

ADOT CAR No.: IGA 18-0006752-I
AG Contract No.: P001 2018 001265
Project Location/Name: SR 24, Ellsworth
Rd – Meridian Rd
Type of Work: Multi-Use Pathway
Federal-aid No.: NA
ADOT Project No.: H8915
TIP/STIP No.: NA
**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 §§ 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 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. ADOT will designate a location within ADOT right-of-way to accommodate the City’s future planned multi-use pathway along State Route 24 (SR 24) corridor, between Ellsworth Road and Meridian Road. The City will be responsible to design, construct, and maintain the multi-use pathway. The roles and responsibilities of the Parties will be identified in a future agreement (Future Agreement).

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

II. SCOPE OF WORK

1. The Parties agree:
 - a. Any future SR24 expansion or necessary modification of improvements will be coordinated during pre-design, design and construction with the City and ADOT and will have precedence over the right-of-way where the pathway is located and there will be no compensation owed to the City for the resulting removal or modification of the pathway.
2. The State will:
 - a. Designate an appropriate location within ADOT right-of-way to accommodate the City's future planned multi-use pathway within ADOT right-of-way along SR 24 corridor, between Ellsworth Road and Meridian Road unless future SR 24 expansion requires the use of said right-of-way. Include in any State sponsored public documents (i.e. reports, plans, etc.), such as the SR 24 design and construction plans, information regarding a future planned pathway.
 - b. Enter into a Future Agreement with the City that addresses pathway costs, Party roles, and establishes maintenance responsibilities.
3. The City will:
 - a. Enter into a Future Agreement with the State that addresses pathway costs, Party roles, and establishes maintenance responsibilities.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.
2. The terms, conditions and provisions of this Agreement shall remain in full force and effect until such time as the Parties enter into the contemplated Future Agreement, or unless cancelled at any time for any reason by either Party after 30 days written notice to the other Party.
3. 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.

4. 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 will provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.
5. The City acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
6. The City acknowledges compliance with federal laws and regulations and may be subject to the CODE OF FEDERAL REGULATIONS, TITLE 2, PART 200 (also known as The Uniform Grant Guidance). Entities that expend \$750,000.00 or more (on or after 12/26/14) of federal assistance (federal funds, federal grants, or federal awards) are required to comply by having an independent audit in accordance with §200.331 Subpart F. Either an electronic or hardcopy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine months of the sub recipient fiscal year end.

ADOT – FMS
Attn: Cost Accounting Administrator
206 S 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
SingleAudit@azdot.gov

7. This Agreement shall be governed by and construed in accordance with Arizona laws.
8. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
9. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.
10. 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".
11. 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.

12. 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.
13. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.
14. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 35-393.01.
15. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
16. 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 Angelica Deeb
300 E. 6th Street
Mesa, AZ 85211
480.644.2845

For Project Administration:

Arizona Department of Transportation
Project Management Group
205 S. 17th Avenue, Mail Drop 614E
Phoenix, AZ 85007
602.712.7545

City of Mesa
Attn: Maria Angelica Deeb
300 E. 6th Street
Mesa, AZ 85211
480.644.2845

17. 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.
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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 _____
DEEANN 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 _____, 2018.

City Attorney