

ADOT CAR No.: IGA 23-0009221-I  
AG Contract No.: P0012023001058  
Project Location/Name: Pedestrian  
Bridge over the Union Pacific Railroad  
(UPRR) along the Maricopa Road  
alignment  
Type of Work: Pedestrian Bridge  
Construction  
Federal-aid No.: MAR-0(214)T  
ADOT Project No.: T0458 01D/01C  
TIP/STIP No.: MAR24-240D/MAR24-  
240D1/MAR24-240C  
CFDA No.: 20.205 - Highway Planning and  
Construction  
Budget Source Item No.: N/A

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF MARICOPA

**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 MARICOPA, 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. The City has received funding through the Fiscal Year (FY) 2023 Allocation of Highway Infrastructure Programs (HIP) Congressional Directed Spending Projects (Earmarks) for the work proposed under this Agreement consisting of constructing a pedestrian bridge over the UPRR along the Maricopa Rd alignment, west of the State Route (“SR”) 347 overpass (the “Project”). The Project includes a three-span precast pre-stressed concrete girder pedestrian bridge; 12 feet wide and 255 feet long with a minimum of 24 feet clearance under it and with elevators on both ends, in accordance with ADOT standards. The Project cost, shown in Exhibit A, is estimated at \$5,030,000.00, which includes federal Earmark and

the Local Agency's match. The Local Agency will administer the design at their own cost, and the State will advertise, bid and award, and administer the construction of the Project. The City will have a separate construction and maintenance agreement with the Union Pacific Railroad.

4. The interest of the State in this Project is the acquisition of federal Earmark for the use and benefit of the Local Agency and authorization of such federal Earmark for the Project pursuant to federal law and regulations. The State shall be the designated agent for the Local Agency for the Project, if the Project is approved by Federal Highway Administration (FHWA) and funds for the Project are available.
5. The foregoing Recitals and Exhibit A shall be incorporated into this Agreement.

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

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## **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 Local Agency 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 Local Agency 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 FHWA. The Local Agency acknowledges it remains responsible for actual costs and agrees to pay according to the terms of this Agreement.
  - d. The Project will be completed in accordance with the memorandum dated March 21, 2023 shown in Exhibit B, attached and made part of this Agreement.
  - e. The Local Agency 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 Local Agency's designated agent for the Project.

- b. After this Agreement is executed, and prior to performing or authorizing any work on the Project, invoice the Local Agency for the Local Agency's share of the initial Project Development Administration (PDA) costs, estimated at \$30,000.00. If PDA costs exceed the estimate during the review of design, notify the Local Agency, obtain concurrence prior to continuing with the review of design, and invoice as determined by ADOT and the Local Agency for additional costs to complete PDA for the Project. After the Project costs are finalized invoice or reimburse the Local Agency for the difference between actual costs and the amount the Local Agency has paid for PDA.
  - c. After receipt of the PDA costs, 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 Earmark; provide design review comments to the Local Agency as appropriate.
  - d. After review of design and prior to bid advertisement, invoice the Local Agency for the actual PDA costs, as applicable, and the Local Agency's share of the Project construction costs, estimated at \$2,300,000.00. After the Project costs for construction are finalized, the State will either invoice or reimburse the Local Agency for the difference between estimated and actual costs. De-obligate or otherwise release any remaining federal Earmark from the scoping/design phase of the Project.
  - e. After receipt of the actual PDA costs, if applicable, and the Local Agency'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 Earmark programmed for construction of this Project be approved. Should costs exceed the maximum federal Earmark available, it is understood and agreed that the Local Agency will be responsible for any overage.
  - f. 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 the Local Agency's concurrence and invoice the Local Agency for the difference between the construction cost estimate and the bid amount prior to awarding the contract.
  - g. Notify the Local Agency of completion and final acceptance of the Project. At such time, file a Notice of Termination (NOT) with ADEQ transferring CGP responsibilities to the Local Agency, and provide a copy to the Local Agency indicating that the State's maintenance responsibility of the Project is terminated, as applicable.
  - h. Notify the Local Agency of completion and final acceptance of the Project; coordinate with the Local Agency and turn over full responsibility of the Project improvements.
  - i. Not be obligated to maintain the Project, should the Local Agency fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.
3. The Local Agency will:
- a. Designate the State as the Local Agency's authorized agent for the Project.

