

ADOT CAR No.: IGA 19-0007461-I  
AG Contract No.: P001 2019 003314  
Project Location/Name: Ellsworth Road –  
Ironwood Drive  
Type of Work: Construct New Roadway  
Federal-aid No.: 024-A(200)T  
ADOT Project No.: H891501C  
TIP/STIP No.: 100230; 8891  
CFDA No.: 20.205 – Highway Planning  
and Construction  
Budget Source Item No.: NA

## **INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF MESA

**THIS 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”), the CITY OF MESA, acting by and through its CITY MANAGER and CITY COUNCIL (the “City”). The State and the City are collectively referred to as “Parties.”

### **I. RECITALS**

1. The State is empowered by A.R.S. § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by A.R.S. § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached and made a part of, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The State is administering the design and construction of the State Route (SR) 24 Interim Phase II between Ellsworth Road and Ironwood Drive (the “State’s Project”). As part of the State’s Project, and at the request of the City, the State will design and construct the SR 24 Eastbound Bridge (EB) over Ellsworth Road and the roadway elements necessary to connect the structure to the interim SR 24, (the “EB Bridge Project”) The City and the Town of Queen Creek will be responsible for the costs associated with the addition of the EB Bridge Project. Costs for design and construction of the EB Bridge Project are estimated at \$14,000,000.00 of which \$225,357.00 is for design. The City’s design and construction contribution is capped at \$11,500,000.00. The Town of Queen Creek’s design and construction contribution of \$2,500,000.00 and responsibilities are addressed separately in Agreement 19-0007524.

4. In addition, the City has requested the State include the following items (the "Enhancement Project") as part of the State's Project:
  - City's fiber optic cable in one conduit from Ellsworth Road to Signal Butte Road
  - Four 2-inch conduits (quad-duct) and FMS/ITS fiber and equipment at Williams Field Road
  - Eight 2-inch conduits and FMS/ITS fiber and equipment at Signal Butte Road
  - Four Close Circuit Television (CCTV) cameras at Williams Field Road and Signal Butte Road
  - Signal Pole (Type W) (furnished & delivered to the City)
  - 60-foot Mast Arm (furnished & delivered to the City)
  - Emergency Vehicle Preemption (EVP) at Williams Field Road and Signal Butte Road
  - Extension of approximately 445 feet of Williams Field Road from the Portland Cement Concrete Pavement (PCCP) limits of the intersection with SR 24 to the north half street designed and constructed by a developer
  - Utility sleeves and cathodic protection test stations for future waterlines crossing SR 24 at Williams Field Road, Crismon Road, Signal Butte Road, and Meridian Road
5. The City's estimated construction costs of the Enhancement Project are \$2,703,535.00. The Maricopa Association of Governments (MAG) has programmed \$450,509.00 toward the City's Enhancement Project construction costs; the City will be responsible for \$2,253,026.00, the difference between estimated cost and programmed amount.
6. The State will acquire, and by Resolution, bring into the State system the necessary rights-of-way needed for the State's Project. After final acceptance of the State's Project, the State will abandon ownership, jurisdiction and maintenance responsibilities beyond the PCCP limits, as depicted in Exhibit A, with the approval of the State Transportation Board. The City agrees to waive the requirements of A.R.S. §28-7209.

**THEREFORE**, in consideration of the mutual terms expressed in this Agreement, it is agreed as follows:

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## **II. SCOPE OF WORK**

1. The Parties agree:
  - a. The EB Bridge and the Enhancement Projects will be performed, completed, accepted and paid for in accordance with the requirements of the State's Project plans and specifications.
  - b. To communicate and coordinate with MAG, in the event any Project related costs exceed the initial estimate(s) and work with MAG to cover all additional costs.

2. The State will:
- a. Execute this Agreement, and if the EB Bridge and the Enhancement Projects are approved by FHWA and funds for the projects are available, be the City's designated agent for the EB Bridge and the Enhancement Projects.
  - b. Execute this Agreement; receive from the City, in two installments, the City's contribution toward the design and construction costs of the EB Bridge Project, for a total of \$11,500,000.00, as follows:
    - After execution of this Agreement, invoice the City for \$6,500,000.00, the first installment of the City's contribution toward the costs of the EB Bridge Project.
    - On or after July 1, 2020, accept the City's FLCP MAG apportionment of \$5,000,000.00, the second installment of the City's contribution toward the costs of the EB Bridge Project.

