

INTERGOVERNMENTAL AGREEMENT

BETWEEN THE CITY OF MESA, CITY OF TEMPE AND TOWN OF GILBERT

FOR EAST VALLEY TRAVEL TIME MONITORING DESIGN & CONSTRUCTION

**(COM Project #)
(COT Project #)
(TOG Project # TS173)**

This Intergovernmental Agreement (Agreement) is between the City of Mesa, a municipal corporation (Mesa), the City of Tempe, a municipal corporation (Tempe) and the Town of Gilbert, a municipal corporation (Gilbert). Mesa, Tempe and Gilbert are collectively referred to as the Parties or individually as a Party. The East Valley Congestion Monitoring design project is referred to as the Project.

This Agreement shall become effective as of the date it is approved by the Governing Councils of all Parties.

STATUTORY AUTHORIZATION

1. A.R.S. §§11-951 et seq. authorize public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.
2. Mesa, Tempe and Gilbert are empowered by A.R.S. §§9-240 and 9-276 to improve and maintain roadways within their jurisdictions and to enter into this Agreement.

BACKGROUND

3. Re-identification sensors allow travel time and congestion information to be collected by matching encoded media access control (MAC) addresses from Bluetooth or Wi-Fi enabled devices.
4. The City of Mesa has already deployed similar re-identification sensors within their own boundaries. The Project will expand upon those existing systems and will introduce new systems to the City of Tempe and the Town of Gilbert.
5. Regional projects that promote information sharing across borders benefit the motoring public who may travel through multiple jurisdictions while commuting.
6. The Project will design a new congestion monitoring and travel time system for deployment within the jurisdictions of the Parties.
7. The Project includes:
 - 7.1 Sensors installed at approximately one-mile increments along the following corridors: Rio Salado, University, Apache, Broadway, Southern, Baseline, Guadalupe, Elliot, Warner, Val Vista, Higley, Gilbert, Cooper, McQueen, Arizona, Alma School, Dobson, Price, McClintock, and Rural. A map of proposed locations is attached as Exhibit A. A proposed list of locations is attached as Exhibit B.
 - 7.2 Software to access the Project data will be installed in the Traffic Management Center

(TMC) or Traffic Operations Center (TOC) of each Party.

7.3 A color coded speed or congestion map will be developed to graphically illustrate traffic conditions to the general public via the party's websites. The data may also be used to populate travel time estimates that are displayed on roadside electronic message boards.

8. Data collected by devices designed in the Project and devices predating the Project will be shared by each Party through the Regional Archived Data Systems (RADS).

PURPOSE OF THE AGREEMENT

9. The purpose of this Agreement is to identify and define the responsibilities of Mesa, Gilbert and Tempe for the cost sharing, design, construction, construction management and Congestion Mitigation and Air Quality (CMAQ) funding reimbursements for the Project.

TERMS OF THE AGREEMENT

10. The cost share responsibilities shall be applicable to each cost element of the Project (i.e., design, construction, construction management, ADOT review and CMAQ Reimbursements). The total estimated Project cost is \$820,000. The estimated construction cost of the Project is \$695,000 of which 94.3% will be eligible for CMAQ reimbursement (\$655,385) leaving a local match of 5.7% (\$39,615). There are also design costs (estimated at \$110,000) and ADOT review costs (estimated at \$15,000) which are not eligible for federal reimbursement. The final Project cost shall be determined after the completion and acceptance of the Project. The costs for the Project including design, review fees, and construction are shared between the Parties based on the percentages shown in Exhibit C, which is calculated based on the number of sensor devices that are estimated to be deployed in each jurisdiction. The final cost sharing will be determined by actual number of sensors installed.

11. Estimated Project costs for each jurisdiction breakdown are detailed in Exhibit C. Project costs are approximate. Final Project costs will be determined at the end of the Project and calculated based on the actual number of sensors installed in each Party's jurisdiction.

12. Any changes to the Project, including field adjustments, delivery methods, change orders and modifications that have physical, financial and aesthetical impacts, must be approved by the project manager designated by each Party.

12.1 Change orders that benefit the overall Project (e.g., such as additional system wide software costs) will be included in the final project costs to be shared between the Parties based on the final cost sharing percentages. Change orders requested by a jurisdiction that only has benefits within that jurisdiction (e.g., such as additional sensors in a jurisdiction) and not to the Project as a whole shall be the full responsibility of the requesting jurisdiction and will be billed 100% to the requesting jurisdiction.

