

ADOT CAR No.: IGA 19-0007327-I
AG Contract No.: P001 2019 000907
Project Location/Name: US 60
Consolidated Canal - Eastern Canal/Multi-
Use Pathway
Type of Work: Construct Multi-Use
Pathway
Federal-aid No.: N/A
ADOT Project No.: MAINTAGR
TIP/STIP No.: N/A
**CFDA No.: 20.205 - Highway Planning
and Construction**
Budget Source Item No.:

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 CITY MANAGER and CITY COUNCIL (the "City"). 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 State.
3. The City will design, construct and maintain a multi-use pathway (MUP) along the US 60, the Consolidated Canal to Eastern Canal hereinafter referred to as "Project Corridor" or "Project" (Exhibit A.1 and A.2). The construction will be multi-phased. Phase one is considered the interim MUP which includes an aggregate surface pathway, pedestrian crossings at 32nd and 39th street and fencing. Phase two will include a 10-12 feet wide asphalt pathway, lighting, fencing, landscape and connections to adjacent City parks, basins and canal pathways. Both Phased projects may be constructed in segments. The City will 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 B, to City standards and in accordance with the City's policies and procedures.

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, to maintain the integrity of the drainage structure adjacent and parallel to the path. Should the Project Corridor require closing, provide traffic control measures during maintenance operations as required by the State. When major 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 the pathway, concrete curb, landscape, and existing and new fences if directly adjacent to the pathway, resulting from the State conducting its maintenance operations as mentioned above.
 - e. Be responsible for the functionality and operation of the adjacent drainage channel.
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. When lighting is installed, the City will maintain and operate lighting throughout the Project Corridor and be responsible for all costs associated with maintenance and operations of said lighting.
- e. When landscape is installed, the City will 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 and keeping maintenance access paths at 32nd Street and 39th Street clear of landscape
- g. Be responsible for graffiti abatement and the removal of litter, debris, and trash that are generated by trail users and not natural to the landscape of the Project Corridor to include the State's drainage channel adjacent to and visible from the Project.
- h. Maintain the existing fence if directly adjacent to the pathway and any new fence if installed by the Project and directly adjacent to the pathway.
- i. Maintain the retaining and block walls, if installed by the Project, and the 24 inch gates along the Project Corridor, as agreed upon in future final design plans (Exhibit C).
- j. In order to accommodate the State's operation and maintenance of ADOT right ofway between 39th Street and Eastern Canal, install 24-inch sliding gates at approximately 300 feet spacing along the fence installed on the north side of the channel.
- k. Be responsible for maintenance of pedestrian facilities limited to the Project Corridor. Maintenance of these areas includes: fencing, sweeping, graffiti abatement, litter, debris, and trash removal, weed control in non-landscaped areas, rustication of surface treatments of features installed by the Project, aesthetics, and any other Project features including pedestrian crossings, raised medians, and pedestrian refuges.
- l. Address any ADA concerns and maintain the integrity of the existing sidewalk, any widened sidewalks and roll curbs that are direct access to the multi-use pathway including any high-strength roll curbs at the maintenance access points at 32nd Street, Val Vista Drive, and 39th Street. The City will keep this area free of debris, trash, and graffiti.

- m. Be responsible for the removal of hazardous litter, debris and trash within the Project Corridor.
- n. Provide access to the channel and ADOT's operations and maintenance road for periodic channel observation and operations.
- o. Repair damage to pathway, fencing, or gates that are adjacent to the pathway due to maintenance vehicles and/or equipment accessing the channel for cleanup/repairs.
- p. Be responsible for and maintain all signing, striping, pavement markings, and other devices that are placed in conjunction with the multi-use pathway.

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 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
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. 17th Avenue, Mail Drop 637E
Phoenix, AZ 85007
JPABranch@azdot.gov

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

For Financial Administration:

Arizona Department of Transportation
Project Management
205 S. 17th Avenue, Mail Drop 614E
Phoenix, AZ 85007
PMG@azdot.gov

City of Mesa
Attn: Maria Angelica Deeb
Address: 300 E 6th 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
City Manager

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 Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

