

ADOT File No.: IGA/JPA 16-0006046-I
AG Contract No.: P00120162847
Project Name: Multi-Use Pathway
Project Location: 202 San Tan Freeway
between Baseline and Elliot Roads
Federal Aid No: N/A
ADOT Project No.: MAINTAGR
TIP/STIP No.: N/A
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 § 48-572 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 will design and construct a multi-use pathway on the east side of the 202 San Tan Freeway between Baseline and Elliot Road, as shown in the attached Exhibit A, hereinafter referred to as the Project. The City will design, construct, operate, and maintain this pathway to City standards and in accordance with the City's policies and procedures.
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 covenants 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.
- b. Provided the City meets all substantive permitting requirements, issue per established procedures of the State's Central District Permit Office, a valid blanket Encroachment Permit for the construction, operation, and routine or 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. Access the Project area as required, to maintain the drainage channel adjacent and parallel to the path.
- d. Maintain the drainage channel and clean debris when necessary. If ADOT needs to close the Project, ADOT shall provide traffic control measures while the clean out and/or major maintenance operations occur. When these clean out and/or major maintenance operation occur, ADOT shall communicate with the City to ensure proper safety precautions are taken and the Project is closed, when needed.

2. The City will:

- a. Prepare and provide the design plans, specifications and other such documents and services required for the construction of the Project and incorporate comments from the State.
- b. Provide and maintain Project lighting.
- c. Maintain all Project components and landscape, to include the existing landscape which will be maintained unless its existing location is in conflict with the Project. If conflicts are encountered, the vegetation will be replaced or relocated in kind.
- d. Provide and maintain the pathway's irrigation system to help ensure the vitality of existing and proposed trees be maintained.
- e. Install and maintain a 42" high chain-link fence to act as a physical barrier between the pathway users and the channel. The fence will be installed with removable panels every 100 yards to provide access to the channel for ADOT maintenance purposes.
- f. Comply with all ADA standards.
- g. Provide access to the channel and ADOT's operations and maintenance road for periodic channel observation and maintenance.
- h. Install a separate irrigation line to maintain the Project landscape along the east side of the channel.
- i. Understand that ADOT's maintenance operations may obstruct the pathway. The City understands ADOT will need to close the pathway and provide traffic control measures while the channel clean out and or maintenance operation occurs.

- j. Request and maintain, per established procedures of the State's Central District Permit Office, a valid blanket Encroachment Permit for the construction, operation, and routine or emergency maintenance work to be 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 Central District's 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.
- k. Meet all substantive permitting requirements.
- l. Abate any graffiti within the shared use path area.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of the Agreement shall remain in full force and until the completion of the Project; however, any provisions for maintenance shall be perpetual unless assumed by another competent entity
2. The City shall indemnify, defend, hold harmless and provide investigation for 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, failure to maintain 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.
3. 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 to 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.
4. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.
5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
6. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.
7. 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".

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:

For Agreement Administration:

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

City of Mesa
Attn: Maria Angelica Deeb
300 E. 6th Street
Mesa, Arizona 85211
(480) 644-2845

For Project Administration

Arizona Department of Transportation
Phoenix Maintenance District Roadway Admin
2140 W Hilton Avenue
Phoenix, Arizona 85009
(602) 712-8395
(602) 712-3108

City of Mesa
Attn: Maria Angelica Deeb
300 E. 6th Street
Mesa, Arizona 85211
(480) 644-2845

For Financial Administration:

Arizona Department of Transportation
Phoenix Maintenance District Roadway Admin
2140 W Hilton Avenue
Phoenix, Arizona 85009
(602) 712-8395
(602) 712-3108

City of Mesa
Attn: Maria Angelica Deeb
300 E. 6th Street
Mesa, Arizona 85211
(480) 644-2845

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.
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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, P.E.
Division 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 A.R.S. § 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