Invoice the City for any additional costs associated with changes to the EB Bridge Project requested by the City.

- c. On or after July 1, 2020, invoice the City for construction costs of the Enhancement Project, estimated at \$2,253,026.00, the difference between the estimated cost and the MAG programmed amount. Invoice the City for any additional costs associated with changes to the Enhancement Project requested by the City.
- d. Prepare and provide the design plans, specifications and other such documents and services required for the construction bidding and construction of the EB Bridge and the Enhancement Projects and incorporate comments from the City as appropriate.
- e. With FHWA authorization, proceed to administer construction: advertise, receive and open bids, award, and enter into a contract with the firm for the construction of the EB Bridge and the Enhancement Projects. Administer contract(s) for the EB Bridge and the Enhancement Projects, and make all payments to the contractor(s).
- f. Invoice the City for any payment of contractor claims for additional compensation in the Enhancement Project, per Section II(3)(e).
- g. Confirm per established procedures of the State's Central District Permit Office, that the City has a valid annual blanket encroachment permit on file for only routine/minor maintenance and emergency maintenance work provided by the City within the State's rights-of-way. Agree that any new construction or installation shall require a separate encroachment permit through the State's Central District Permits Office, and shall issue those encroachment permits in accordance with established regulations and procedures based on scope of work.
- h. Notify the City, prior to any construction activities, of the location and existing conditions of the City rights-of-ways the State requires to conduct any and all construction and preconstruction related activities for the Project. Restore all City rights- of-way used or accessed to preconstruction condition.

- i. Not be obligated to incur any expenditure(s) for the EB Bridge and the Enhancement Projects.
  - j. Manage and coordinate all construction efforts, obtain City concurrence of change orders for utility relocations for the Enhancement Project within the City of Mesa.
  - k. Notify the City of final inspection and acceptance of the Enhancement Project improvements and be responsible for the maintenance of the structural integrity of the EB Bridge excluding any Enhancement Project components or specialized features requested by the City.
  - l. Be granted, without cost requirements, the right to enter City right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry on to and over said City rights-of-way.
  - m. After final acceptance of the Project, with approval by Resolution of the State's Transportation Board, abandon and transfer to the City ownership, jurisdiction, and maintenance responsibilities of the locations beyond the PCCP limits depicted in Exhibit A, including preservation of any Access Control rights.
3. The City will:
- a. Designate the State as the City's authorized agent for the EB Bridge and the Enhancement Projects.
  - b. Within 30 days of receipt of an invoice(s) from the State, in two installments, pay to the State a total of \$11,500,000.00 for the City's contribution toward the design and construction costs of the EB Bridge Project as follows:
    - After execution of this Agreement pay \$6,500,000.00, for the City's first installment of the City's contribution toward the costs of the EB Bridge Project.
    - On or after July 1, 2020, contribute City FLCP MAG apportionment of \$5,000,000.00, to the State, for the second installment of the City's contribution toward the costs of the EB Bridge Project.

Should the City request any changes to the EB Bridge Project construction, pay for additional costs associated with such changes, within 30 days of receipt of an invoice from the State.
  - c. On or after July 1, 2020, within 30 days of receipt of an invoice from the State, pay to the State \$2,253,026.00, for the City's Enhancement Project construction costs. Should the City request any changes to the Enhancement Project construction, pay for additional costs associated with such changes, within 30 days of receipt of an invoice from the State.
  - d. Review design plans, specifications, cost estimates and other such documents required for the construction bidding and construction of the State's Project, the EB Bridge Project, and the Enhancement Project, including design plans and documents required

by FHWA to qualify projects for and to receive federal funds; provide design review comments to the State as appropriate.