13. The Project elements within each jurisdiction will be designed to the design standards of that Party.

14. CMAQ Reimbursements will be allocated based upon each Party's Project cost share percentage.

15. The City of Mesa was the applicant on the CMAQ application and will serve as the lead agency on the Project.

16. **Responsibilities of the City of Mesa:**

- 16.1 Mesa shall act as the lead agency for the Project.
- 16.2 Mesa shall provide all design plans and submittals to the other Parties periodically, as appropriate, for review.
- 16.3 Mesa shall provide the other Parties with a set of final sealed Plans, Specifications and Estimate (PS&E) based on the completed Project design.
- 16.4 Mesa shall issue no-cost permits, as needed, for the necessary Project related work, within the City of Mesa, performed in accordance with the Project's final PS&E.
- 16.5 Mesa shall invoice the other Parties for their applicable cost share, as provided in this Agreement, as follows:
 - 16.5.1 Upon award of the design contract, Mesa shall invoice the other Parties one-hundred percent (100%) of their share of the estimated design and review costs as shown in Exhibit C.
 - 16.5.2 Upon Project completion and final acceptance of all improvements, Mesa shall invoice the other Parties for their remaining total Project net cost share including design, review fees, construction costs and any other project.
- 16.6 Mesa shall prepare final Project cost share accounting, including final adjustments and credits, and will credit the other Parties accordingly. CMAQ Reimbursements will be included in these adjustments, and distributed to the Parties, if necessary.
- 16.7 This agreement will remain in effect until the project has been closed out with ADOT, federal reimbursements have been received and City of Mesa has received payment on invoices from the other Parties.
- 16.8 Upon completion and acceptance of the Project, Mesa shall provide final Project record drawings in English units to the other Parties.
- 16.9 Mesa shall be responsible for completing and submitting the necessary required documents (i.e. Project Overview, Project Agreement and Project Reimbursement Request). Mesa will make all Project Reimbursement Requests and distributions to partners in a prompt and timely manner.
- 16.10 Mesa shall retain the services of a qualified design consultant to produce plans and specifications for the Project. The design consultant will also obtain required environmental, right-of-way and utility clearances for the Project. The design contract will be between the selected consultant and Mesa. Mesa will pay all invoices related to design and shall bill the other Parties for their share.
- 16.11 Mesa shall be the main liaison between the Arizona Department of Transportation (ADOT) and the Parties.
- 16.12 Mesa shall not review Project plans for compliance with Gilbert's or Tempe's design standards and shall not be liable for design deficiencies. Each Party shall review Project plans for compliance with its own standards for those elements within its jurisdiction.
- 16.13 Permit fees, as required by any Party to this agreement, for any necessary Project related

work performed in accordance with the Project's final PS&E shall be waived. Any permit fee required by a third Party shall be paid by Mesa and Mesa shall bill the other Parties for their share.

16.14 Mesa shall advertise the Project once plans and specifications have been finalized. The bid process will follow Mesa established policies and procedures.

16.15 Mesa shall insure that the contractor supplies record drawings and serial numbers of all devices to each jurisdiction for asset management as required by ADOT and Federal Highway Administration (FHWA).

17. Responsibilities of all Parties:

17.1 Each Party (other than Mesa) shall review Project design plans and all change orders promptly, and provide a written or e-mailed response to Mesa within fourteen (14) calendar days.

17.2 Each Party shall issue no-cost permits, as needed, for any necessary Project related work, within that Party's jurisdiction, performed in accordance with the Project's final PS&E.

17.3 Each Party shall provide construction inspection services for the elements within its jurisdiction at no cost to the other Parties.

17.4 Each Party (other than Mesa) shall provide payment to Mesa within 30 days of receiving a proper invoice as follows:

17.4.1 Upon award of the design contract and receipt of an invoice from Mesa, each Party shall remit payment for one-hundred percent (100%) of their estimated share of the design and review costs as shown in Exhibit C.

17.4.2 Upon Project completion and acceptance, and receipt of an invoice from Mesa, each Party shall remit final payment for the Party's remaining total Project net cost share including design, review fees, construction costs and any other project costs; or if there is a balance owed to a Party, Mesa will remit such amounts back to such Party.

17.5 Each Party will be required to enter into a software agreement for software for the Project and will be required to provide computers for the Project software to be installed on. Each Party will be required to pay for all future renewals, updates, and future licensee fees after the initial installation of the Project software. Upon Project completion, each Party is responsible for maintenance of its Project software.

17.6 Upon Project completion and acceptance each jurisdiction will own, operate, and maintain those sensors and associated hardware that are located within that jurisdiction.

