

ADOT CAR No.: IGA /JPA 17-0006379-I
AG Contract No.: P001 2017 001882
Project Location/Name: US 60 and Val Vista
Drive
Type of Work: Mill and Fill Project
Federal-aid No.: NA
ADOT Project No.: M692901M
TIP/STIP No.: NA
CFDA No.: 20.205
Budget Source Item No.:

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 §§ 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 resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The City will administer a minor pavement preservation project (the Project) on Val Vista Drive between Baseline Road and the US 60, which will consist of designing, constructing, and maintaining the roadway improvements, completed as mill and overlay to bring ramps/driveways up to current City and ADA standards in proposed City right-of-way. The Project also includes the design and construction of portland cement concrete pavement roadway improvements in State right-of-way. The State will reimburse the City for the Project costs estimated at \$539,676.00, shown in Exhibit B. The State will abandon ownership, jurisdiction, and maintenance responsibilities of the right-of-way as detailed in the attached Exhibit A after completion and acceptance of the Project. The City will assume ownership, jurisdiction, and maintenance responsibilities of the right-of-way area as detailed in Exhibit A. The City agrees to the requirements of Arizona Revised Statutes Section § 28-7209, but shall waive the requirements of Arizona Revised Statutes Section § 28-7209 A.2. The City

acknowledges upon jurisdictional transfer the area of right-of-way detailed in Exhibit A, will be maintained as other City roadways are maintained.

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

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

II. SCOPE OF WORK

1. The State will:
 - a. Provide the pavement section guidelines that the Project will use for the State right-of-way area that is to remain in their ownership.
 - b. Provide a field inventory of existing State hardware and fixtures currently located in the State abandonment area which the City will accept ownership jurisdiction and maintenance responsibilities.
 - c. Review design plans, invoices and all back-up documentation and inform the City of any questions, errors, or discrepancies. Reimburse the City for eligible Project costs in a total amount not to exceed \$539,676.00, including Administrative Review Fees, as detailed in Exhibit B, within 30 days of receipt of approved invoices.
 - d. Issue, per established procedures of the State's Central District Permit Office, a valid blanket Encroachment Permit for any pothole or survey required for the design and construction 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.
 - e. Inspect the Project, at their own cost, during construction and prior to completion of the Project. Items of inspection shall include but are not limited to: quality control, request for information, submittals, daily reports, and construction as-built review and approval. The State will provide a letter accepting the Project improvements.
 - f. Notify the City and follow the City's established procedures for obtaining traffic control permits in order to maintain the no-cost permit identified in paragraph (II)(1)(g). Further, the State agrees to obtain separate permits for any new construction or installations that are not part of the Project in accordance with the City's established procedures at no cost to the State.
 - g. Provide a letter of acknowledgment within 10 days of the City's construction Notice-to-Proceed, complete inspection of the roadway pavement improvements as detailed in paragraph (II)(1)(e). If the State does not provide this letter, the State will reimburse the City within 30 days of the City's Construction Notice-to-Proceed an additional inspection-fee

estimated at \$10,334.00, if the State does not provide the letter, so the City can inspect the area and proceed without delays in the completion of the Project.

- h. After completion of improvements and final acceptance of the Project, by both Parties, with approval by Resolution of the State's Transportation Board, abandon and transfer ownership, jurisdiction, and maintenance responsibilities of right-of-way as detailed in Exhibit A.
 - i. After acceptance by the City of ownership, jurisdiction, and maintenance responsibilities of right-of-way as detailed in Exhibit A, be granted continued right of entry approval to access crossroads as necessary to perform right-of-way monumentation if needed.
- 2. The City will:
 - a. Agree to the requirements of Arizona Revised Statutes Section § 28-7209, but shall waive requirements of Arizona Revised Statutes Section § 28-7209 A.2. The City acknowledges upon jurisdictional transfer the area of right-of-way detailed in Exhibit A will be maintained as other City roadways are maintained.
 - b. Provide the State, in a timely fashion, with information and data to review and comment on the Project's Project Scope & Estimate and review, before award, the construction/contract documents.
 - c. 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 City shall take all necessary steps to remove or prevent any such encroachment or use.
 - d. Request and maintain, per established procedures of the State's Central District Permit Office, a valid blanket Encroachment Permit for any pothole or survey for the design and construction 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 State's Central 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.
 - e. Perform required renewal work to complete the Project.
 - f. Invoice the State for the actual design cost within 30 days of the Construction award. The City will invoice the State in a quarterly manner once the Project's Notice to Proceed letter is issued. The invoices will be prepared in April, July, October and January and submitted when complete. Together with the invoice, the City will provide all necessary backup documentation for such invoice. Invoice the State for the costs associated with the Project, in the amount of \$539,676.00 minus the reimbursements paid by the State for the Project. After the Project is completed, the City will share with the State an itemized summary of the of the Project's actual expenses and will reconcile this amount with the State payment. The necessary payment or reimbursement shall happen within 30 days of receipt of such summary.

- g. After final construction completion and acceptance of the Project by the State and approval by Resolution of the State's Transportation Board, accept transfer of ownership, jurisdiction, and maintenance responsibilities of the right-of-way as detailed in Exhibit A.
- h. Grant to the State by execution of this Agreement, its agents and/or contractors, without cost, the temporary right to enter public rights-of-way, as required, to conduct any and all construction and preconstruction related activities, access control, if any, and freeway signage for the Project, on, to and over said public rights-of-way.

III. MISCELLANEOUS PROVISIONS

1. 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 provisions for maintenance shall be perpetual, unless assumed by another competent entity. 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 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 Project.
2. 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.
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 in this Agreement by reference regarding "Non-Discrimination".
8. 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.
9. In the event of any controversy, which may arise out of this Agreement, the Parties agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.
10. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.
11. The Parties shall comply with the applicable requirements of Arizona Revised Statutes §35-393.01.
12. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
13. 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. 17th Avenue, Mail Drop 637E
Phoenix, AZ 85007
JPABranch@azdot.gov

City of Mesa
Attn: Maria Angélica Deeb
300 E. Sixth Street
P.O. Box 1466
Mesa, AZ 85211
480.644.2845
MariaAngelica.Deeb@mesaaz.gov

For Project Administration:

Arizona Department of Transportation
Central Maintenance District
2140 W. Hilton Avenue, MD E700

City of Mesa
Attn: Melody Zyburt
Mesa City Plaza

Phoenix, AZ 85009
602.712.6622
BPursell@azdot.gov

For Financial Administration:

Arizona Department of Transportation
Central Maintenance District
2140 W. Hilton Avenue, MD E700
Phoenix, AZ 85009
602.712.6622
BPursell@azdot.gov

20 E. Main Street
Mesa, AZ 85201
480.644.5574
Melody.Zyburt@mesaaz.gov

City of Mesa
Attn: Maria Angelica Deeb
300 E. Sixth Street
P.O. Box 1466
Mesa, AZ 85211
480.644.2845
MariaAngelica.Deeb@mesaaz.gov

14. In accordance with Arizona Revised Statutes § 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, P.E.
Division Director

ATTEST:

By _____
DEEANN MICKELSEN
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 _____, 2017.

City Attorney