

ADOT File No.: IGA 19-00007440-I  
AG Contract No.: P001 2019 002323  
Project Location/Name: Mesa Gateway  
Pathway at 202 San Tan Freeway (PH  
2) Elliot Rd – Hawes Rd  
Type of Work: Construct Multi Use  
Pathway  
Federal-aid No.: MES-0(236)D  
ADOT Project No.: T0209 01D/01C  
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 \_\_\_\_\_, pursuant to Arizona Revised Statutes (“A.R.S”) §§ 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 the “Parties.”

### **I. RECITALS**

1. The State is empowered by A.R.S. § 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 A.R.S. § 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. The City designed, constructed, and is maintaining a multi-use pathway on the east side of the 202 San Tan Freeway between the Baseline Road and Elliot Road Interchanges, as shown on Exhibit A, addressed in IGA 16-0006046-I and Amendment No. One, hereinafter referred to as “Phase 1” (Exhibit A). The City will design and construct an extension to Phase 1, from Elliot Road to Hawes Road, hereinafter referred to as “Phase 2” or the “Project”, and as shown in Exhibit B. Phase 1 and Phase 2 are collectively referred to as the “Project Corridor”. The City will obtain federal funds for and administer the construction of the Project. The City will be responsible for the operation and maintenance of the Project and pay for all utilities associated with the operation of the Project Corridor, from right-of-way fence to fence as shown in Exhibit C, to City standards and in accordance with the City’s

policies and procedures. Responsibilities for future phases of the Project Corridor will be addressed by separate agreement(s).

**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. Review the design documents required for construction of the Project, provide comments to the City, and provide approval of the final design.
  - b. Confirm per established procedures of the State's Central District Permit Office, that the City has a valid annual blanket encroachment permit on file for only routine/minor maintenance and emergency maintenance work provided by the City within the State's rights-of-way. Agree that any new construction or installation shall require a separate encroachment permit through the State's City District Permits Office, and shall issue those encroachment permits in accordance with established regulations and procedures based on scope of work.
  - c. Access the Project area as required, should the Project Corridor require closing, provide traffic control measures during maintenance operations as required by the State's and City of Mesa Temporary Traffic Control codes. When maintenance operations occur, communicate with the City to ensure adequate safety precautions are taken prior to closing of the Project Corridor. When performing major operations, stock pile the material so it can dry out prior to transporting it.
  - d. Not be responsible for any damage to the Project Corridor, including pathway, landscape, and fences, resulting from the State conducting its maintenance operations as mentioned above.
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 agreed upon comments from the State.
  - b. Not proceed with construction until ADOT has concurred with the location and reviewed and approved final design.
  - c. Maintain and follow requirements of a valid annual blanket encroachment permit for the routine/minor maintenance and emergency maintenance work provided by the City within the State's rights-of-way. Any new construction or installation shall require a separate encroachment permit as per the State's established procedures, which may be obtained through the State's Central District Permits Office. Notify the State's Central District Permit Office of any emergency maintenance work affecting the State right-of-way.

- d. Install, maintain, and operate lighting throughout the Project Corridor and be responsible for all costs associated with maintenance and operations of said lighting.
- e. Be responsible for landscape maintenance of the Project Corridor, including but not limited to, installation and maintenance of irrigation system(s).
- f. Be responsible for removing, replanting or replacing any disturbed landscape features including trees and shrubs with in-kind features and per the Project plans. After replanting or replacing, be responsible for maintenance of all landscape features within the defined areas of the Project, in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping.
- g. Be responsible for the maintenance of the Project Corridor which includes keeping area free of debris, trash and graffiti.
- h. Maintain the existing and new 42" fence along the Project Corridor and provide gate openings in order to accommodate the State's operation and maintenance of ADOT right of way every 1300 ft, as shown in Exhibit B
- i. Be responsible for maintenance of pedestrian facilities limited to the Project Corridor. Maintenance of these areas includes, but is not limited to: fencing, sweeping, graffiti abatement, litter, debris, and trash removal, weed control in non-landscaped areas, rustication of surface treatments, aesthetics, and any other Project features.
- j. Maintain the integrity of the existing sidewalk and/or any widened sidewalks along Elliot Road within the SR202 Traffic Interchange including but not limited to keeping the area free of debris, trash and graffiti.
- k. Operate, maintain, and be responsible for the signal(s), including but not limited to timing, equipment, and electrical costs associated with such signal(s) at Warner Road.
- l. Be responsible for the maintenance of the street lighting at the Warner Road traffic signal and all signing, striping, pavement markings and other devices that are placed with the Project within its defined Corridor.
- m. Be responsible for the graffiti abatement and the removal of litter, debris, and trash, that are generated by trail users and not natural to the landscape in the Project Corridor.
- n. Be responsible for the removal of hazardous litter, debris and trash within the project corridor.

