

**ADOT File No.: IGA/JPA 05-081**  
AG Contract No.: KR05-1308TRN  
**AMENDMENT ONE**  
Mesa Project No.: 01-507-001  
Project: US 60 Park and Ride-Maintenance  
Section: Gilbert Road to Power Road  
**ADOT Project No.: MAINTAGR**  
Budget Source Item No.: City Funded

**AMENDMENT ONE  
TO  
INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF MESA, ARIZONA

**THIS AGREEMENT**, entered into this date \_\_\_\_\_, 2012, amends the agreement dated April 30, 2007 (“Original Agreement”), A.G. Contract No.: KR05-1308TRN, Mesa Project No. 01-507-001 and filed with the Secretary of State under document No. 28892, pursuant to the Arizona Revised Statutes § 11-951 through § 11-954, 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 MANAGER and CITY COUNCIL (the “City”). This Agreement shall hereinafter be referred to as “Amendment” and shall become part of the Original Agreement. The State and the City are collectively referred to as “Parties.”

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Amendment and has delegated to the undersigned the authority to execute this Amendment on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 11-952 to enter into this Amendment and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Amendment and has authorized the undersigned to execute this Amendment on behalf of the City.

As part of Valley Metro’s expansion of the existing City Park and Ride facility at Power Road and US 60, a permit was issued to the City through the State’s Phoenix Maintenance District Permit Office for enhancements that were requested and constructed at the City Park and Ride facility including a box culvert approximately 600 feet long within the State’s drainage channel. The purpose of this Amendment is to include the changed conditions relative to the maintenance of the Park and Ride facility and the box culvert portion of the drainage channel shown on the attached Amendment One Exhibit depicting the City’s area of maintenance.

**THEREFORE**, in consideration of the mutual agreements expressed herein, this Amendment is agreed to as follows:

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**II. SCOPE OF WORK**

1. The State shall:

**Article II, Paragraph 1.c is amended to read as follows:**

c. 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. Comply with all permit and Certificate of Insurance requirements. 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.

**Article II, Paragraph 1.f is added to read as follows:**

f. Be responsible for maintaining the uncovered portion of the drainage channel, as shown on the attached Amendment One Exhibit.

2. The City shall:

**Article II, Paragraph 2.c is amended to read as follows:**

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.

For Maintenance Permit – Contact:

Arizona Department of Transportation  
Phoenix Maintenance District Permits Office  
2140 W Hilton Ave, Mail Drop PM00  
Phoenix, AZ 85009-6913

**Article II, Paragraph 2.d is revised and replaced to read as follows:**

d. Be responsible for the operations and maintenance of the Project, which includes maintaining the structural integrity of the retaining wall, **graffiti control and removal on the City's side of the retaining wall**, and maintenance of the City's installed fences, and all costs associated with water and electrical power.

**Article II, Paragraph 2.e is added to read as follows:**

e. Be responsible for maintaining the covered portion of the drainage channel and all enhancements associated with the construction to expand the City Park and Ride facility within the State's rights of way. The total area to be maintained by the City is shown on the attached Amendment One Exhibit.

**III. MISCELLANEOUS PROVISIONS****Article III, Paragraph 2 is deleted and replaced in full to read as follows:**

2. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, the construction of the Project contemplated, cost over-runs and construction claims. The City shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State as an additional indemnitee in the City contracts with its contractors. 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 defend, save, hold harmless 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, 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, or any of its independent contractors, 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 or reasonable attorneys' fees.

In addition, the City shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless the State, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the City's contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

**Article III, Paragraph 3 is revised for this Amendment One to read as follows:**

3. This Amendment shall become effective upon signing and dating of the Determination Letter by the Attorney General.

**Article III, Paragraph 5, 9 and 10 are updated and amended to read as follows:**

5. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement and subsequent Amendments.

9. All notices or demands upon any Party to this Amendment 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 South 17 Avenue, MD 637E  
Phoenix, AZ 85007  
(602) 712-7124 FAX : 602-712-3132

City of Mesa  
Attn: City Manager  
P.O. Box 1466  
Mesa, Arizona 85211  
Phone # (480) 644-3333  
Fax # (480) 644-2175

For Maintenance Permit – Contact:

Arizona Department of Transportation  
Phoenix Maintenance District Permits Office  
2140 W Hilton Ave, Mail Drop PM00  
Phoenix, AZ 85009-6913

10. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each Party's legal counsel and that the Parties are authorized under the laws of this State to enter into this Amendment and that the Amendment is in proper form.

**Article III, Paragraphs 11, 12, and 13 are added to read as follows:**

11. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The City warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes § 23-214, Subsection A.

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of this Agreement including subsequent Amendments and the City may be subject to penalties up to and including termination of this Agreement or subsequent Amendments.

c. The State retains the legal right to inspect the papers of any employee who worked on the Project to ensure that the City or subcontractor is in compliance with the warranty under paragraph (a).

12. 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 operations" 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 and/or this Amendment.

13. 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.

**EXCEPT AS AMENDED** herein, ALL **OTHER** terms and conditions of the Original Agreement shall remain in full force and effect.

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**IN WITNESS WHEREOF**, the Parties have executed this Amended Agreement the day and year first above written.

**CITY OF MESA**

**STATE OF ARIZONA**  
Department of Transportation

By \_\_\_\_\_  
CHRISTOPHER J. BRADY, Manager

By \_\_\_\_\_  
ROBERT SAMOUR, P.E.  
Deputy State Engineer, Valley Transportation

ATTEST:

By \_\_\_\_\_  
LINDA CROCKER  
Clerk



## JPA 05-081 Amendment One Exhibit

**AMENDMENT ONE**

**JPA 08-051 I**

**APPROVAL OF THE MESA CITY ATTORNEY**

I have reviewed the above-referenced proposed Intergovernmental Agreement between the STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA and declare this Amendment One to the referenced 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