- b. Within 30 days of receipt of an invoice from the State, pay the PDA costs, estimated at \$30,000.00. Agree to be responsible for actual PDA costs, if during the review of design, PDA costs exceed the initial estimate. Be responsible for the difference between the estimated and actual PDA costs of the Project.
- c. Prepare and provide 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 Earmark; incorporate design review comments from the State, as appropriate.
- d. Enter into an agreement with the design consultant which states that the design consultant will provide professional post-design services as required and requested throughout and at completion of the construction phase of the Project. After final acceptance of the Project, provide an electronic version of the record drawings to the ADOT Project Manager.
- e. 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 Local Agency's share of the Project construction costs, estimated at \$2,300,000.00, and if applicable, the difference between the final and initial construction cost estimates. Be responsible for and pay the difference between the estimated construction cost and Project bid amount prior to award. After Project completion, be responsible for and pay any outstanding Project costs, within 30 days of receipt of an invoice.
- f. 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 Earmark available, it is understood and agreed that the Local Agency is responsible for these costs; payment for these costs shall be made within 30 days of receipt of an invoice from the State.
- g. 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 Local Agency, if applicable.
- h. As applicable, the Local Agency shall certify that it has adequate resources to discharge the Local Agency'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). Additionally the Local Agency shall certify

that all real estate related activities requiring licensure are performed by licensed individuals as defined by the Arizona Department of Real Estate (A.R.S. §§ 32-2121 & 32-2122).

- i. 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 Local Agency 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.
- j. Automatically grant to the State, by execution of this Agreement, its agents and/or contractors, without cost, the temporary right to enter the Local Agency's rights of way, as required, to conduct any and all construction and preconstruction related activities for the Project, on, to and over said Local Agency's rights of way. This temporary right will expire with completion of the Project.
- k. 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.
- l. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any Local Agency 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 Local Agency. Payment for these costs will be made to the State within 30 days of receipt of an invoice from the State.
- m. 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.
- n. 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 Local Agency terminates this Agreement, the Local Agency 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 Local Agency terminates this Agreement, the State shall in no way be obligated to complete or maintain the Project.
5. 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.
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 Local Agency shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the Local Agency.
7. Programmed Federal Funds. The cost of scoping, 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 Local Agency 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 Local Agency 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 Local Agency 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. Single Audit. The Local Agency 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 17<sup>th</sup> Ave. Mail Drop 204B  
Phoenix, AZ 85007  
[SingleAudit@azdot.gov](mailto:SingleAudit@azdot.gov)
12. Governing Law. This Agreement shall be governed by and construed in accordance with Arizona laws.
13. Conflicts of Interest. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
14. Inspection and Audit. The Local Agency 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 Local Agency, electronically or at the State office as set forth in this Agreement, at the request of ADOT.
15. Title VI. The Local Agency acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
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, 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."
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. **Contractor Certifications.** The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §§ 35-393.01 and 35-394.
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. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, AZ 85007  
[JPABranch@azdot.gov](mailto:JPABranch@azdot.gov)

City of Maricopa  
Attn: Keith Brown, PE  
45755 W Edison Road  
Maricopa, AZ 85139  
520.316.6942  
Keith.brown@maricopa-az.gov

**For Project Administration:**

Arizona Department of Transportation  
Project Management Group  
205 S. 17<sup>th</sup> Avenue, Mail Drop 614E  
Phoenix, AZ 85007  
[PMG@azdot.gov](mailto:PMG@azdot.gov)

City of Maricopa  
Attn: Keith Brown, PE  
45755 W Edison Road  
Maricopa, AZ 85139  
520.316.6942  
Keith.brown@maricopa-az.gov

**For Financial Administration:**

Arizona Department of Transportation  
Project Management Group  
205 S. 17<sup>th</sup> Avenue, Mail Drop 614E  
Phoenix, AZ 85007  
[PMG@azdot.gov](mailto:PMG@azdot.gov)

City of Maricopa  
Attn: Brenda Hasler, CPA  
39700 West Civic Center Plaza  
Maricopa, AZ 85138  
520.316.3853  
Brenda.Hasler@maricopa-az.gov

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.



**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 MARICOPA**

By \_\_\_\_\_ Date \_\_\_\_\_  
**NANCY SMITH**  
Mayor

ATTEST:

By \_\_\_\_\_ Date \_\_\_\_\_  
**VANESSA BUERAS**  
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 Maricopa, 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. P0012023001058 (ADOT IGA 23-0009221-I), an Agreement between public agencies, the State of Arizona and the City of Maricopa, 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**

**T0458 01D/01C**

The Project costs are estimated as follows:

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

Local Agency's costs @ 100%	<u>\$ 30,000.00</u>
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**Construction:\***

Federal Earmark @ 94.3%	\$ 2,700,000.00
Local Agency's match @ 5.7%	163,203.00
Local Agency's costs @ 100%	<u>2,136,797.00</u>

<b>Subtotal - Construction</b>	<b>\$ 5,000,000.00</b>
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<b>Estimated TOTAL Project Cost</b>	<b>\$ 5,030,000.00</b>
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<b>Total Estimated Local Agency Funds</b>	<b>\$ 2,330,000.00</b>
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<b>Total Federal Earmark</b>	<b>\$ 2,700,000.00</b>
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\* (Includes 15% construction engineering (CE) and administration cost (this percentage is subject to change, any change will require concurrence from the Local Agency) and 5% Project contingencies)



U.S. Department  
of Transportation

**Federal Highway  
Administration**

# Memorandum

**Subject:** **ACTION:** Allocation of Highway Infrastructure Programs Projects designated in Division L of the Consolidated Appropriations Act, 2023 [CFDA No. 20.205]

