

ADOT CAR No.: IGA 23-0009159-I
AG Contract No.: P0012023000668
Project Location/Name: US-60X (Apache Trail) Sossaman - Meridian
Type of Work: Pavement Preservation, Sidewalks & Lighting
Federal-aid No.: FA-X60-C(202)T
ADOT Project No.: F0361 01D/01C
TIP/STIP No.: MAG 23-00
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 (“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 “City”). The State and the City are each individually referred to as a “Party” and 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 and Section 103 of the Mesa City Charter to enter into this Agreement and has by resolution, if required, 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 will design, advertise, award and administer construction of roadway improvements (the “Project”) on US 60X (also referred to as Apache Trail and/or Main Street), from Sossaman Road to Meridian Road, (the “Project Corridor”). A portion of the Project will require the design and construction of sidewalks, curb, gutter, pedestrian curb ramps, signing, pavement marking, traffic signal work, and the relocation of City-owned fire hydrants (collectively, “City Improvements”). The City will continue to be responsible for maintenance of the City Improvements. The State will administer the design and construction of improvements for the entire Project, including the City Improvements. The State will pursue federal funds for the design and construction costs associated with the Project. The purpose of this Agreement is to allow ADOT access on to City right of way. The

State and the Maricopa County Department of Transportation (MCDOT) have a separate IGA 21-0008393-I that addresses the Project and abandonment of right of way for those portions of the Project within County jurisdiction.

4. The foregoing Recitals shall be incorporated into this Agreement.

In consideration of the mutual terms expressed herein, the Parties agree as follows:

II. SCOPE OF WORK

1. The Parties agree:
 - a. To perform their responsibilities consistent with this Agreement; any change or modification to this Agreement will only occur with the mutual written consent of both Parties.
2. The State will:
 - a. Execute this Agreement, and if funds for the Project are available, be the City's designated agent for the Project.
 - b. Prepare and provide the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project.
 - c. Obtain, at no cost, all proper Construction and Temporary Traffic Control permits as required.
 - d. Not to proceed with construction until the City has concurred with, reviewed, and approved final design of that portion of the Project within the City rights of way.
 - e. 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).
 - f. Protect in place all City utilities and facilities within the limits of the Project which are not relocated, and in the event of damage to any such utilities or facilities, restore or repair them to City standards at no cost to the City.
 - g. Notify the City of substantial completion and final acceptance of the Project.
 - h. Issue, in accordance with the established procedures of the State's Central District Permit Office, a permit on a yearly basis for routine maintenance and emergency work. Routine maintenance and emergency work will be defined within the permit. Permits will be issued when appropriate insurance documents are provided as required by ADOT Risk Management.

3. The City will:
 - a. Designate the State as the City's authorized agent for the Project.
 - b. Review the design documents required for construction of the Project and provide comments to the State as appropriate. Work within the design timeframes set forth by the State to not delay the Project.
 - c. Not permit or allow any encroachments upon or private use of the public right of way, except those authorized by permit. Coordinate all authorized permits with ADOT prior to construction. 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. 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 Project.
 - e. Submit an encroachment permit application with all required documentation to the State's Central District Permit Office for routine maintenance and emergency work. Provide appropriate insurance with each encroachment permit once, then annually for the maintenance and emergency work, to keep that permit valid. Notify the State's Central District Permit Office of any emergency maintenance work affecting the State right of way. Submit an encroachment permit application for any new construction or installation.

III. MISCELLANEOUS PROVISIONS

1. Effective Date. This Agreement shall become effective upon signing and dating of all Parties.
2. Amendments. Any change or modification to this Agreement will only occur with the mutual written consent of both Parties.
3. Duration. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project. Any and all obligations hereunder shall remain perpetual and shall survive any termination hereof and the assignment or assumption of this Agreement or the Project by another competent jurisdiction or entity.
4. Cancellation. This Agreement may be cancelled at any time up to 30 days before the award of the Project contract, so long as the cancelling Party provides at least 30 days' prior 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.
5. Indemnification. Each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively

referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

6. Third-Party Indemnification. The State shall include Section 107.13 of the 2021 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. Federal Funding Accountability and Transparency Act. 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.
8. Governing Law. This Agreement shall be governed by and construed in accordance with Arizona laws.
9. Conflicts of Interest. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
10. Inspection and Audit. The City shall retain all books, accounts, reports, files and other records relating to this Agreement which shall be subject at all reasonable times to inspection and audit by the State for five years after completion of the Project. Such records shall be produced by the City, electronically or at the State office as set forth in this Agreement, at the request of ADOT.
11. Title VI. The City acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
12. Non-Discrimination. 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, as amended by Executive Order 2023-01, issued by the Governor of the State of Arizona and incorporated in this Agreement by reference regarding "Non-Discrimination."
13. 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.
14. Arbitration. 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.

15. E-Verify. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
16. Contractor Certifications. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01 and 35-394.
17. Other Applicable Laws. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
18. Notices. All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered electronically, in person, or sent by mail, addressed as follows:

For Agreement Administration:

Arizona Department of Transportation
Joint Project Agreement Group
205 S. 17th Avenue, Mail Drop 637E
Phoenix, AZ 85007
JPABranch@azdot.gov

City of Mesa
Attn: Maria Angelica Deeb
300 E 6th Street
PO Box 1466
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
PMG@azdot.gov

City of Mesa
Attn: Maria Angelica Deeb
300 E 6th Street
PO Box 1466
Mesa, AZ 85211
480.644.2845

19. Revisions to Contacts. Any revisions to the names and addresses above may be updated administratively by either Party and shall be in writing.
20. Legal Counsel Approval. In accordance with A.R.S. § 11-952 (D), the written determination of each Party's legal counsel providing that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form is set forth below.
21. Electronic Signatures. This Agreement may be signed in an electronic format using DocuSign.

Remainder of this page is intentionally left blank.

(Signatures begin on the next page)

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective upon the full completion of signing and dating by all Parties to this Agreement.

CITY OF MESA

By _____ Date _____
CHRISTOPHER J. BRADY
City Manager

ATTEST:

By _____ Date _____
HOLLY MOSELEY
City Clerk

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 A.R.S. § 9-511 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. Approved as to Form:

By _____ Date _____
City Attorney

ARIZONA DEPARTMENT OF TRANSPORTATION

By _____ Date _____
STEVE BOSCHEN, PE
Infrastructure Delivery and Operations Division
Division Director

By _____ Date _____
BRENT A. CAIN, PE
Transportation Systems Management and Operations Division
Division Director

A.G. Contract No. P0012023000668 (ADOT IGA 23-0009159-I), an Agreement between public agencies, the State of Arizona and the City of Mesa, has been reviewed pursuant to A.R.S. §§ 11-951 through 11-954 and A.R.S. § 28-401, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona. No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

By _____ Date _____
Assistant Attorney General