- e. Be responsible for payment of any valid contractor claims related to the Enhancement Project. The State will administer the process and the City will have input in the claims process. All settlements will be approved by both the State and the City. Within 30 days of receipt of an invoice from the State, the City will pay to the State 100% of cost increases due to change orders.
- f. Be responsible for a portion of the payment of any valid contractor claims related to the EB Bridge Project as agreed with MAG, the Town of Queen Creek and the State. The State will administer the process and all settlements will be approved by the State, the City, and Town of Queen Creek.
- g. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the Enhancement Project costs provided that the City will be consulted before any significant work is undertaken as a result of unforeseen conditions or circumstances.
- h. 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.
- i. Investigate and document utilities within the EB Bridge Project and the Enhancement 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.
- j. Maintain and follow requirements of a valid annual blanket encroachment permit for the routine/minor maintenance and emergency maintenance work provided by the City within the State's rights-of-way. Any new construction or installation shall require a separate encroachment permit as per the State's established procedures, which may be obtained through the State's Central District Permits Office. Notify the State's Central District Permit Office of any emergency maintenance work affecting the State right-of-way.
- k. Waive the requirements of A.R.S. §28-7209.
- l. After final acceptance of the Project by the State and approval by Resolution of the State's Transportation Board, accept ownership, jurisdiction, and maintenance responsibilities of the locations beyond the PCCP limits as depicted in the Exhibit A, including preservation of any Access Control rights.
- m. After acceptance of ownership, jurisdiction, and maintenance responsibilities, continue to grant the State, its agents and/or contractors, without cost, right of entry approval to access crossroads, to perform seeding and/or right-of-way monumentation.

- n. After final inspection and acceptance of the Projects, maintain the following crossroads: Ellsworth Road, Williams Field Road, Signal Butte Road, and Mountain Road, at its sole expense, shown in Exhibit B. Maintenance includes sweeping, graffiti abatement, litter, debris, trash, and weed removal, ADA ramps, medians (landscape/hardscape), roadway signing and striping, integrity of sidewalks, and removal of non-hazardous spills. The repairs shall not compromise the safety and structural stability of the State facilities.
- o. After final inspection and acceptance of the Enhancement Project is complete, assume maintenance responsibilities of the Enhancement Project at its sole expense. Maintenance responsibilities include: maintaining the four 2-inch conduits (quad-duct); FMS/ITS fiber and equipment; the four Close Circuit Television (CCTV) cameras, the Emergency Vehicle Preemption (EVP); the utility sleeves of future waterlines; and lighting.
- p. Be responsible for the operation, maintenance, and electrical power of the traffic signals for Ellsworth Road, Williams Field Road, Signal Butte Road, and Mountain Road at the City's sole expense.
- q. The City shall be a participant in the inspection of work completed under this IGA. The City shall receive a Letter of Acceptance (LOA) once the work is accepted by both parties.
- r. Respond to and provide concurrence on any Request for Information (RFI) or COs provided by the State within four (4) business days.

### **III. MISCELLANEOUS PROVISIONS**

1. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.
2. Any change or modification to the EB Bridge and the Enhancement Projects will only occur with the mutual written consent of the Parties.
3. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the EB Bridge and the Enhancement Projects, and all related deposits and/or reimbursements are made. Any provisions for maintenance shall survive for the lifetime of the Projects, unless assumed by another competent entity.
4. This Agreement may be cancelled at any time prior to the award of the Project contract 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 for the EB Bridge and Enhancement Projects up to the time of termination. It is further understood and agreed that in the event the City terminates this Agreement, the State shall in no way be obligated to complete or maintain the EB Bridge and Enhancement Projects.
5. The City shall indemnify, defend, and hold harmless the State, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as the "State") from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of

every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the City, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. The City's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the State, except the obligation does apply to any negligence of the City which may be legally imputed to the State by virtue of the State's ownership or possession of land. The City's obligations under this paragraph shall survive the termination of this Agreement.

6. 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 into this Agreement by reference, in the State's contract with any and all contractors, of which the City shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the City.
7. Should the federal funding related to this EB Bridge and Enhancement Projects 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.
8. The cost of the EB Bridge and Enhancement Projects under this Agreement includes indirect costs approved by the FHWA, as applicable.
9. 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 shall provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.
10. The City acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
11. This Agreement shall be governed by and construed in accordance with Arizona laws.
12. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
13. The City shall retain all books, accounts, reports, files and other records relating to the Agreement for five years after completion of the EB Bridge and Enhancement Projects. These documents shall be subject at all reasonable times to inspection and audit by the State. Such records shall be produced by the City at the request of ADOT.
14. 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 by reference regarding "Non-Discrimination."