**Date:** March 21, 2023

**In Reply**  
**Refer to:** HISM-40

**From:** Peter J. Stephanos  
Director, Office of Stewardship, Oversight,  
and Management

**To:** Brian R. Bezio  
Chief Financial Officer

Division Administrators

The Consolidated Appropriations Act, 2023 (Public Law 117-328) appropriates a total of \$3,417,811,613 for Highway Infrastructure Programs (HIP) from the General Fund of the Treasury for fiscal year (FY) 2023. Of such amount, \$1,862,811,613 is set aside for “Community Project Funding / Congressionally Directed Spending.” The project descriptions for the 562 projects can be found in the “Community Project Funding / Congressionally Directed Spending” table in the Joint Explanatory Statement incorporated by reference in Division L of the Consolidated Appropriations Act, 2023, and are also included in the attachment to this memo. With this memorandum, FHWA is allocating \$1,851,971,613 for 557 projects to State departments of transportation (DOTs). The Office of Federal Lands Highway (FLH) will distribute funding for five tribal community projects totaling \$10,840,000. These funds are in addition to any other funds, including contract authority, provided in FY 2023. This funding is not subject to any obligation limitation that applies to Federal-aid contract authority.

With this memorandum, we are requesting the Budget Execution Team in the Office of Budget to allocate in the Fiscal Management Information System (FMIS) **\$1,851,971,613** for **557** projects to the States, as indicated in the attachment to this memorandum (**FMIS program code Y926; DELPHI fund value 1530569B50.**)

These funds remain available for obligation through September 30, 2026. Any such amounts not obligated on or before September 30, 2026, shall expire. Once the period for obligation

has expired, these funds will only remain available for adjusting and liquidating obligations as authorized in accordance with title 31, United States Code (U.S.C.), section 1553. Obligated earmark balances are available for expenses properly charged to the account and incurred until September 30, 2031. After that date, any unexpended balances shall be cancelled in accordance with 31 U.S.C. 1552 and shall no longer be available for obligation or expenditure.

Demo IDs have been assigned for each project to properly track these funds to ensure that they are only obligated and expended for the specific project for which they were designated. Each project has been assigned a unique Demo ID that links the funding to the specific project description as listed in the Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2023. Since the project description defines the scope of work on which the funds may be legally expended, the funding for the project can only be utilized for the activities within the scope and physical limits of the project as defined by the project description. The Demo IDs under which these funds are being distributed are also included in the attachment to this memorandum.

Except as otherwise provided, these funds are to be administered as if apportioned under chapter 1 of title 23, U.S.C.<sup>1</sup> Therefore, these projects are to be administered as title 23 projects in accordance with the applicable statutory and regulatory provisions contained in title 23, U.S.C. and Code of Federal Regulations (CFR), as well as other applicable Federal requirements, such as the National Environmental Policy Act (42 U.S.C. 4321, et seq.) and the Disadvantaged Business Enterprise Program. The State, through its DOT in accordance with 23 U.S.C. 302, is the direct recipient of funds allocated by this memorandum and is responsible for administration of these funds. If the State DOT acts as a pass-through entity of Federal assistance, the State DOT maintains the passthrough responsibilities specified in 2 CFR 200.332 and 23 U.S.C. 106(g)(4).

The maximum Federal share for these State projects is governed by 23 U.S.C. 120, as amended. It is generally 80 percent (See 23 U.S.C. 120(b)). The maximum Federal share for projects on the Interstate System is 90 percent unless the project adds lanes that are not high-occupancy-vehicle or auxiliary lanes (See 23 U.S.C. 120(a)). For projects that add single occupancy vehicle capacity, that portion of the project will revert to the 80 percent level. An upward sliding scale adjustment is available to States having public lands ([Sliding Scale Rates In Public Land States](#)). States may use a lower Federal share on Federal-aid projects as provided in 23 U.S.C. 120(h). These funds may not be used as the non-Federal match for other Federal programs unless there is specific statutory authority (2 CFR 200.306(b)(5)). The Consolidated Appropriations Act, 2023, does not provide authority for use of these funds as a non-Federal match for other Federal programs, including Federal-aid programs under title 23, U.S.C.

Generally, Project Agreements should not be modified to replace one Federal fund category with another unless specifically authorized by statute (23 CFR 630.110(a)). For additional information on earmarked funds, see [Q&As on Obligation of Earmarked Funds for Federal-Aid Projects](#).

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<sup>1</sup> Tribal projects funded from these amounts are to be administered as if allocated under chapter 2 of title 23, U.S.C.

Earmarked funds shall not participate in costs incurred prior to the date of project agreement (23 CFR 630.106(b)).

By copy of this memorandum, we request that the Budget Execution Team (HCFB-12) in the Office of Budget:

- 1) enter the Demo IDs identified in the attached table, and
- 2) process these allocations.

If there are any questions, please contact Tony DeSimone at 317-226-5307 or by email at [Anthony.DeSimone@dot.gov](mailto:Anthony.DeSimone@dot.gov).

Attachment