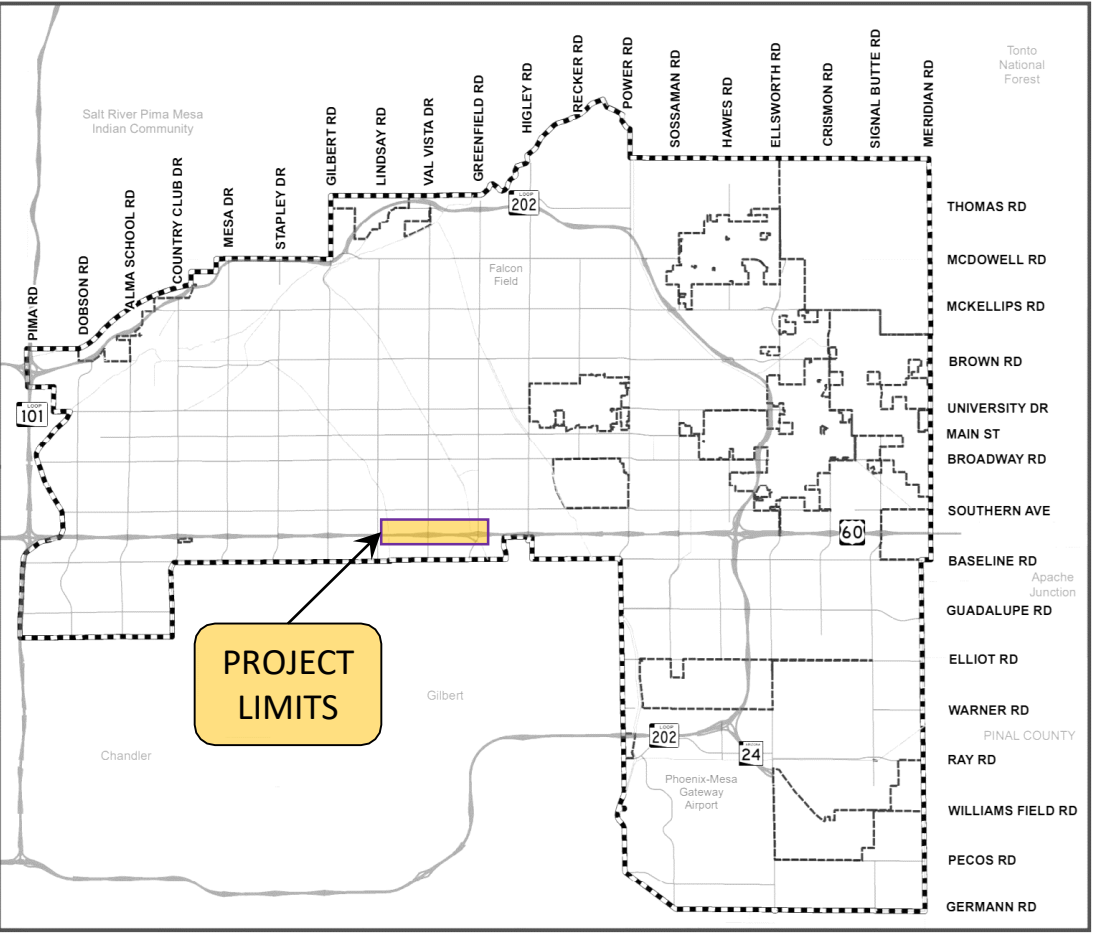
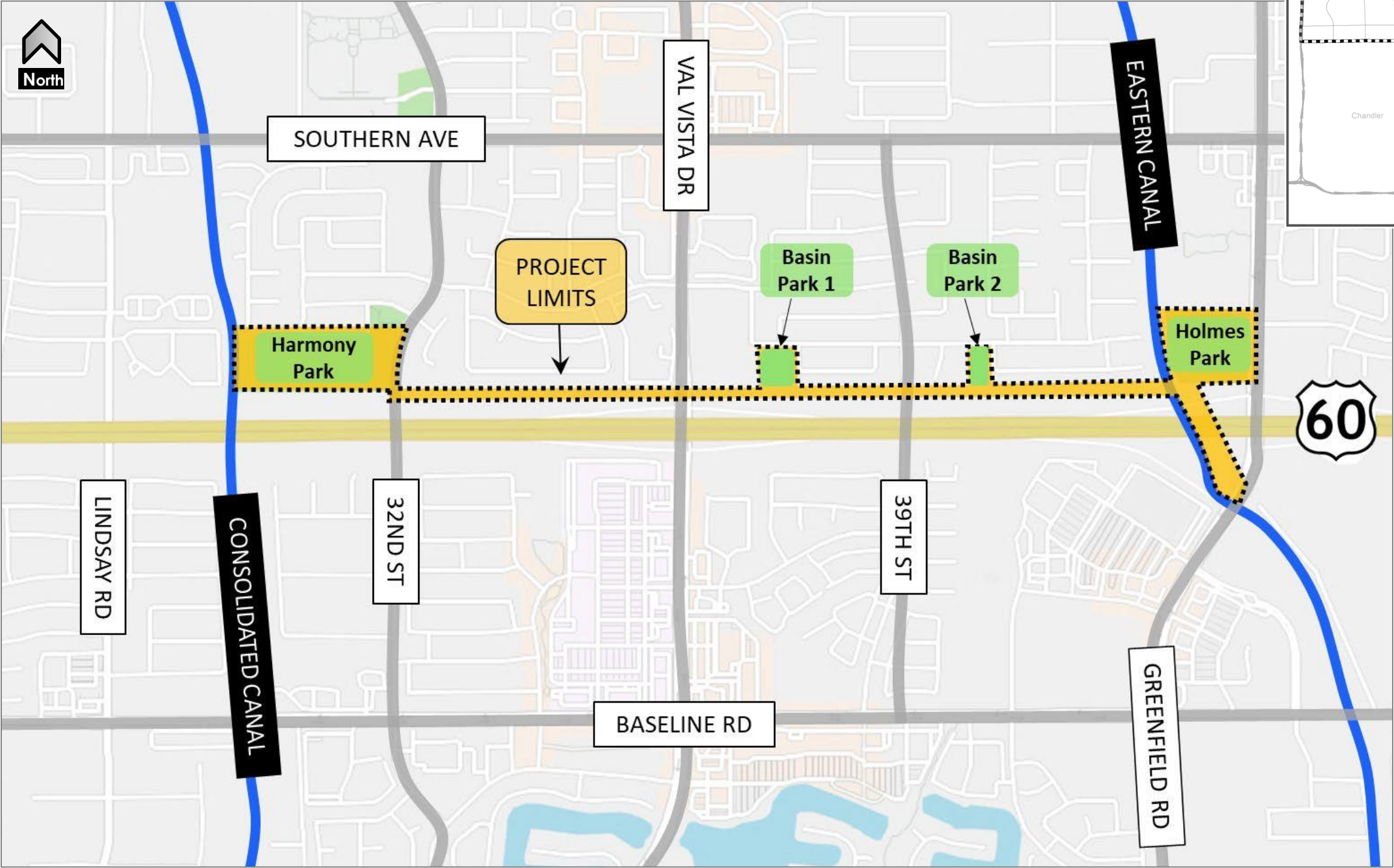
No opinion is expressed as to the authority of the State to enter into this Agreement.