17.7 For a period of five (5) years after Project completion, each Party agrees to provide sensor data to the Regional Archived Data Server or to the City of Mesa for the creation of a regional travel time map.

18. Congestion Mitigation and Air Quality (CMAQ) Requirements and Reimbursements:

18.1 Mesa shall be responsible for completing and submitting the necessary required documents (i.e. Project Overview, Project Agreement and Project Reimbursement Request) as identified in the current Maricopa Association of Governments (MAG) Arterial Life Cycle Program

(ALCP) Policies and Procedures as approved by the MAG Regional Council.

- 18.1.1 Mesa shall enter into a Project Agreement with MAG which will document the total amount of regional funds available for this Project and when those funds will become available for reimbursement.
- 18.1.2 In accordance with the Project Agreement, the CMAQ regional reimbursements shall be determined by the actual eligible Project expenditures and the Project's remaining regional budget in the approved MAG TIP (Transportation Improvement Program) at the time reimbursement is requested.
- 18.1.3 CMAQ reimbursements are capped at 94.3% of eligible Project costs or the amount programmed in the MAG TIP, whichever is less.
- 18.1.4 CMAQ Reimbursements shall be applied to each Party's eligible Project costs in direct proportion to the final number of devices installed in each Party's jurisdiction at the completion of construction. Estimated project cost responsibilities are listed in Exhibit C. Mesa will distribute CMAQ reimbursements to each Party after the project has been closed out and all reimbursements have been received from ADOT.

GENERAL TERMS AND CONDITIONS

- 19. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify and save the other Parties harmless, including any of the indemnified Parties' departments, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or nonperformance by the indemnifying Party of any of the provisions of this Agreement. By entering into this Agreement, each Party indemnifies the other against all liability, losses and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement by the indemnifying Party, except such injury or damage as shall have been occasioned by the negligence of that indemnified Party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Party, its departments, agencies, officers, employees, elected officials or agents. In the event of an action, the damages which are the subject of this indemnity shall include costs, expenses of litigation and reasonable attorney's fees.
- 20. This Agreement shall become effective as of the date it is approved by all Parties (the "Effective Date") and remain in full force and effect until all stipulations previously indicated have been satisfied except that it may be amended upon written Agreement by all Parties.
- 21. The term of this Agreement shall be from the Effective Date until that date that is five (5) years after Project completion and final acceptance of all improvements. After Project completion and final acceptance of all improvements and payment for its Project costs, a Party may terminate this Agreement upon furnishing the other Parties with a written notice at least ninety (90) days prior to the effective termination date. No Party shall be entitled to terminate this Agreement prior to Project completion and final acceptance of all improvements and payment for its Project costs.
- 22. This Agreement shall be subject to the provisions of A.R.S. §38-511.
- 23. The Parties warrant that they are in compliance with A.R.S. § 41-4401 and further acknowledge that:
 - 23.1 Any contractor or subcontractor who is contracted by a Party to perform work on the Project

shall warrant its compliance with all federal immigration laws and regulations that relate to its employees and its compliance with A.R.S. § 23-214(A);

- 23.2 That any breach of the warranty, shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract;
 - 23.3 The Parties retain the legal right to inspect the papers of any contractor or subcontractor employee who works on the Project to ensure that the contractor or subcontractor is complying with the warranty above and that the contractor agrees to make all papers and employment records of said employee available during normal working hours in order to facilitate such an inspection;
 - 23.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
- 24. Each Party in this Agreement warrants that neither it nor any contractor or vendor under contract with the Party to provide goods or services toward the accomplishment of the objectives of this Agreement are not suspended or debarred by any federal agency which has provided funding that will be used in the Project described in this Agreement.
 - 25. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.
 - 26. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.
 - 27. This Agreement does not grant authority to control the subject roadway, except to the extent necessary to perform the tasks expressly undertaken pursuant to this Agreement.
 - 28. Any funding provided for in this Agreement is contingent upon being budgeted and appropriated by the Gilbert Town Council, the Mesa City Council and the Tempe City Council in such fiscal year.
 - 29. This Agreement has been arrived at by negotiation and shall not be construed against any Party or against the Party who prepared the last draft.

[Signatures on Following Pages]

City of Mesa

Christopher J. Brady Date
City Manager

Attest By:

DeeAnn Mickelson Date
City Clerk

APPROVAL OF ATTORNEY FOR CITY OF MESA

I hereby state that I have reviewed the proposed Intergovernmental Agreement, between the City of Mesa, the City of Tempe, and the Town of Gilbert, and declare the agreement to be in proper form and within the powers and authority granted to their respective governing bodies under the laws of the State of Arizona.

