shall be governed by and construed in accordance with Arizona laws.
6. Conflicts of Interest. This Agreement may be cancelled in accordance with A.R.S. § 38-511.

7. Inspection and Audit. The Local Agency shall retain all books, accounts, reports, files and other records relating to the 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 Local Agency, electronically or at the State office as set forth in this Agreement, at the request of ADOT.
8. Title VI. The Local Agency acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
9. 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, as amended by Executive Order 2023-01, issued by the Governor of the State of Arizona and incorporated in this Agreement by reference regarding “Non-Discrimination.”
10. 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.
11. 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.
12. E-Verify. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
13. Contractor Certifications. The Local Agency shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01 and 35-394.
14. Other Applicable Laws. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
15. 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 Section
205 S. 17th Avenue, Mail Drop 637E
Phoenix, AZ 85007
JPABranch@azdot.gov

City of Sierra Vista
Attn: Sharon Flissar
1011 N. Coronado Dr.
Sierra Vista, AZ 85635
520.458.5775
Sharon.flissar@sierravistaaz.gov

For Project Completion:

Arizona Department of Transportation
Local Public Agency Group

City of Sierra Vista
Attn: Irene Zuniga

205 S. 17th Avenue, Mail Drop 614E
Phoenix, AZ 85007
localpublicagencysection@azdot.gov

1011 N. Coronado Dr.
Sierra Vista, AZ 85635
520.458.5775
irene.zuniga@sierravistaaz.gov

For Financial Administration:

Arizona Department of Transportation
Financial Management Services
206 S. 17th Avenue
Phoenix, AZ 85007
fmscontroller@azdot.gov

City of Sierra Vista
Attn: David Felix
1011 N. Coronado Dr.
Sierra Vista, AZ 85635
520.458.5775
david.felix@sierravistaaz.gov

16. Revisions to Contacts. Any revisions to the names and addresses above may be updated administratively by either Party and shall be in writing.
17. 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.
18. Electronic Signatures. This Agreement may be signed in an electronic format using DocuSign.

Remainder of this page is intentionally left blank.

(Signatures begin on the next page)

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 SIERRA VISTA

By _____ Date _____
CLEA MCCAA
Mayor

ATTEST:

By _____ Date _____
JILL ADAMS
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 Sierra Vista, 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 _____

STEVE BOSCHEN, PE
Infrastructure Delivery and Operations Division
Division Director

A.G. Contract No. _____ (ADOT IGA 23-0009269-I), an Agreement between public agencies, the State of Arizona and the City of Sierra Vista, 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