15. 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.
16. 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.
17. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
18. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01.
19. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
20. 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 Agreement Section  
205 S. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, AZ 85007  
[JPABranch@azdot.gov](mailto:JPABranch@azdot.gov)

City of Mesa  
Attn: Maria Angelica Deeb  
P.O. Box 1466  
Mesa, AZ 85211  
[MariaAngelica.Deeb@mesaaz.gov](mailto:MariaAngelica.Deeb@mesaaz.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 Mesa  
Attn: Maria Angelica Deeb  
P.O. Box 1466  
Mesa, AZ 85211  
[MariaAngelica.Deeb@mesaaz.gov](mailto:MariaAngelica.Deeb@mesaaz.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 Mesa  
Attn: Maria Angelica Deeb  
P.O. Box 1466  
Mesa, AZ 85211  
[MariaAngelica.Deeb@mesaaz.gov](mailto:MariaAngelica.Deeb@mesaaz.gov)

21. In accordance with A.R.S. § 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.



**IN WITNESS WHEREOF**, the Parties have executed this Agreement the day and year first above written.

**CITY OF MESA**

**STATE OF ARIZONA**  
Department of Transportation

By \_\_\_\_\_  
**CHRISTOPHER J. BRADY**  
City Manager

By \_\_\_\_\_  
**STEVE BOSCHEN, PE**  
Division Director

ATTEST:

By \_\_\_\_\_  
**DEE ANN MICKELSEN**  
City Clerk

By \_\_\_\_\_  
**BRENT A CAIN, PE**  
Division Director  
Transportation Systems Management and Operations

**ATTORNEY APPROVAL FORM FOR THE CITY OF MESA**

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 MESA, 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.