City Attorney



Date

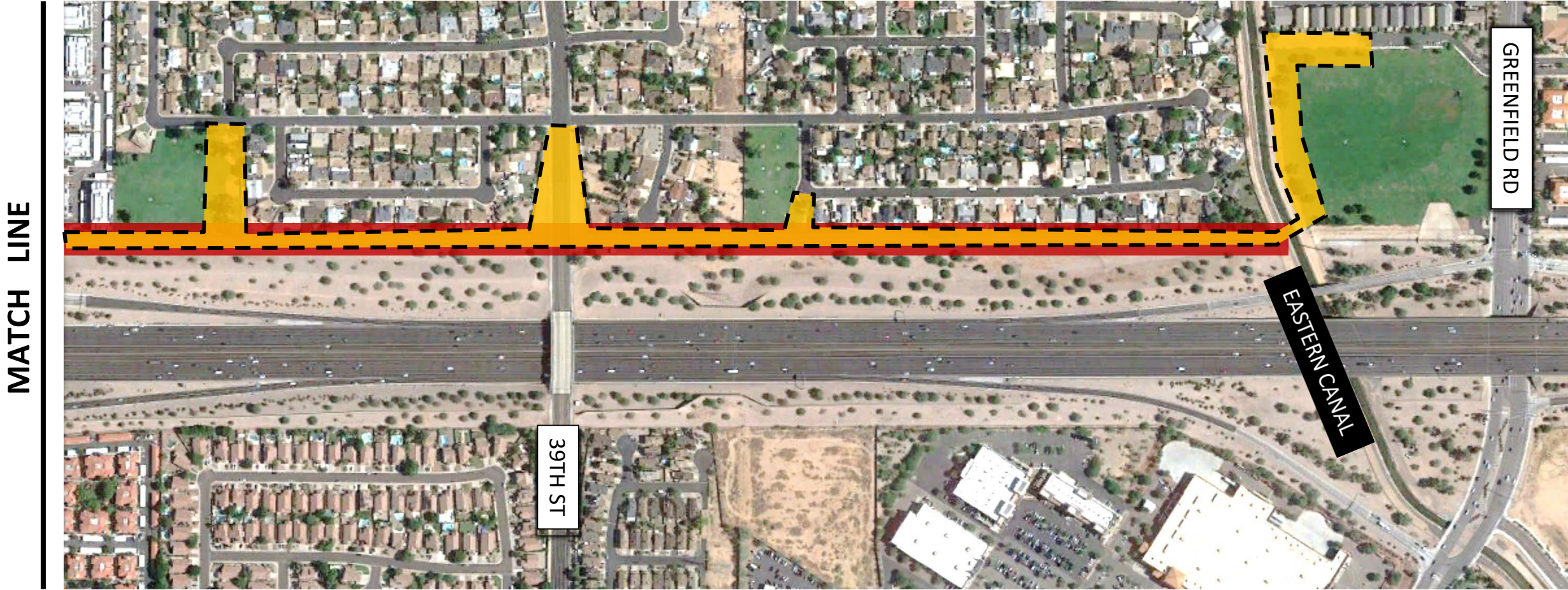
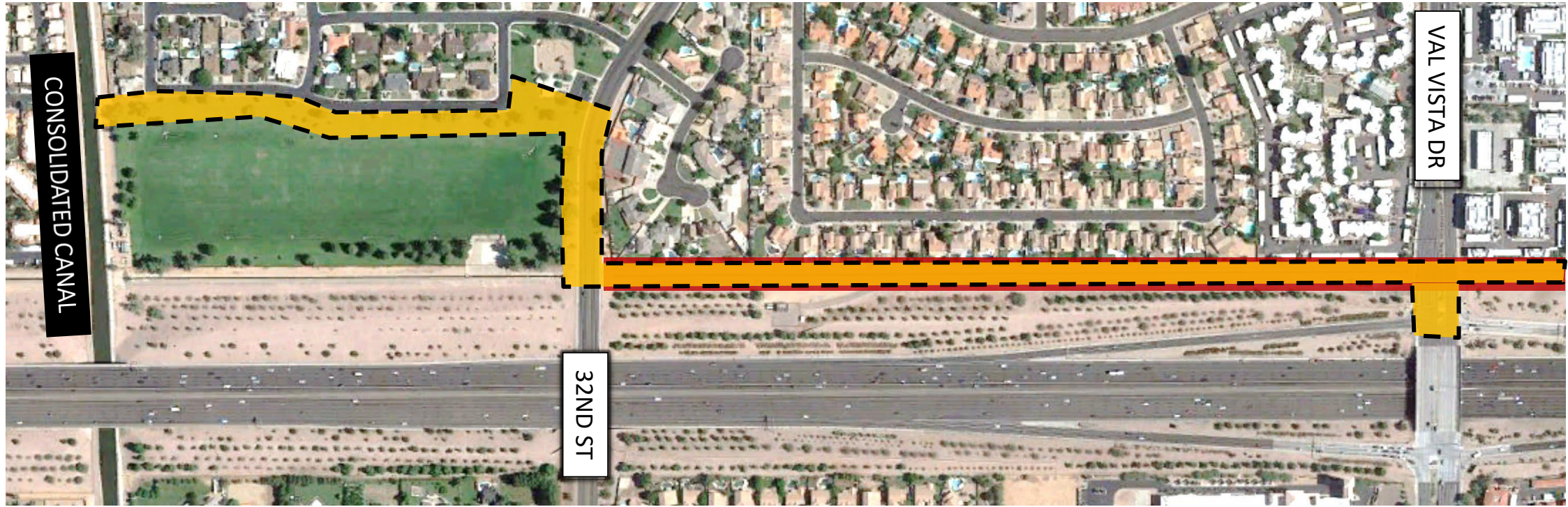
US 60 SHARED USE PATHWAY PROJECT
CONSOLIDATED CANAL TO EASTERN CANAL
MESA, ARIZONA
EXHIBIT A-1