Jim Smith Date
Deputy City Attorney

CITY OF TEMPE

Mark Mitchell
Mayor

Date

Attest By:

Brigitta Kuiper
City Clerk

Date

APPROVAL OF ATTORNEY FOR CITY OF TEMPE

I hereby state that I have reviewed the proposed Intergovernmental Agreement, between the City of Mesa, the City of Tempe, and the Town of Gilbert, and declare the agreement to be in proper form and within the powers and authority granted to their respective governing bodies under the laws of the State of Arizona.

Judith Baumann City Attorney	Date
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TOWN OF GILBERT

John W. Lewis
Town Mayor

Date

Attest By:

Cathy Templeton
Town Clerk

Date

APPROVAL OF ATTORNEY FOR TOWN OF GILBERT

I hereby state that I have reviewed the proposed Intergovernmental Agreement, between the City of Mesa, the City of Tempe, and the Town of Gilbert, and declare the agreement to be in proper form and within the powers and authority granted to their respective governing bodies under the laws of the State of Arizona.

Michael Hamblin
Gilbert Attorney

Date _____

Exhibit A: Proposed Device Location Map

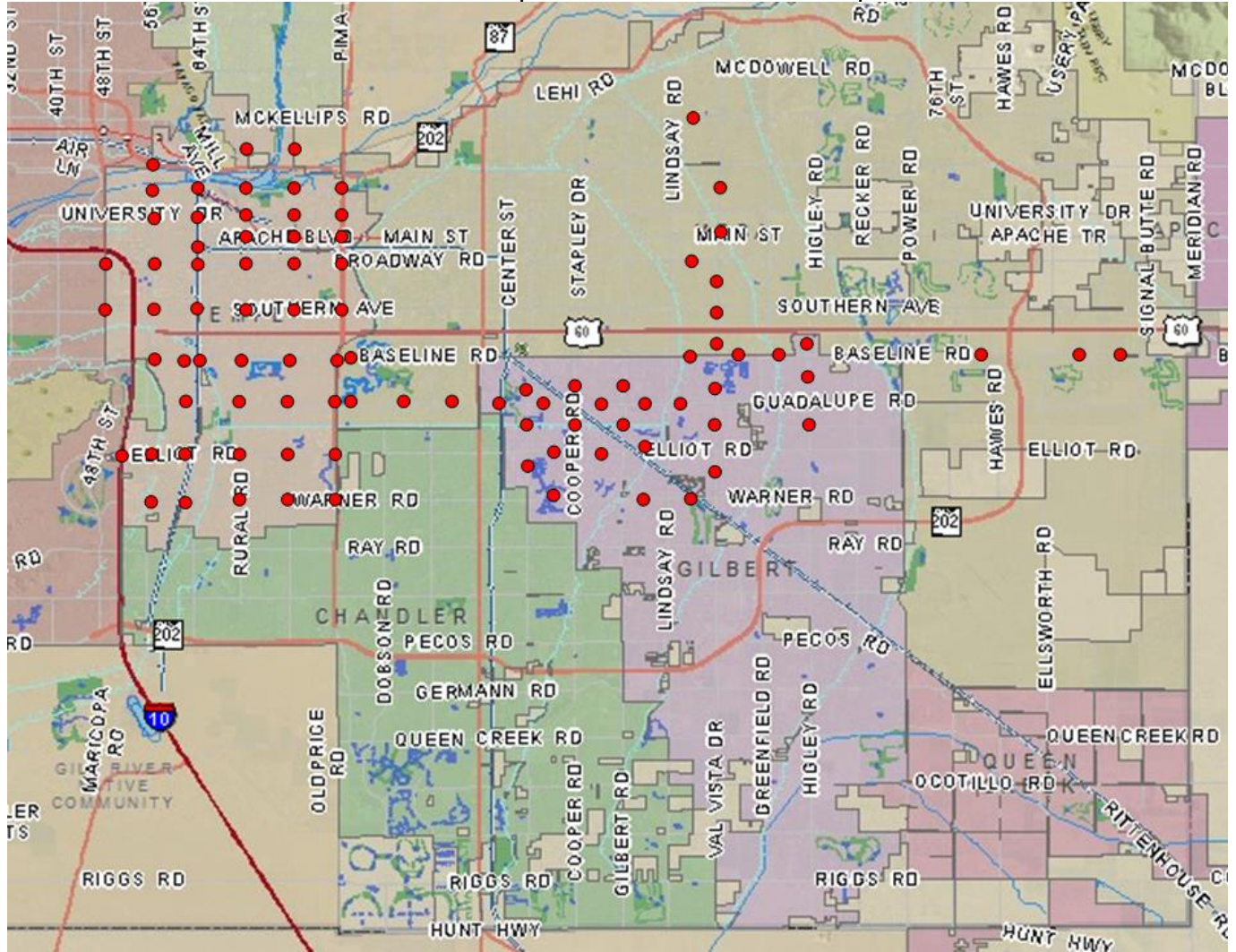


Exhibit B: Proposed Device Location List

#	Town of Gilbert	City of Mesa	City of Tempe	#	City of Tempe
1	Fiesta & Guadalupe	Don Carlos & Baseline	Rural & Rio Salado	28	Curry & Scottsdale
2	McQueen & San Pedro	Carriage & Guadalupe	McClintock & Rio Salado	29	Curry & McClintock
3	McQueen & McQueen Park Entrance	Longmore & Guadalupe	Price & Rio Salado	30	Priest & Loop 202
4	McQueen & Mesquite High North	Extension & Guadalupe	Rural & University	31	Priest & University
5	Fire Station # 10 & Guadalupe	Val Vista & Inverness	McClintock & University	32	Mill & University
6	Cambridge & Elliot	Val Vista & Hampton	Price & University	33	Broadway & 48 th Street
7	S. Islands East & Warner	Val Vista & Pueblo	Rural & Apache	34	Broadway & Priest
8	Cooper & Houston	Farnsworth & Baseline	McClintock & Apache	35	Broadway & Mill
9	Cooper & Western Powerline Trail	Baldwin & Baseline	Price & Apache	36	Southern & 48 th Street
