

IGA/JPA File No. IGA/JPA 11-167 I
A.G. Contract No.: P001-2012-001024
Project: SR 24 (Gateway Freeway)
Section: SR 202L, Santan Freeway -
Ellsworth Road
TRACS No.: H686701C
Budget Source: **City Funded Enhancements**

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA,
AND
THE CITY OF MESA

THIS AGREEMENT (the "Agreement") is entered into _____, 2012 pursuant to Arizona Revised Statutes § 9-500.17, § 11-951 through 11-954 and § 28-7677, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA, acting by and through its CITY COUNCIL ("City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 11-952, § 28-401 and § 28-7677 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 and § 9-240 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. Incident to the State's construction of State Route 24 (SR 24), Gateway Freeway from SR 202L (Santan Freeway) to Ellsworth Road, and as part of the traffic signal design and construction, the City requests the State include the following enhancements to the proposed traffic signals at Hawes and Ellsworth Roads: Opticom Systems at the SR 202L/Hawes Road traffic interchange (TI) and SR 24/ Ellsworth Road TI; and CCTV cameras – 2 cameras at the SR 202L/Hawes Road traffic TI and 2 cameras at the SR 24/ Ellsworth Road TI, herein referred to as the "Project". The current estimate for the proposed City enhancements (Project) is **\$46,910.00**, as shown on Exhibit A, attached hereto and made a part hereof, at the City's expense. It is understood that all funds received from the City for the Project will be deposited into TRACS number **H6867 01C**.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this Agreement, agree to be the authorized agent for and on behalf of the City. Also upon execution of this Agreement, invoice the City **\$46,910.00**, for the estimated costs associated with the City's requested enhancements (the Project), which will include fixed percentage rates for: construction surveying and layout (1.25%); contractor quality control (0.75%); mobilization (10%); construction engineering and administration (9%); contingency (5%); design engineering (2.5%), and design engineering administration (5%), as shown on Exhibit A.

b. On behalf of the City, retain and contract with one or more professional design consultants (the "Consultants"), to prepare to state requirements: design plans, specifications, and other such documents required for the bidding, awarding and construction of the Project and provide to the City for concurrence. Confer with the City on any design consultant related contract modifications.

c. Notify the City and conduct monthly design and construction progress meetings. Provide the City the design documents for review and comment, as required and incorporate the City's comments as appropriate.

d. Invoice the City if any additional design changes requested by the City exceed the approved City authorized funding for the Project, which will include a fixed rate of 5% for the State's design, review and administration costs for the Project.

e. Upon the City's concurrence of the plans, advertise and award one or more construction contract(s) for the Project, per the Project plans, specifications and estimate. Administer same and make all payments to the contractor(s).

f. Prior to completion of this Project work, execute a letter addendum to JPA 05-053 with the City to incorporate the SR 24 (Gateway Freeway) and Ellsworth Road traffic interchange location, which identifies responsibilities between the Parties relative to the operation and maintenance of traffic signals, the associated electrical facilities and electrical energy costs to operate the electrical facilities within the City. The location of Hawes Road at SR 202L (Santan Freeway) location is currently included in the referenced agreement (JPA 05-053).

g. Upon completion of the Project, provide the City with a recapitulation of the actual costs for the Project, along with an invoice or reimbursement, for the difference between the amount paid by the City and the actual costs for the Project, to include the fixed rates, as shown on Exhibit A.

h. Upon completion of the Project, conduct a final walk through with the City for sign-off of the City's requested elements for the Project identified herein. Accept the Project on behalf of the Parties that the Project has been constructed in accordance with the Project plans and that the Project has been satisfactorily completed.

i. Be responsible for all electrical energy costs to operate the electrical facilities, the interconnect system and supporting electrical equipment, at Hawes Road and Ellsworth Road in accordance with JPA 05-053 and associated Amendments.

j. Grant or confirm, per established procedures of the State's Phoenix Maintenance District Permit Office, that the City has a valid annual citywide Blanket Permit on file, for routine/normal maintenance and emergency maintenance work provided by the City within the State's rights of way. Agree any new construction or installation shall require a separate permit through the State's Phoenix

Maintenance District Permit Supervisor, as per the Phoenix Maintenance District's established procedures.