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

Exhibit A - Right of Way Turnback

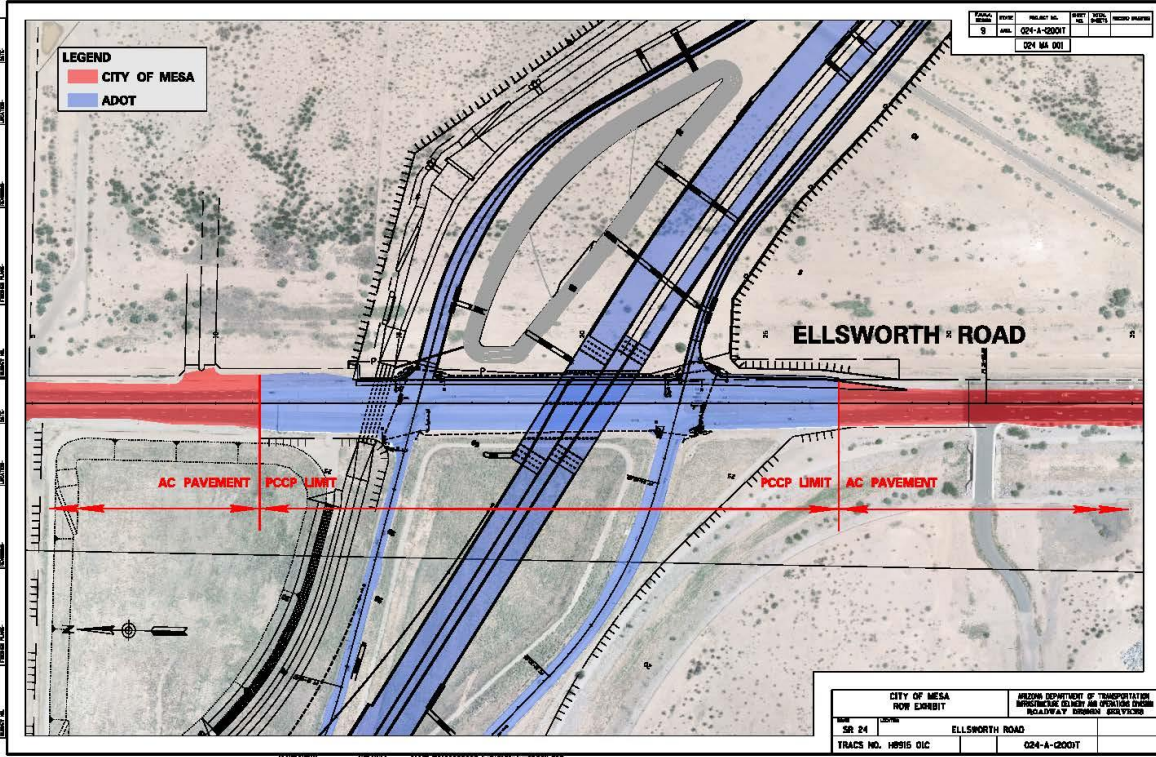