### **III. MISCELLANEOUS PROVISIONS**

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

2. Any change or modification to the Project will only occur with the mutual written consent of both Parties.
3. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project. Any provisions for maintenance shall survive for the lifetime of the Project, unless assumed by another competent entity.
4. 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.
5. 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.
6. Contractor and subcontractors shall procure and maintain insurance until all of their obligations have been discharged, including any warranty periods under their Contract with the City, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The amounts and types of insurance required are those required by the *ADOT Permits Insurance Matrix*.
7. The cost of scoping, design, construction and construction engineering work under this Agreement is to be covered by the federal funds programmed for this Project, up to the maximum available. The City acknowledges that actual Project costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by FHWA as eligible for federal funds. Therefore, the City agrees to pay the difference between actual costs of the Project and the federal funds received.
8. Should the federal funding related to this Project be terminated or reduced by the federal government, or Congress rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for any past, current or future expenses under this Agreement.

9. 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.
10. The City acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
11. 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 17<sup>th</sup> Ave. Mail Drop 204B  
Phoenix, AZ 85007  
[SingleAudit@azdot.gov](mailto:SingleAudit@azdot.gov)
12. This Agreement shall be governed by and construed in accordance with Arizona laws.
13. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
14. The City shall retain all books, accounts, reports, files and other records relating to the Agreement for five years after completion of the Project. These documents shall be subject at all reasonable times to inspection and audit by the State. Such records shall be produced by the City at the request of ADOT.
15. 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."
16. 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.
17. In the event of any controversy, which may arise out of this Agreement, the Parties agree to abide by arbitration as is set forth for public works contracts if required by A.R.S. § 12-1518.
18. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.

19. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01.
20. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
21. 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. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, AZ 85007  
[JPABranch@azdot.gov](mailto:JPABranch@azdot.gov)

City of Mesa  
Attn: Maria Angelica Deeb  
Address: 300 E 6<sup>th</sup> Street;  
P.O. Box 1466  
Mesa, AZ, 85211  
480.644.2845

**For Project Administration:**

Arizona Department of Transportation  
Central Maintenance District  
2140 West Hilton Avenue, Mail Drop PM00  
Phoenix, AZ 85009  
602.712.6664

City of Mesa  
Attn: Maria Angelica Deeb  
Address: 300 E 6<sup>th</sup> Street;  
P.O. Box 1466  
Mesa, AZ, 85211  
480.644.2845

**For Financial Administration:**

Arizona Department of Transportation  
Project Management  
205 S. 17<sup>th</sup> Avenue, Mail Drop 614E  
Phoenix, AZ 85007  
[PMG@azdot.gov](mailto:PMG@azdot.gov)

City of Mesa  
Attn: Maria Angelica Deeb  
Address: 300 E 6<sup>th</sup> Street;  
P.O. Box 1466  
Mesa, AZ, 85211  
480.644.2845

22. In accordance with A.R.S. § 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**  
Mayor

By \_\_\_\_\_  
**STEVE BOSCHEN, PE**  
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 Amendment No. One 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 Amendment No. One.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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