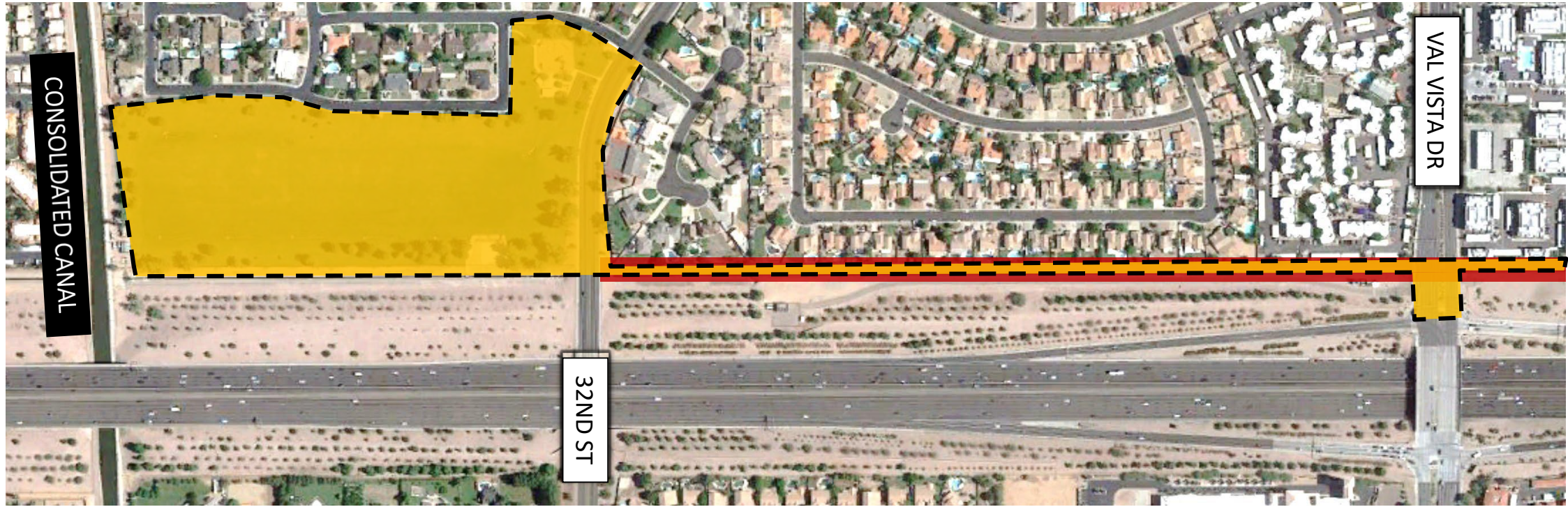
PROJECT LIMITS AND VICINITY MAPS





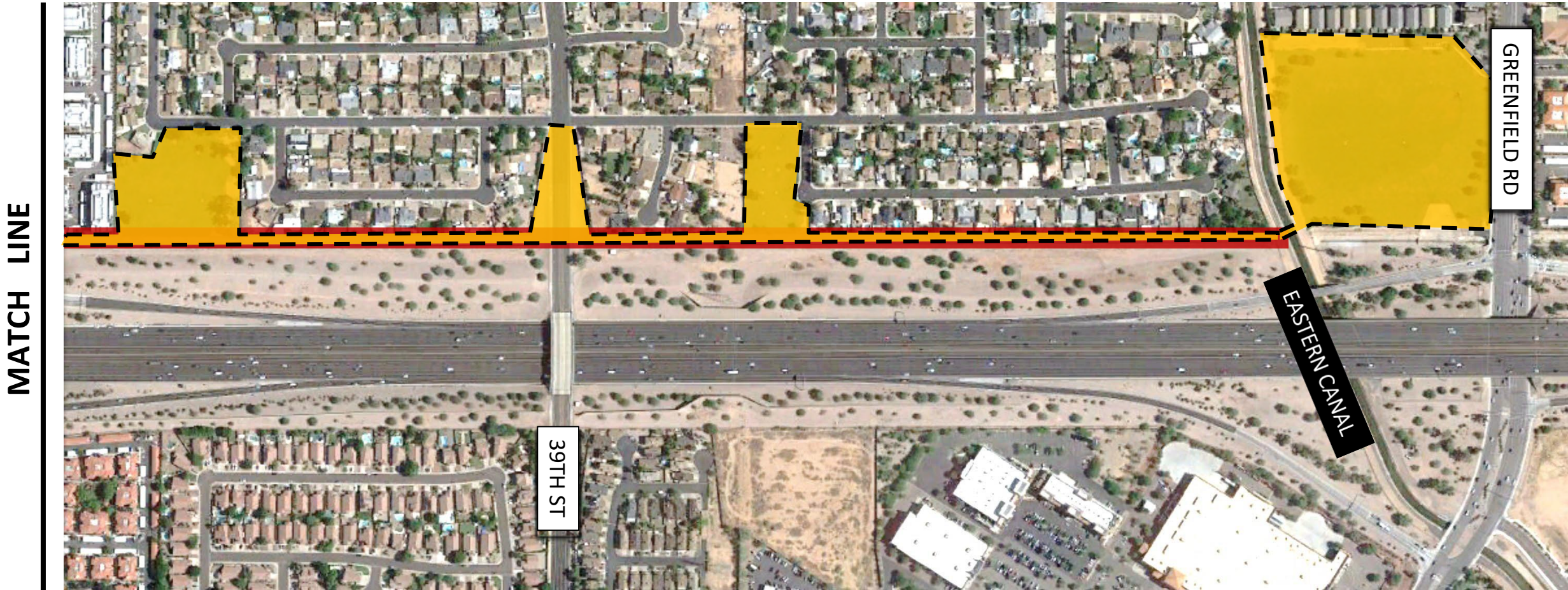
US 60 SHARED USE PATHWAY PROJECT
CONSOLIDATED CANAL TO EASTERN CANAL
MESA, ARIZONA
EXHIBIT A-2

-  GENERAL CONSTRUCTION IMPACT AREA
-  CONSTRUCTION IMPACT AREA WITHIN ADOT ROW





-  MESA MAINTENANCE RESPONSIBILITY
-  MESA MAINTENANCE RESPONSIBILITY WITHIN ADOT ROW



CITY RESPONSIBILITIES ALONG PROJECT CORRIDOR

- 1. Maintain and operate lighting throughout
- 2. Be responsible for landscape maintenance including removing, replanting or replacing any disturbed landscape features
- 3. Be responsible for graffiti abatement and the removal of litter, debris, and trash that are generated by trail