

ADOT File No.: IGA/JPA 15-0005427-I  
AG Contract No.: P0012015003178  
Project: Maintenance of System  
Enhancements  
Section: Mesa Rio Salado Pathway from  
SR101L to Dobson Road (previously  
Mesa Rio Salado Pathway– Segment 3  
and 4)  
**Federal-aid No.: MES-0(227)D**  
**ADOT Project No.: SZ08001C**  
**TIP/STIP No.:**  
**CFDA No.: 20.205 - Highway Planning  
and Construction**  
**Budget Source Item No.: N/A**

## **INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF MESA

**THIS AGREEMENT** is entered into this date \_\_\_\_\_, 2016, pursuant to the Arizona Revised Statutes §§ 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the “State” or “ADOT”) and the CITY OF MESA, acting by and through its MAYOR and CITY COUNCIL (the “City”). The State and the City are collectively referred to as “Parties.”

### **I. RECITALS**

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 11-952 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The City is self-administering the design and construction of Segments 3 and 4 of the Mesa Rio Salado Pathway project identified in the Transportation Improvement Program as “Mesa Rio Salado Pathway from SR101L to Dobson Road”). This pathway project was previously considered two separate projects, which were combined as one and obtained one Federal-aid Number at the time of construction bid and award, referred previously as Segments 3 and 4, hereinafter referred to as the Project. The Project consists of a 9 – 10 foot wide asphalt shared Multi-Use Path, within the City limits; Segment 3 begins at the eastern right-of-way limit of the SR 101L/SR 202 Interchange and continues east to an access tunnel which will serve as the connection from the Rio Salado Pathway to the recently completed Riverview Baseball and Multi-use Spring Training Facility and Mesa Riverview Park. Segment 4 continues east from the access tunnel, with portions on the south Salt River bank levee within the State’s right of way to the SR 202L/Dobson Road interchange as depicted on Exhibit A. The purpose of this agreement is to identify the State’s and the City’s maintenance responsibilities regarding the Project.

4. The Parties shall perform their responsibilities consistent with this Agreement and any change or modification to the Project will only occur with the mutual written consent of both Parties.

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

---

## **II. SCOPE OF WORK**

### **1. The State will:**

a. Review the design documents required for construction of the Project, and provide comments to the City as appropriate.

b. Issue, per established procedures of the State's Phoenix District Permit Office, a valid blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance work to be provided by the City within the State's rights-of-way. Process any other Encroachment Permits that may be needed to work within the State's right-of-way to effectively meet the obligations set forth for the City in this Agreement. The State agrees all activities that are reasonably required to be performed by the City under this Agreement shall be set forth in and covered by the appropriate Encroachment Permit.

c. Be granted, without cost requirements, the right to enter City's right-of-way as required to conduct any and all pre-construction, construction, and maintenance related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry on to and over said rights-of-way of the City.

d. Accept and permit the use of the multi-use (bike, pedestrian, equestrian, etc.) pathway segments within the State right-of-way for transportation purposes.

e. Maintain the State right-of-way in accordance with current practice, except those responsibilities assigned to the City in this agreement.

f. Maintain the curb and gutter and concrete scupper improvements installed with the Project, specifically Rio Salado Pathway Segment 4 portion at the SR202L, Dobson Road interchange, culverts under SR 202L tunnel which also extend (continuously) along the path in their entirety.

g. Maintain the existing retaining walls along the edge of the Project so as to preserve stability of fill slopes supporting SR 202L tunnel.

h. Not be obligated to maintain those responsibilities assigned to the City, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

### **2. The City will:**

a. Prepare and provide the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project and incorporate comments from the State as appropriate.

b. Be responsible for the on-going maintenance and emergency repairs upon completion of the Project. Maintenance shall include but not be limited to: keeping tree limbs and vertical obstructions at least three (3) feet from the edge of the path and pruned at least seven (7) feet above the surface of the path; maintain granite mulches for weeds and litter, maintain irrigation system installed with pathways; graffiti removal and fence maintenance, keeping the concrete sidewalk and asphalt path surfaces clean of debris (gravels, silt, organic debris, etc.) and maintained as constructed; cleaning out such areas where the path intersects low lying drainage areas, after storm events to keep the path surface free of debris and maintaining a stable, firm and slip-resistant surface; keeping drainage features free of debris, so as not to restrict water flow, if separate culverts or scuppers (not connected to culverts under SR202L) are used under the path.

c. Be responsible for payment of all electrical costs and for repairs where required to the sidewalk, including but not limited to the repairs to the sidewalk concrete pad; path or tactile warning strips caused by cracking, buckling or heaving.

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

e. Request and maintain, per established procedures of the State's Phoenix District Permit Office, a valid blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance work provided by the City within the State's rights-of-way. Agree to obtain separate permits for any new construction or installations in accordance with the Phoenix District established procedures. The City agrees all activities performed by the City under this Agreement shall be set forth in and covered by the appropriate Encroachment Permit.

f. Maintain all portions of the Rio Salado Pathway project constructed under project Mesa Rio Salado Pathway SR 101L to Dobson Road (Federal Aid No. MES-0(227)D, ADOT Project No. SZ08001C) that encroach on State right-of-way during and after construction of the multi-use pathway segment, with the exception of the scope detailed in II. 1, f. above.

g. Maintain ADA ramps along Dobson Road that are for the sole use of the pathway and the 10' sidewalk located under the Dobson Road Bridge.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect for the life of the Project, any provisions for maintenance shall be perpetual, unless assumed by another competent entity. This Agreement may be cancelled at any time, upon thirty (30) days written notice to the other Party. It is understood and agreed that, in the event the City terminates this Agreement, the City will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid on behalf of the City and the fulfillment of any other responsibilities of the State as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless, defend and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non-performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

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

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

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

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. **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.

8. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

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

10. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

11. 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:

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

**City of Mesa**  
Attn: Maria Angelica Deeb, P.E.  
300 E. 6<sup>th</sup> Street  
Mesa, Arizona 85211  
(480) 644-2845  
(480) 644-3130 Fax

12. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each Party's legal counsel and that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

---

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

**CITY OF MESA**

**STATE OF ARIZONA**

Department of Transportation

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

By \_\_\_\_\_  
**STEVE BOSCHEN, P.E.**  
ITD Director

ATTEST:

By \_\_\_\_\_  
**DE ANN MICKELSON**  
City Clerk

**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.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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