

ADOT CAR No.: IGA 22-0008973-I
AG Contract No.: P0012023000384
Project Location/Name: SR24 and Ray
Road
Type of Work: Maintenance
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 City is constructing a 6-lane roadway with raised median including curb, gutter, sidewalk, streetlights, and a traffic signal on Ray Road between Hawes and Ellsworth Roads (the “Project”). The Project includes replacing existing raised median east-west curb protecting the columns to install and maintain a Manual for Assessing Safety Hardware (MASH) TL-2 compliant low profile barrier curb. The Project passes underneath the Gateway Freeway State Route 24 (SR24) within ADOT right of way, an area defined as “Project Limits” as shown in Exhibit A. The City will administer the Project and be responsible for the operation, maintenance, and cost of the Project. The purpose of this Agreement is to establish the Parties’ maintenance responsibilities within the Project Limits, i.e., ADOT right of way.
3. The foregoing Recitals and Exhibit A 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 the City's Project will only occur with the mutual written consent of both Parties.
 - b. The City will be responsible for any and all Project costs.
 - c. Any future modifications within the Project Limits required for transportation purposes and resulting in the removal or alteration of the Project will have precedence over the Project and there will be no compensation owed to the City.
2. The State will:
 - a. Review the design documents required for the construction of the Project, provide comments to the City, and provide approval of the final design.
 - b. Issue, in accordance with the established procedures of the State's Central District Permit Office, separate encroachment permits for related pre-construction activities (such as potholing, utility work, survey, etc.), an encroachment permit for the initial construction of the Project, and an annual blanket 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.
 - c. Not be responsible for any damages to items defined as to be maintained by the City within the Project Limits resulting from the State conducting its maintenance operations.
 - d. Be responsible for the structural integrity of the existing SR24 freeway overpass.
 - e. Be responsible for the structural integrity of the slope paving on the SR24 overpass.
 - f. Not be responsible to maintain and operate any items defined as to be maintained by the City within the Project Limits, as set forth in this Agreement and shown on Exhibit A, should the City fail to budget or provide for proper and perpetual maintenance of said areas.
 - g. Have no financial responsibility to this Project.
3. The City will:
 - a. Prepare and provide design plans, specifications, and other such documents and services required for the construction of the Project and incorporate agreed upon comments from the State required for the construction and operation that portion of the Project within the Project Limits.

- b. Not proceed with construction until ADOT has concurred with, reviewed and approved final design of that portion of the Project within the Project Limits.
- c. Submit an encroachment permit application with all required documentation to the State's Central District Permit Office for the pre-construction activities and a separate encroachment permit for construction activities as needed. Any changes to the approved plans must be pre-approved by ADOT prior to being constructed. Submit for and maintain a valid annual blanket permit that will cover City's maintenance activities. 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.
- d. Protect in place all ADOT facilities within the Project Limits during Project construction. Restore or repair any damages or modifications to ADOT facilities to ADOT standards at the expense of the City.
- e. Be responsible for all Project costs incurred in performing and accomplishing the work as set forth under this Agreement.
- f. Not permit or allow any encroachments upon or private use of ADOT 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 within the Project Limits, the City shall take all necessary steps to remove or prevent any such encroachment or use.
- g. Coordinate inspection of Project Limits improvements including those that the State will own, operate and maintain, as shown in Exhibit A.
- h. Assume operation and maintenance responsibilities, associated with the Project Limits as shown in Exhibit A.
- i. Be responsible for wildlife mitigation and aviary and pest control measures throughout the Project Limits.
- j. Be responsible for the maintenance of the catch basins within the Project Limits including the storm drain that drains to the existing State basin as shown in Exhibit A.
- k. Coordinate with the State to address any potential temporary or permanent impacts to the State's drainage system, catch basins, culverts, etc., related to all new construction by the City. Be responsible for all new construction related modifications and/or construction elements within the Project Limits to accommodate the City's new construction, including all related costs to the State including the new headwall in ADOT's basin and any erosion in the basin as a result of the new pipe leading into it.
- l. Be responsible for major and minor maintenance within the Project Limits of areas and features including but not limited to fencing, street surfaces, shoulders, curbs and gutters, driveways, sidewalks, ADA ramps, median dividers, pavers, screen/sound walls, slope paving, and surface drainage features feeding into the State's system. Maintenance