Exhibit A - Right of Way Turnback

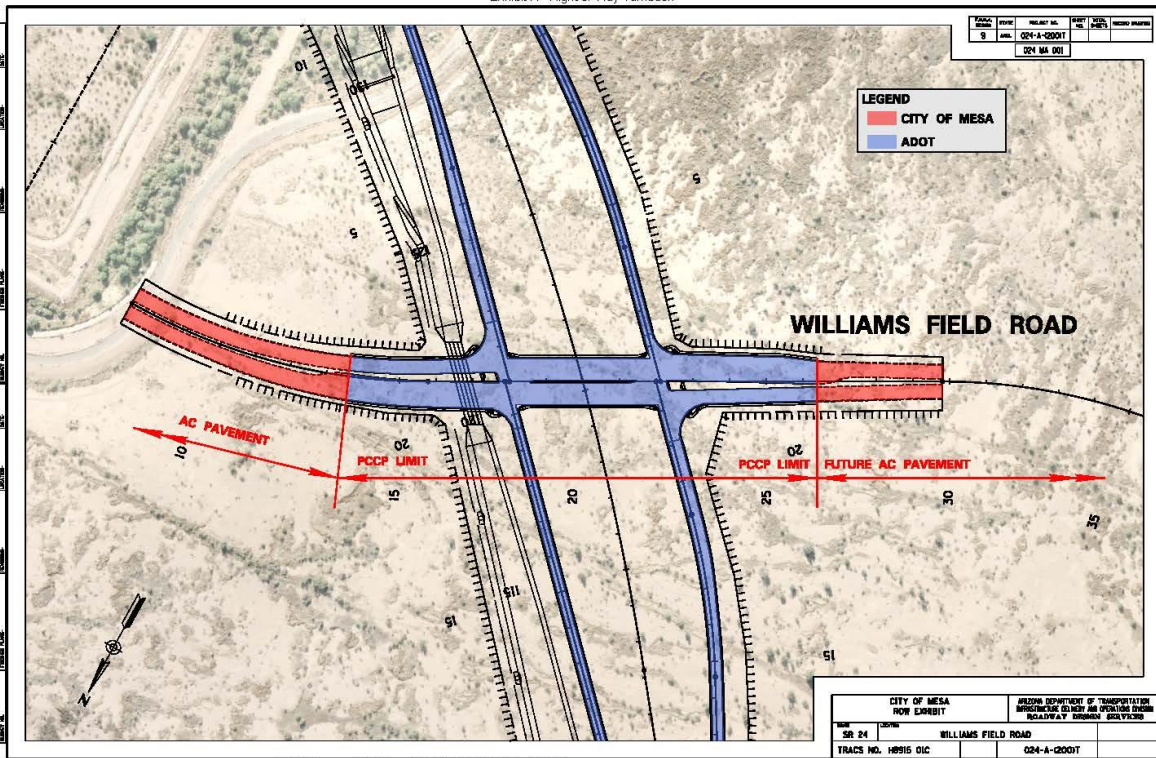


Exhibit A - Right of Way Turnback

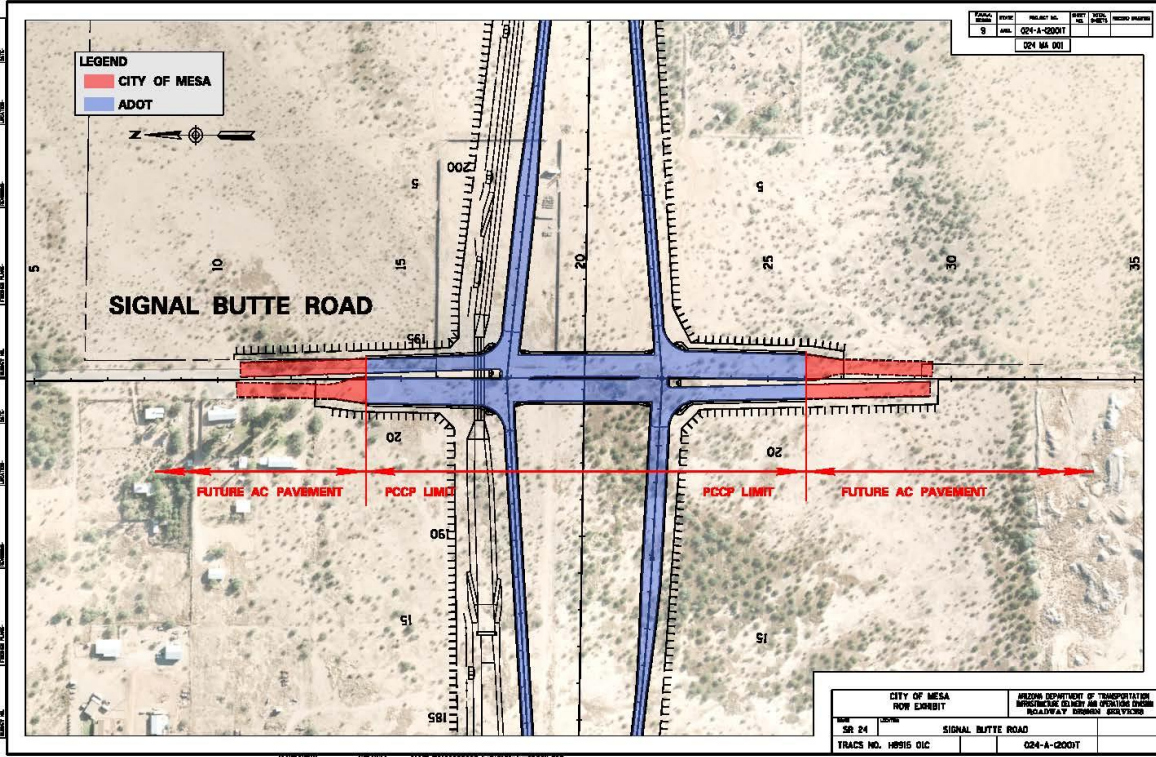