users and not natural to the landscape to include the State's drainage channel adjacent to and visible from the Project.
- 4. Maintain the existing fence and new fence if directly adjacent to the pathway, retaining wall if installed by the Project and the gates
- 5. Be responsible for maintenance of pedestrian facilities limited to: fencing, sweeping, graffiti abatement, litter, debris, and trash removal, weed control in non-landscaped areas, rustication of surface treatments of features installed by the Project, aesthetics, and any other Project features limited to pedestrian crossings, raised medians, and pedestrian refuges.

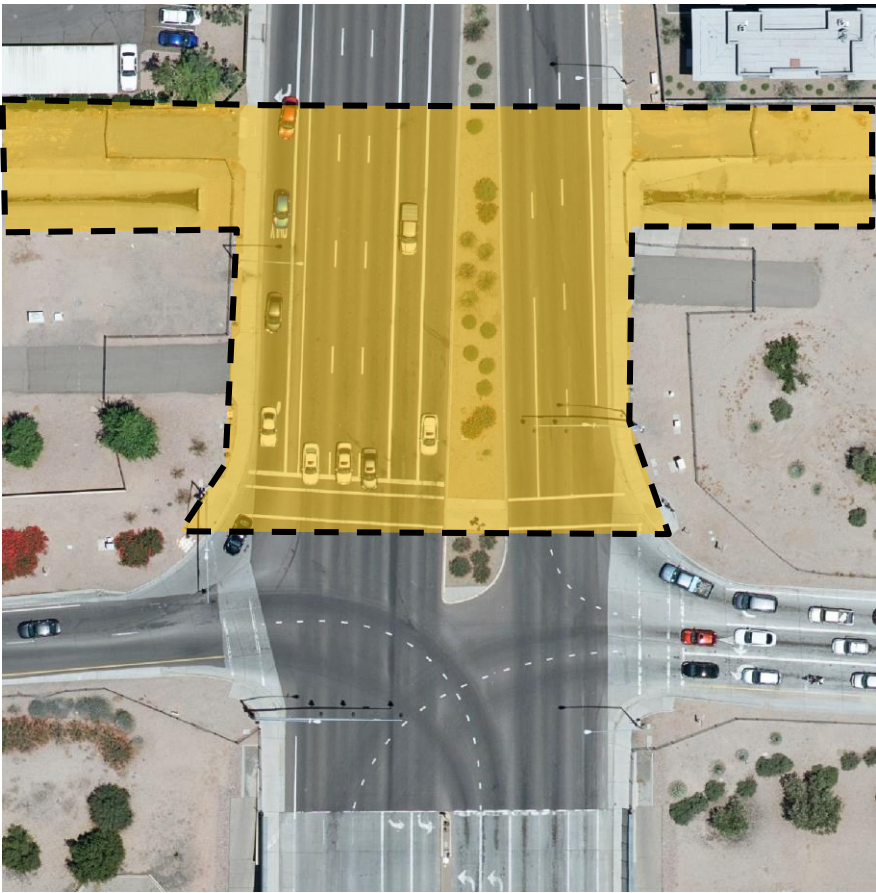
TYPICAL PATH SEGMENT ADJACENT TO CHANNEL



