

ADOT CAR No.: IGA 19-0007532-I  
AG Contract No.: P001 2019 000xxx  
Project Location/Name: SR24, Ellsworth  
Rd. – Ironwood Dr., Interim Phase II  
Type of Work: Construct New Roadway  
Federal-aid No.: 024-A(200)T  
ADOT Project No.: H8915 01D  
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 (“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 “State”). The State and the City are collectively referred to as “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 State is administering the design and construction of State Route (SR) 24 Interim Phase II between Ellsworth Road and Ironwood Drive (the “State’s Project”). As part of the State’s Project, and at the request of the City, the State will design and construct: extension of approximately 445 feet of Williams Field Road from the Portland Cement Concrete Pavement (PCCP) limits of the intersection with SR 24 to the north half street designed and constructed by a developer; four (4) 2-inch conduits (quad-duct) and FMS/ITS fiber and equipment at Williams Field Road and Signal Butte Road; and utility sleeves for future waterlines crossing SR 24 at Williams Field Road, Crismon Road, Signal Butte Road, and Meridian Road (the “Project”). The City will be responsible for the costs associated with the design of the Project estimated at \$125,766.00 including indirect cost allocation plan (ICAP). Construction costs and maintenance responsibilities will be addressed in separate agreements.

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

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## **II. SCOPE OF WORK**

1. The State will:
  - a. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the City designated agent for the Project.
  - b. Execute this Agreement; invoice the City for \$125,766.00, the City's contribution toward design costs. The State will invoice the City for any additional costs associated with changes requested by the City.
  - c. 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 City as appropriate.
  - d. With FHWA authorization, proceed to administer construction: advertise, receive and open bids, award, and enter into a contract with the firm for the construction of the Project. Administer contract(s) for the Project and make all payments to the contractor(s).
  - e. Request from the City concurrence with all Change Orders (CO) related to work described in this IGA, before implementation.
  - f. If for any reason it becomes apparent that the City's share of costs for the Project may exceed the estimated costs, the State will provide an amended estimate and invoice the City.
  - g. Not be obligated to incur any expenditure(s) for the Project.
2. The City will:
  - a. Designate the State as the City authorized agent for the Project.
  - b. Within 30 days of receipt of an invoice from the State, pay to the State \$125,766.00, the City's contribution toward design of the Project. Should the City request any changes to the Project design, pay for additional costs associated with such changes, within 30 days of receipt of an invoice from the State
  - c. Review the design documents required for construction of the Project and provide comments to the State as appropriate.
  - d. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the Project costs provided that the City will be consulted before any significant work is undertaken as a result of unforeseen conditions or circumstances.

- e. Be responsible for the cost of any City requested changes to the scope of work of the Project (such changes will require State approval).
- f. Automatically grant to the State, by execution of this Agreement, its agents and/or contractors, without cost, the temporary right to enter City rights-of-way, as required, to conduct any and all construction and preconstruction related activities for the Project, on, to and over said City rights-of-way. This temporary right will expire with completion of the Projects.

### **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 the Parties.
3. 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.
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 for the Project 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. 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 into 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.

7. 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.
8. The cost of the Project under this Agreement includes indirect costs approved by the FHWA, as applicable.
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 shall 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. This Agreement shall be governed by and construed in accordance with Arizona laws.
12. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
13. 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.
14. 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 by reference regarding "Non-Discrimination."
15. 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.
16. 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.
17. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
18. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01.

19. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
20. 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  
P.O. Box 1466  
Mesa, AZ 85211  
480.644.2845  
[MariaAngelica.Deeb@mesaaz.gov](mailto:MariaAngelica.Deeb@mesaaz.gov)

**For Project Administration:**

Arizona Department of Transportation  
Project Management Group  
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  
P.O. Box 1466  
Mesa, AZ 85211  
480.644.2845  
[MariaAngelica.Deeb@mesaaz.gov](mailto:MariaAngelica.Deeb@mesaaz.gov)

**For Financial Administration:**

Arizona Department of Transportation  
Project Management Group  
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  
P.O. Box 1466  
Mesa, AZ 85211  
480.644.2845  
[MariaAngelica.Deeb@mesaaz.gov](mailto:MariaAngelica.Deeb@mesaaz.gov)

21. 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 \_\_\_\_\_  
**JOHN GILES**  
Mayor

By \_\_\_\_\_  
**STEVE BOSCHEN, PE**  
Division Director

ATTEST:

By \_\_\_\_\_  
**DEE ANN MICKELSEN**  
City Clerk

By \_\_\_\_\_  
**BRENT A CAIN, PE**  
Division Director  
Transportation Systems Management and Operations

**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.

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City Attorney

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Date