activities include but are not limited to fencing, sweeping, crack sealing, mill and overlay, removal of spills and debris, graffiti abatement within the Project Limits, repair of potholes, signing and striping, pavement markings, leveling and/or patching of asphalt concrete pavement, seal coating, litter and trash removal, repair of the surface/base of damaged pavement presenting a safety hazard, new grates, storm drains, erosion control, rustication of surface treatments, aesthetics, and the removal of weeds, litter, debris, and trash not natural to the landscape of the Project and visible from the Project. The repairs or maintenance performed by the City shall not compromise the safety and structural stability of the State facilities.

- m. Be responsible for the maintenance and electrical power for the roadway and underdeck lighting within the Project Limits, maintenance includes but is not limited to, replacement and/or repair of all damaged roadway lighting equipment, including knockdowns, and maintenance of street and underdeck lighting.
- n. Be responsible for cleanup of any material that will generally fit into 50-gallon bags, and any material that is deemed to be hazardous. The State will be responsible for oversized materials that would not fit into 50-gallon bags.
- o. Be responsible for landscape maintenance of all features and within the defined areas of the City responsibility, as shown in Exhibit A, 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 installation and maintenance of irrigation system, including the power and water source at the sole expense of the City.

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 the Project 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 of maintenance 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. 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. Indemnification. 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. 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.
7. Title VI. The City acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
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. 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.”
12. 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.

13. 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.
14. E-Verify. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
15. Contractor Certifications. The City shall certify that all contractors comply with the applicable requirements of A.R.S. §§ 35-393.01 and 35-394.
16. Other Applicable Laws. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
17. 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: MariaAngelica Deeb
300 E. 6th Street
PO 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](tel:602.712.6664)

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

18. Revisions to Contacts. Any revisions to the names and addresses above may be updated administratively by either Party and shall be in writing.
19. 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.
20. Electronic Signatures. This Agreement may be signed in an electronic format including 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