Exhibit A - Right of Way Turnback

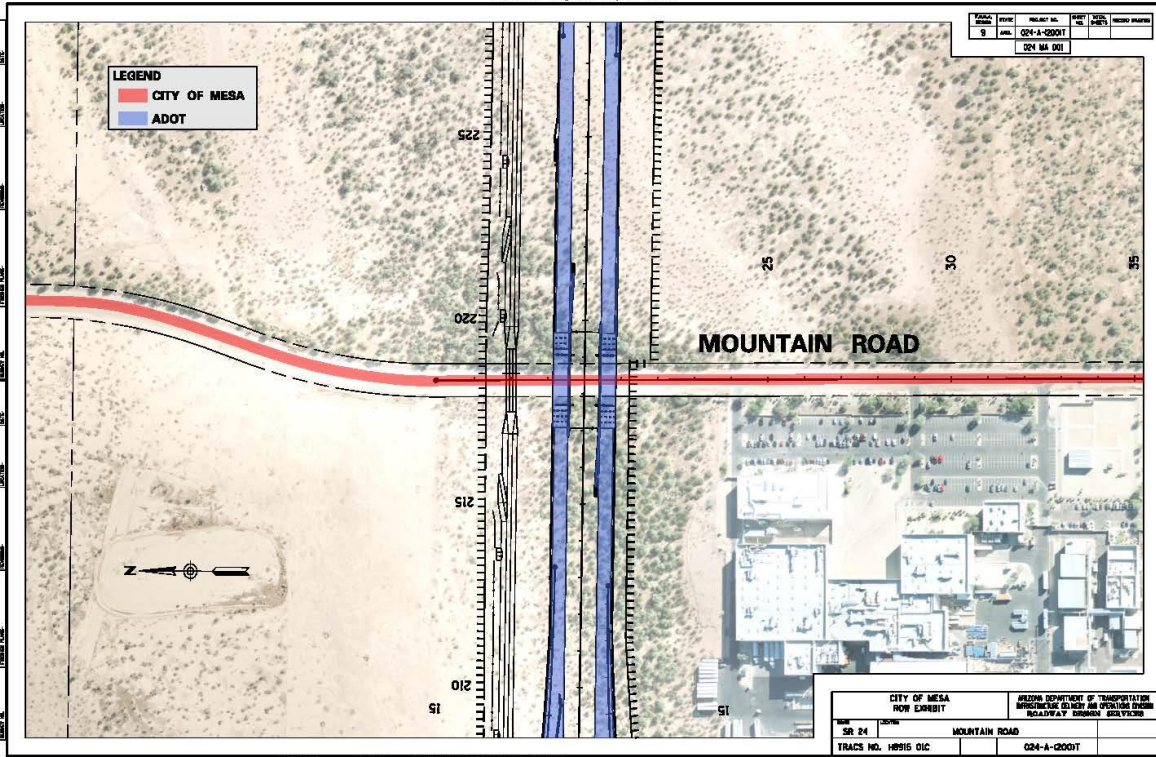


Exhibit B - Maintenance

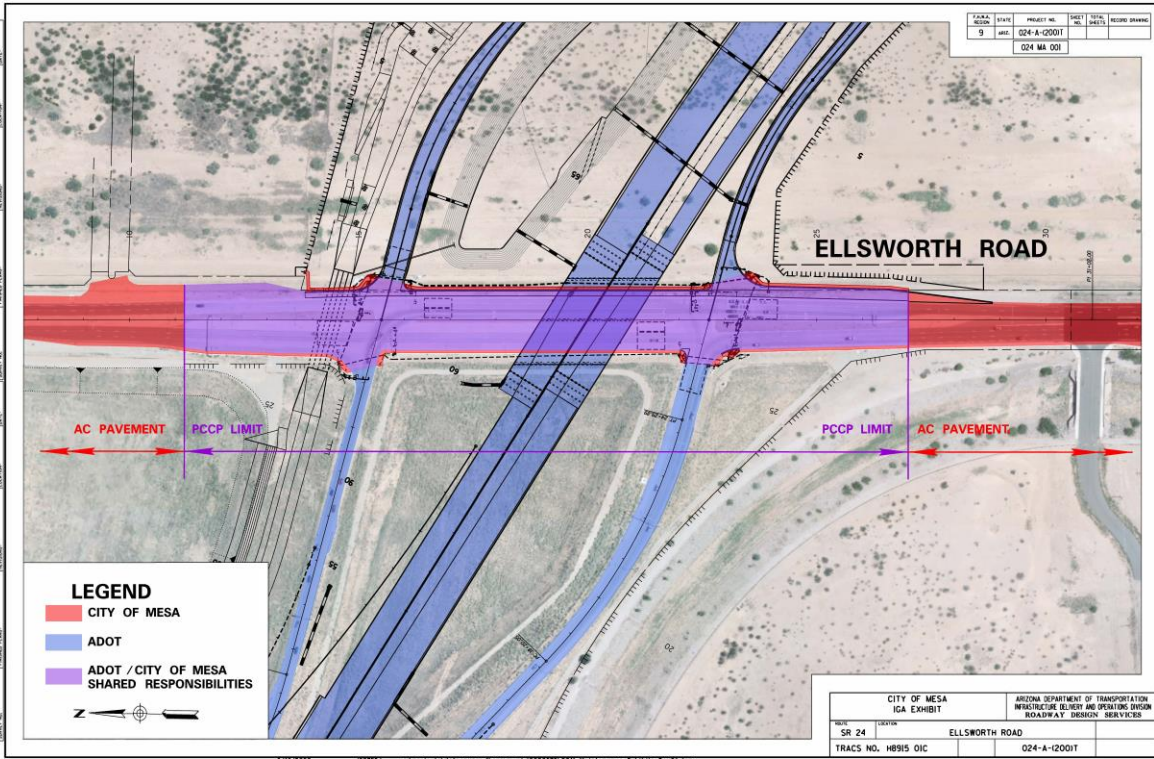