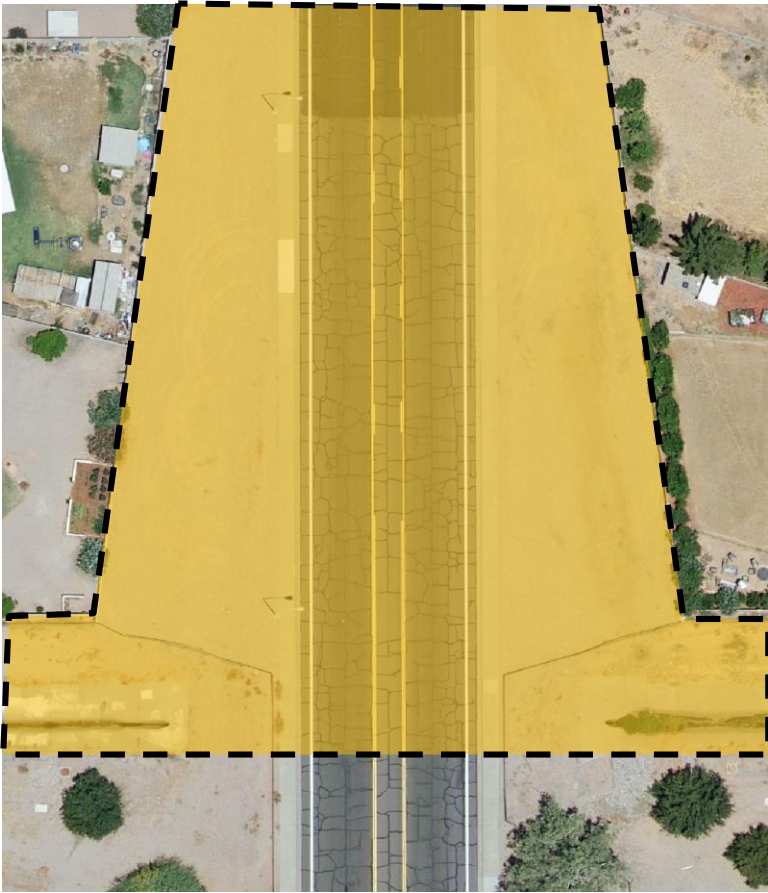
32ND STREET



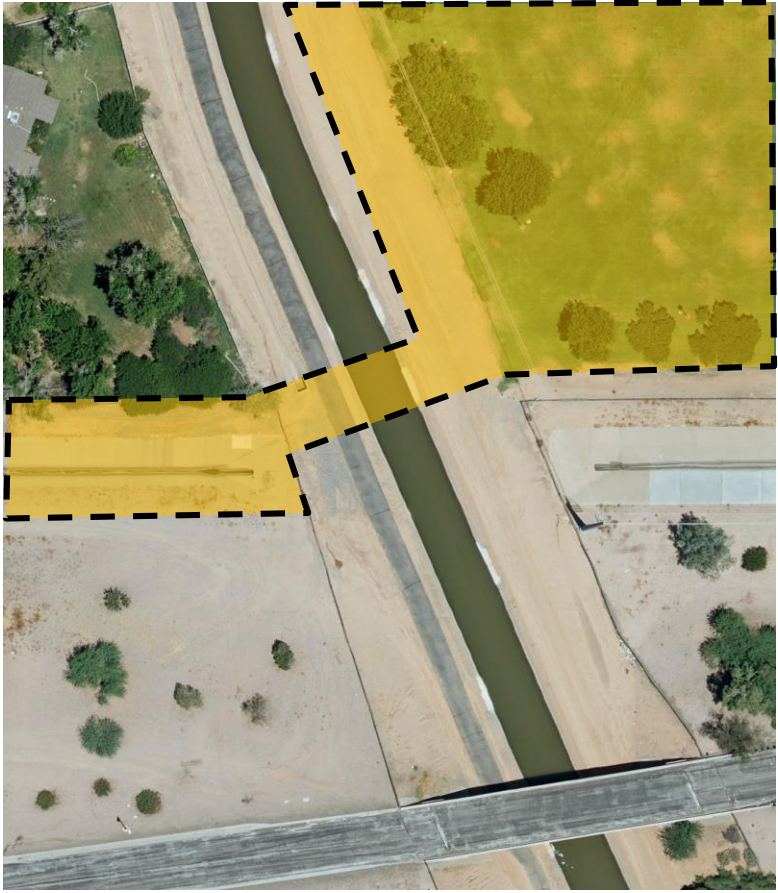
VAL VISTA DR



39TH STREET



EASTERN CANAL



CITY RESPONSIBILITIES ALONG PROJECT CORRIDOR

- 7. Maintain the integrity of the existing sidewalk, any widened sidewalks and roll curbs that are a direct part of the multi-use pathway along Val Vista Drive within the US 60 Traffic Interchange.
- 8. Be responsible for the removal of hazardous litter, debris and trash