10	Neely & Guadalupe	Wildrose & Baseline	Rural & Broadway	37	Priest & Southern
11	Neely & Elliot	Broadway & 32 nd Street	McClintock & Broadway	38	Mill & Southern
12	Gilbert & Houston	Main & Val Vista	Price & Broadway	39	Baseline & Priest
13	Gilbert & Western Powerline Trail	Adobe & Val Vista	Rural & Southern	40	Baseline & Kyrene
14	Burk & Guadalupe	McKellips & 32 nd Street	McClintock & Southern	41	Baseline & Mill
15	Burk & Elliot		Price & Southern	42	Guadalupe & Kyrene
16	Driftwood & Baseline		Rural & Baseline	43	Elliot & I-10
17	Freestone & Guadalupe		McClintock & Baseline	44	Elliot & Priest
18	Val Vista & Raleigh Bay		Price & Baseline	45	Elliot & Kyrene
19	Val Vista & Hearne		Rural & Guadalupe	46	Priest & Warner
20	Val Vista & Mesquite		McClintock & Guadalupe	47	Kyrene & Warner
21	Warner & Civic Center		Price & Guadalupe	48	Mill & Rio Salado
22	Warner & Western Skies		Rural & Elliot	49	Priest & Rio Salado
23	Baseline & 39 th /Lakeview		McClintock & Elliot	50	Mill & Apache/13 th
24	Baseline & Quinn		Price & Elliot		
25	Higley & Inverness		Rural & Warner		
26	Higley & Houston		McClintock & Warner		
27	Higley & Western Powerline Trail		Price & Warner		

Exhibit C: Estimated Cost Sharing (Final cost sharing to be determined by actual number of sensors installed)

Agency	Estimated No. of Sensors	Estimated Percent Share	Estimated Design Costs	Estimated Design Review Fees	Estimated Design Cost to be Billed at beginning of project
Gilbert	27	29.7%	\$32,637	\$4,451	\$37,088
Mesa	14	15.4%	\$16,923	\$2,308	\$19,231
Tempe	50	54.9%	\$60,440	\$8,242	\$68,681
Total:	91	100%	\$110,000	\$15,000	\$125,000

Agency	Estimated No. of Sensors	Estimated Percent Share	Estimated Construction Cost	Estimated CMAQ Reimbursement for Construction Costs	Estimated Local Agency Matching Funds for Construction
Gilbert	27	29.7%	\$227,308	\$214,351	\$12,957
Mesa	14	15.4%	\$102,308	\$96,476	\$5,832
Tempe	50	54.9%	\$365,385	\$344,558	\$20,827
Total:	91	100%	\$695,001	\$655,385	\$39,615