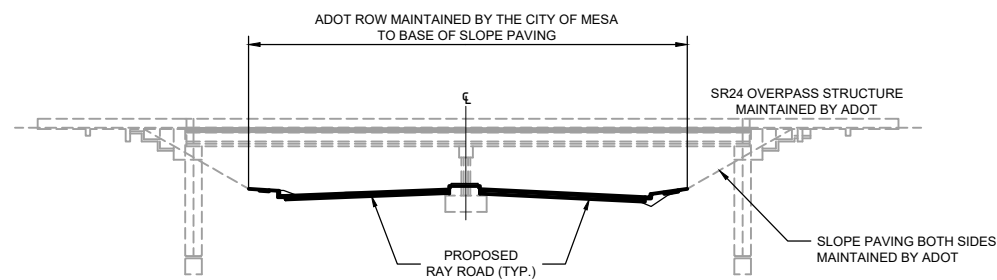
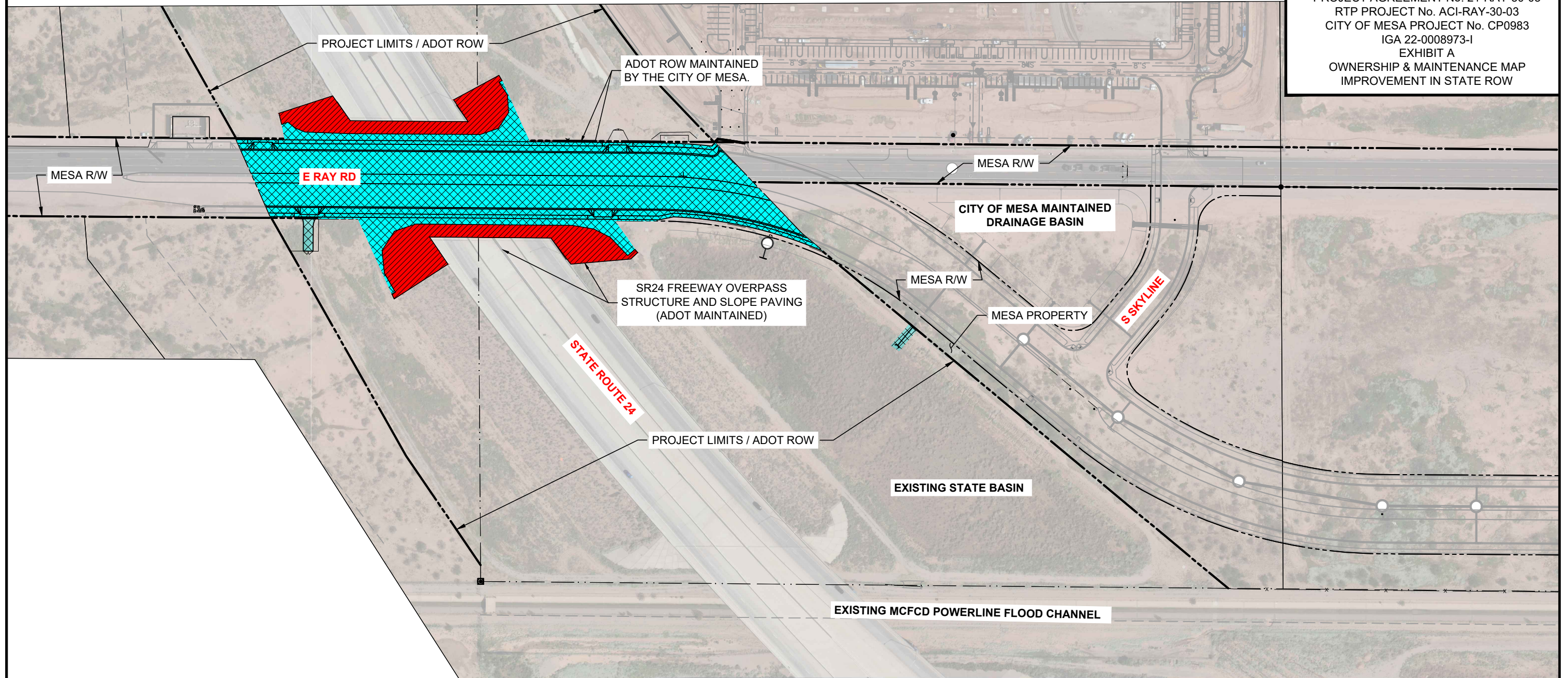
A.G. Contract No. P0012023000384 (ADOT IGA 22-0008973-I), an Agreement between public agencies, the State of Arizona and the City of Mesa, has been reviewed pursuant to A.R.S. §§ 11-951 through 11-954 and A.R.S. § 28-401, by the undersigned Assistant Attorney General who has determined that it is in 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

**EXHIBIT A
OWNERSHIP & MAINTENANCE FOR RAY ROAD: SR24 TO ELLSWORTH ROAD**



SCALE: 1" = 75'
0 19 37.5 75 150
NORTH

RAY ROAD: SR24 TO ELLSWORTH ROAD
PROJECT AGREEMENT No. 21-RAY-30-03
RTP PROJECT No. ACI-RAY-30-03
CITY OF MESA PROJECT No. CP0983
IGA 22-0008973-1
EXHIBIT A
OWNERSHIP & MAINTENANCE MAP
IMPROVEMENT IN STATE ROW



RAY ROAD AND STATE ROUTE 24 LOOKING EAST
NTS

LEGEND: MAINTENANCE RESPONSIBILITIES

-  ADOT ROW MAINTAINED BY CITY OF MESA
-  ADOT ROW MAINTAINED BY ADOT

NOTES

1. AREAS NOT HIGHLIGHTED ARE NOT IMPACTED BY THE PROJECT AND THEREFORE THE OWNERSHIP AND MAINTENANCE RESPONSIBILITIES OF AREAS NOT HIGHLIGHTED ARE TO REMAIN AS CURRENT.
2. PROJECT LIMITS ARE CONTAINED WITHIN EXISTING ADOT ROW.