- 9. Provide access to the channel and ADOT’s operations and maintenance road for periodic channel observation and operations.
- 10. Repair damage to pathway, fencing, or gates that are adjacent to the pathway due to maintenance vehicles and/ or equipment accessing the channel for cleanup/repairs.
- 11. Be responsible for and maintain all signing, striping, pavement markings, and other devices that are placed in conjunction with the multi-use pathway.

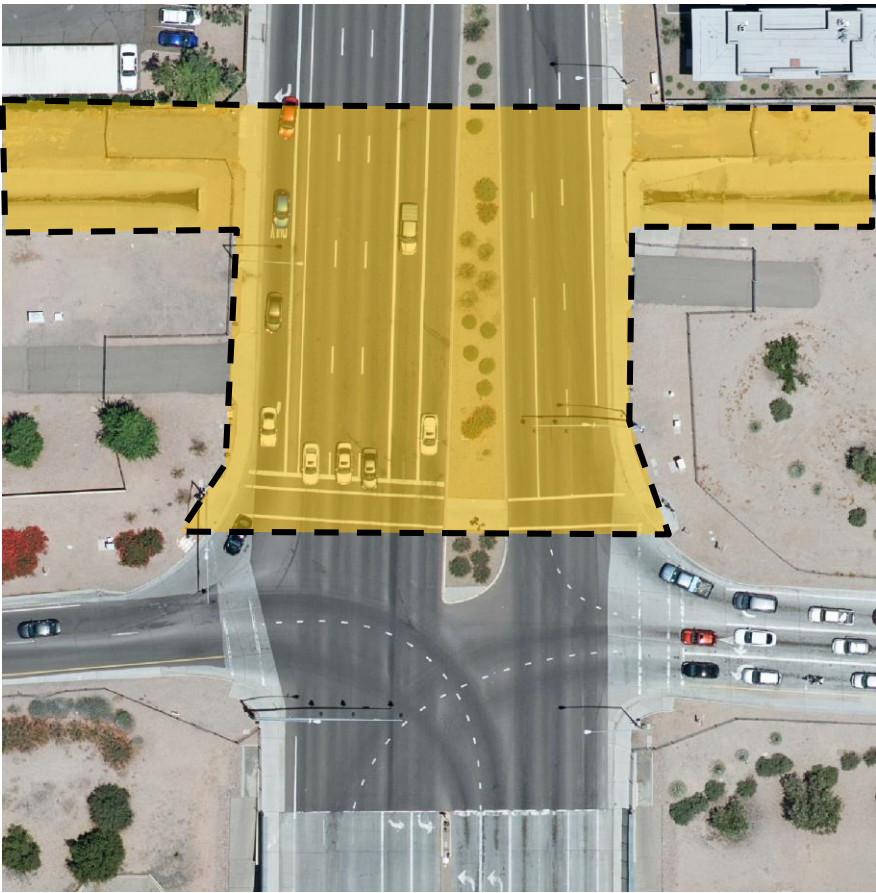
TYPICAL PATH SEGMENT ADJACENT TO CHANNEL