2. The City will:

a. Upon execution of this Agreement, hereby designate the State as the authorized agent for and on behalf of the City. Also upon execution of this Agreement and within 30 days upon receipt of an invoice, remit **\$46,910.00** to the State for the estimated costs associated with the City's requested enhancements of the Project, which will include fixed percentage rates for: construction surveying and layout (1.25%); contractor quality control (0.75%); mobilization (10%); construction engineering and administration (9%); contingency (5%); design engineering (2.5%), and design engineering administration (5%), as shown on Exhibit A.

b. Be responsible for all additional design changes requested by the City that exceed the approved City authorized funding for the Project, which will include a fixed rate of 5% for the State's design, review and administration costs for the Project. Be responsible for any consultant claims for extra compensation caused by or attributable to the City.

c. Upon notification from the State that the Project is complete, attend a final walk through with the State for concurrence/sign-off of the City's requested elements for the Project identified herein.

d. Prior to completion of this Project work, execute a letter addendum to JPA 05-053 with the State to incorporate the SR 24 (Gateway Freeway) and Ellsworth Road traffic interchange location, which identifies responsibilities between the Parties relative to the operation and maintenance of traffic signals, the associated electrical facilities and electrical energy costs to operate the electrical facilities within the City. The location of Hawes Road at SR 202L (Santan Freeway) location is currently included in the referenced agreement (JPA 05-053).

e. If necessary upon completion of the Project and within 30-days from receipt of an invoice of the actual Project costs from the State, remit the amount for the difference between the amount deposited by the City and the actual costs for the Project, to include the fixed rates shown on Exhibit A and II.2.b above.

f. Obtain, per established procedures of the State's Phoenix Maintenance District Permit Office, a valid annual citywide Blanket Permit for the routine/normal maintenance and emergency maintenance work provided by the City within the State's rights of way. Comply with all permit and Certificate of Insurance requirements. Agree, any new construction or installation shall require a separate permit as per the Phoenix Maintenance District's established procedures, of which may be obtained through the Phoenix Maintenance District Office referenced herein.

g. Upon completion of construction of the Project and completion of the State's work, be responsible for the operation and maintenance of the Opticom Systems, CCTV Cameras and associated traffic signal facilities at the Hawes Road / SR 202 (Santan Freeway) TI and Ellsworth Road / SR 24 (Gateway Freeway) TI in accordance with existing JPA 05-053 and associated amendments.

III. MISCELLANEOUS PROVISIONS

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

2. This Agreement shall remain in full force and effect until completion of the work contemplated herein and all reimbursements; provided however, that this Agreement, except any provisions herein for maintenance which shall be perpetual except as provided for in existing JPA 05-053 and associated

amendments, may be cancelled at any time prior to the award of a Project advertisement, with 30-days written notice to the other Party. It is understood and agreed by both Parties that, in the event the City fails to fulfill its obligations set forth in this Agreement or withdraw its proposed plans for whatever reason, the City shall be responsible for all costs incurred by the State up to the time of the City's withdrawal/cancellation.

3. The State assumes no financial obligation or liability under this Agreement relative to the City's requested enhancements (described in Recitals I.3 above, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design plans, specifications, reports, the engineering in connection therewith and the construction of the City's requested enhancements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless, defend and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

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.

4. The cost of the Project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (FHWA). *"Applicable indirect costs" means costs incurred by ADOT and approved by FHWA under ADOT's indirect cost allocation proposal, pursuant to 2 CFR 225 and OMB Circular A-87.*

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. The Parties warrant compliance with the "Buy America" requirements as set forth in Section 106.15 of the ADOT Standard Specifications for Road and Bridge Construction.

8. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, U.S.C. Volume 42, Sections 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 is incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds. Every payment obligation of State and City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State or the City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

If the federal funding related to this Project is terminated or reduced by the federal government, or if the federal government 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.

10. To the extent applicable under Arizona Revised Statutes § 41-4401, each Party and its subcontractors warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statutes § 23-214(A). A breach of the above-mentioned warranty by any Party or its subcontractors shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the non-breaching Party. Each Party retains the legal right to randomly inspect the papers and records of the other Party's or its subcontractors' employees who work on the Project to ensure that the other Party or its subcontractors are complying with the above-mentioned warranty.

11. Pursuant to Arizona Revised Statutes § 35-391.06 and § 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operation" shall have the meanings set forth in Arizona Revised Statutes § 35-391 or and § 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

12. The City and the State (Arizona Department of Transportation) (ADOT) warrants 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 (ADOT) to enable the State (ADOT) to comply with the requirements of the Act, as may be applicable.

13. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by Arizona Revised Statutes § 12-1518, as applicable.

14. 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:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, AZ 85007-3212
Fax: 602-712-3132

City of Mesa
City Manager
PO Box 1466
Mesa, AZ 85211-1466
FAX: 480-644-2175
PHONE: 480-644-2066

For Maintenance Permit – Contract

Arizona Department of Transportation
Phoenix Maintenance District Permits Office
2140 S. 22nd Avenue, Mail Drop PM00
Phoenix, AZ 85017

City Finance – Contract

City of Mesa
Controller
PO Box 1466
Mesa, AZ 85211-1466
FAX: 480-644-2999
PHONE: 480-644-5697

State Finance - Receivable: Contact

Arizona Department of Transportation
Attn: Accounts Receivable
206 S. 17th Avenue, MD 204B
Phoenix, AZ 85007

State Finance – Payable: Contact

Arizona Department of Transportation
Attn: Accounts Payable
206 S. 17th Avenue, MD 203B
Phoenix, AZ 85007

15. In accordance with Arizona Revised Statutes §11-952, (D) attached hereto and incorporated herein 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: _____
ROBERT SAMOUR, P.E.
Deputy State Engineer, Valley Transportation

ATTEST:

By _____
LINDA G. CROCKER
City Clerk

**EXHIBIT A
 SUMMARY**

**SR 24 (GATEWAY FREEWAY)
 SR 202L TO ELLSWORTH ROAD
 DESCRIPTION AND COST OF PAY ITEMS FOR CITY OF MESA ENHANCEMENTS**

ITEM	COST			DESCRIPTION
	DESIGN	CONSTRUCTION	TOTAL	
1 CITY OF MESA SIGNAL ENHANCEMENTS	\$900	\$40,320	\$41,220	Install Opticom Systems and CCTV Cameras at SR 202L / Hawes Road and SR 24 / Ellsworth Road traffic interchanges.
Item 1 SubTotal:	\$900	\$40,320	\$41,220	
2 14% CONSTRUCTION ENGINEERING AND ADMINISTRATION	NA	\$5,645	\$5,645	Construction Engineering and Administration (14%) was calculated on a percentage basis of the construction cost for Item 1.
3 5% DESIGN ENGINEERING ADMINISTRATION	\$45	NA	\$45	Design Engineering Administration was calculated on a percentage basis of the design cost for Item 1.
Items 2-3 SubTotal:	\$45	\$5,645	\$5,690	
Total	\$945	\$45,965	\$46,910	

**EXHIBIT A
 ITEM 1 SUMMARY BACKUP**

Item No	Item Description	Unit	Quantity	Unit Price	Amount
1	Item 1 - CITY OF MESA SIGNAL ENHANCEMENTS				
2					
3					
4	7350551 OPTICOM PRE-EMPTION UNIT	EACH	2	7,500.00	\$ 15,000.00
5	7370421 ELECTRICAL SYSTEM (CCTV CAMERA) (COM)	EACH	4	5,250.00	\$ 21,000.00
6					
7					
8	SUBTOTAL CONSTRUCTION COST (1)				\$ 36,000.00 (A)
9					
10					
11					
12	CONSTRUCTION SURVEYING AND LAYOUT SHARE ¹	L.SUM	1	1.25%	\$ 450.00
13	CONTRACTOR QUALITY CONTROL SHARE ²	L.SUM	1	0.75%	\$ 270.00
14	MOBILIZATION SHARE ³	L.SUM	1	10.00%	\$ 3,600.00
15					
16	SUBTOTAL CONSTRUCTION COST (2)				\$ 40,320.00 (B)
17	DESIGN ENGINEERING	L.SUM	1	2.50%	\$ 900.00
18	ITEM 4 LUMP SUM SUBTOTAL				\$ 41,220.00
19					

Notes:

1. Construction Surveying and Layout was calculated on a percentage basis (1.25% fixed rate) of the construction cost of the City Items.
2. Contractor Quality Control was calculated on a percentage basis (0.75% fixed rate) of the construction cost of the City Items.
3. Mobilization was calculated on a percentage basis (10.0% fixed rate) of the construction cost of the City Items.

JPA 11-167 I

APPROVAL OF THE MESA CITY ATTORNEY

I have reviewed the above-referenced proposed Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, 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 _____ 2012

City Attorney