Exhibit B - Maintenance

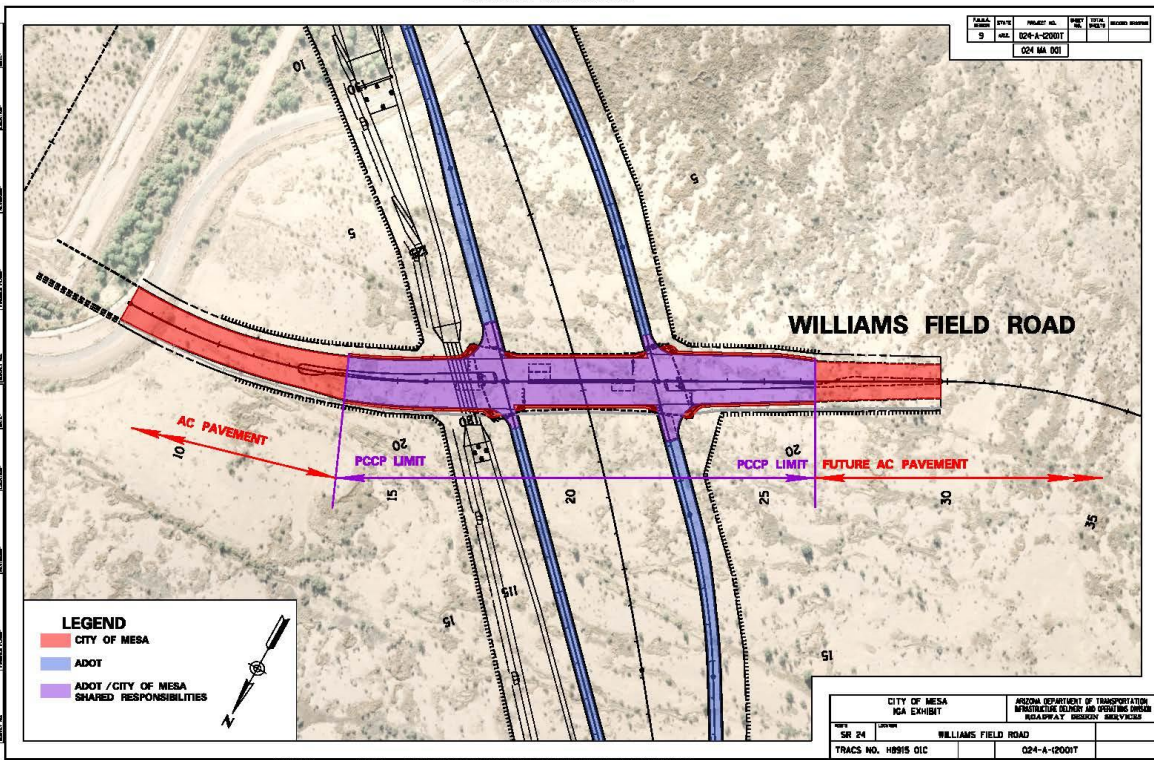


Exhibit B - Maintenance

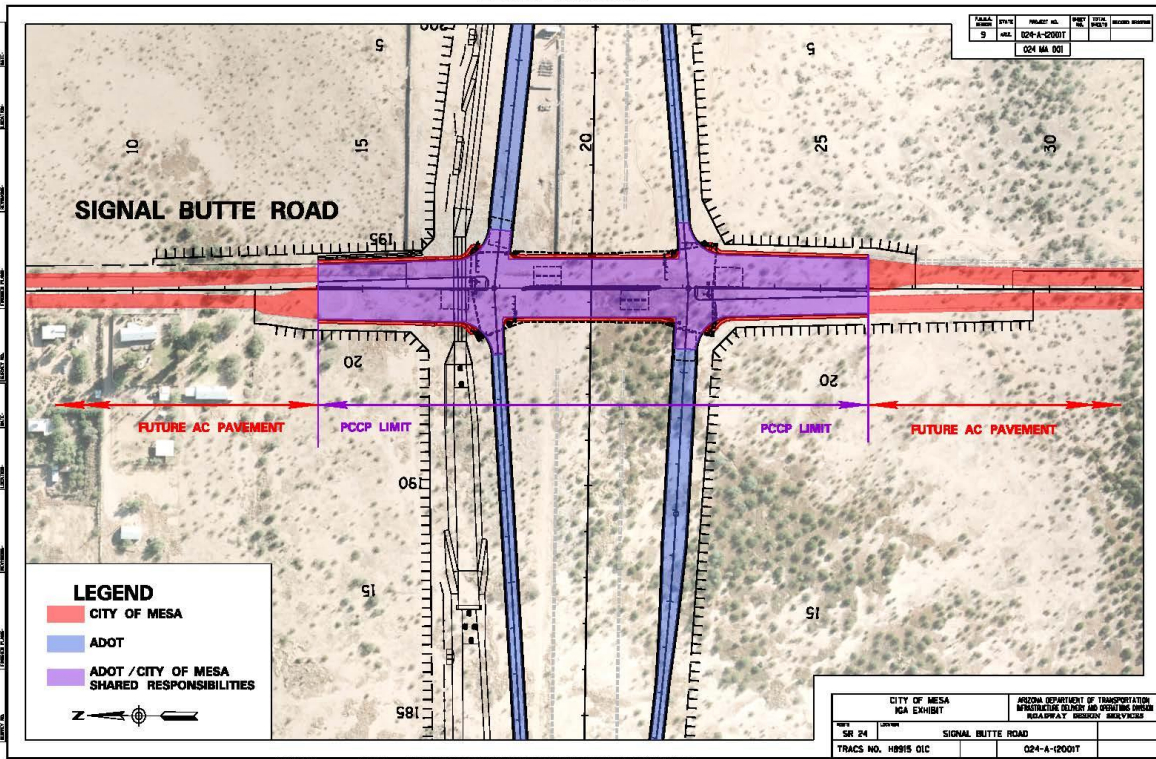


Exhibit B - Maintenance