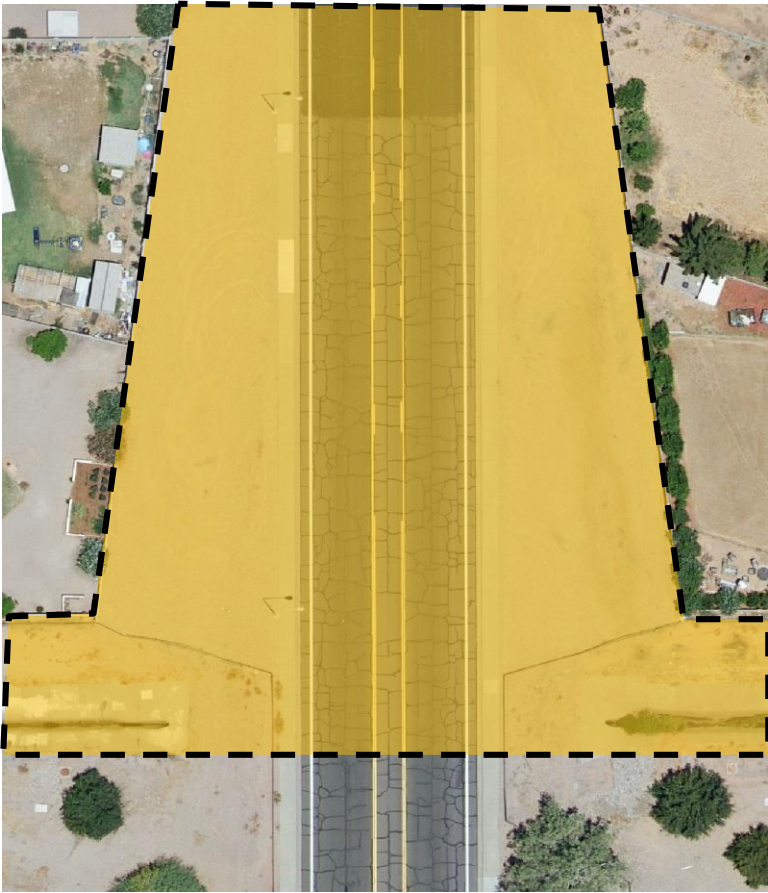
32ND STREET



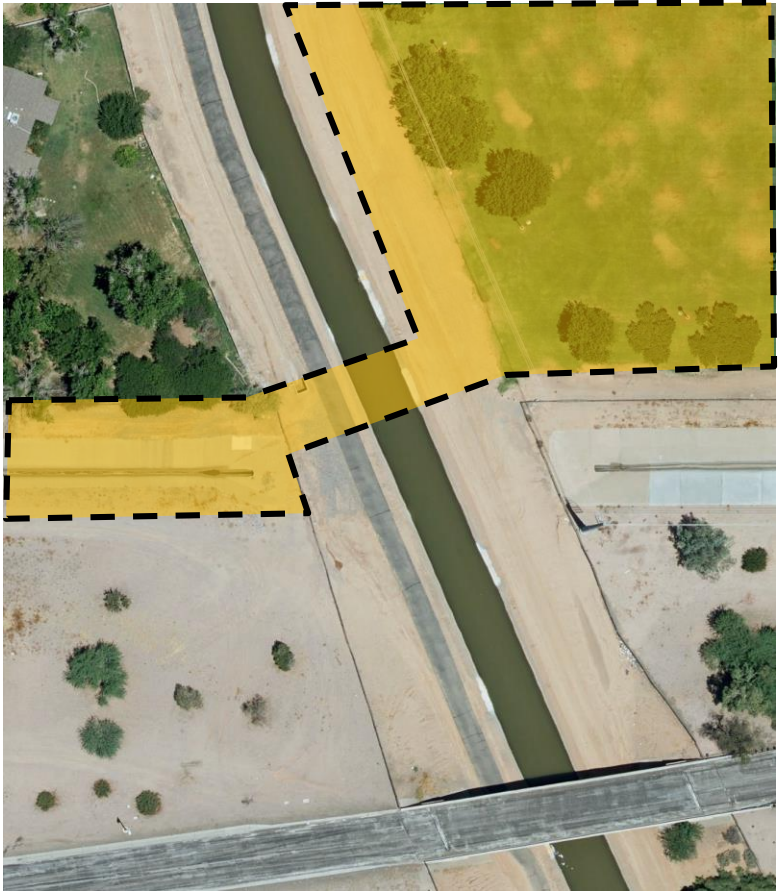
VAL VISTA DR



39TH STREET



EASTERN CANAL





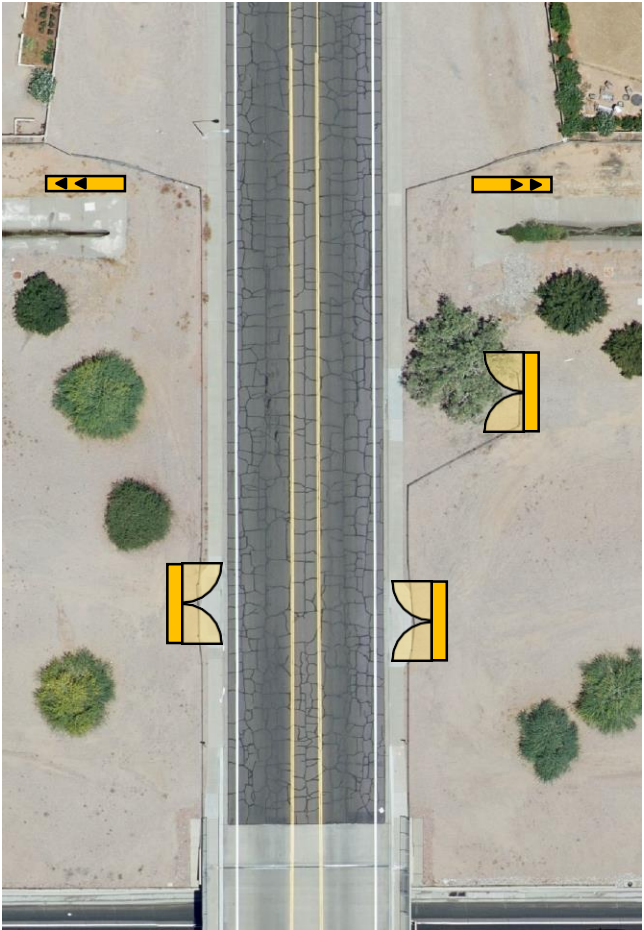
32ND STREET



VAL VISTA DR



39TH STREET



EASTERN CANAL



24' SWING GATE



24' SLIDING GATE (*Arrows indicate sliding direction*)

Note: In addition to the gates shown, multiple 24' sliding gates are proposed between 39th Street and the Eastern Canal for additional access to the channel. The gates should be spaced at 300' intervals within this section.