

ADOT CAR No.: IGA 20-0007996-I
AG Contract No.: P001 00xxxx
Project Location/Name: SR 202 – Val
Vista Drive; Lehi Crossing Shared Use
Pathway
City of Mesa CIP No.: CP0672
Type of Work: Design, Construct, and
Maintain Shared Use Pathway
Federal-aid No.: N/A
ADOT Project No.: MAINTAGR
TIP/STIP No.: N/A
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
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 City.
3. The City will design, construct, and maintain a shared use pathway along the SR 202, approximately from Val Vista Drive to Thomas Road. The Project, as shown in Exhibit 1 is the area between the existing and new fence and includes construction of an asphalt pathway, a portion of which runs through an existing ADOT tunnel, lighting, fencing, gates, landscape, equestrian facilities, and a parking lot. The Project Corridor, as shown in Exhibit 1, is the area between the new fencing and the SR 202 and includes drainage features including a catch basin, channel, cut ditches with riprap, grates and flap-grates. The City will be responsible for the operation and maintenance, as shown in Exhibit 1, to City standards and in accordance with the City’s policies and procedures. The City will pay for all utilities associated with the operation of the Project. Responsibilities for future projects will require ADOT approval and be addressed by separate agreement(s).

THEREFORE, the Recitals set forth above and Exhibit 1, attached hereto and made part hereof, are incorporated into this Agreement and in consideration of the mutual terms expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:
 - a. Review the design documents required for construction of the Project and Project Corridor, 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, a permit for the initial construction of the Project, separate permits for related pre-construction activities (such as pot-holing, utility work, survey, etc.), and 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.
 - c. Access the Project and Project Corridor as required to conduct State maintenance operations. When major maintenance operations occur, communicate with the City to ensure adequate safety precautions are taken prior to closing of the Project and/or Project Corridor.
 - d. Not be responsible for any damage to the Project or Project Corridor, including the pathway, concrete curb, landscape, existing wire mesh fence, new wire mesh fences, new expanded metal fence, and gates if directly adjacent to the pathway, resulting from the State conducting its maintenance operations.
 - e. Be responsible for trimming and/or removing trees as necessary within the Project Corridor.
 - f. Be responsible for the structural integrity of cut ditches with riprap installed by the City.
 - g. Not be obligated to maintain the City's area of responsibility within the Project and Project Corridor, as set forth in this Agreement, should the City fail to budget or provide for proper and perpetual maintenance of said areas.
2. The City will:
 - a. Prepare and provide the design plans, specifications, cost estimate, and other such documents and services required for the construction of the Project and Project Corridor 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. Submit an encroachment permit application with all required documentation to the State's Central District Permit Office for the initial construction of the Project, separate encroachment permit applications for related pre-construction activities as needed.
- d. 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.
- e. Serve as the first point of contact for complaints regarding the Project's operation and maintenance.
- f. Install, maintain, and operate lighting throughout the Project. In the existing tunnel, install new lighting and be responsible for all costs associated with maintenance of said lighting.
- g. Be responsible for landscape maintenance of the Project and Project Corridor, as shown in Exhibit 1, including but not limited to, installation and maintenance of irrigation system(s). The irrigation system will be powered and have its own source of water, which will be procured at the sole expense of the City.
- h. Be responsible for graffiti abatement of all features installed by the Project, and those existing within the Project Corridor including along the sound wall and in the tunnel, and the removal of weeds, litter, debris, and trash not natural to the landscape of the Project Corridor and visible from the Project and Project Corridor.
- i. Be responsible for the maintenance of paint on the sound wall that is facing the Project and tunnel areas within the Project.
- j. Be responsible for aviary and pest control measures throughout the Project and Project Corridor.
- k. Maintain all existing and new fencing including all gates within the Project and Project Corridor.
- l. Install gates at the locations shown on Exhibit 1.
- m. Be responsible for maintenance of pedestrian and equestrian facilities within the Project as per Exhibit 1. Maintenance within the Project includes: fencing, sweeping, graffiti abatement, litter, grates, erosion control, hazardous litter, debris, and trash removal, weed control in both landscaped and non-landscaped areas, rustication of surface treatments, aesthetics, and any other features including but not limited to pedestrian crossings, raised medians, and pedestrian refuges.
- n. Be responsible for maintenance within the Project Corridor including but not limited to, fencing, graffiti abatement, litter, trash, grates, hazardous litter, debris and trash removal, weed control in both landscaped and non landscaped area, rustication of

surface treatments, aesthetics, and any other features including but not limited to pedestrian crossings, raised medians, and pedestrian refuges.

- o. Coordinate with City of Mesa Police to address homeless encampment and clean-up consistent with City guidelines within the Project and Project Corridor.
- p. Be responsible for maintenance of all landscape features, including trees, shrubs, and palms, within the Project and Project Corridor, as shown in Exhibit 1, in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscape, keeping maintenance access paths clear of landscape and removal of landscape features including shrubs and palms.
- q. Address any ADA concerns and maintain the integrity of the new and existing sidewalks within the Project and Project Corridor as shown on Exhibit 1 including any widened and high-strength roll curbs at the maintenance access points. Maintain access points to be free of debris, trash, and graffiti.
- r. Repair damage to pathway, fencing, landscaping, grates, or gates that are within the Project and Project Corridor due to any maintenance vehicles and/or equipment accessing the area for cleanup/repairs.
- s. Be responsible for and maintain all signing, striping, pavement markings, and other devices as shown in the area on Exhibit 1 and Project plans that are placed in conjunction with the shared use pathway.
- t. Be responsible for installing a catch basin where the drainage pipes are exposed as shown on Exhibit 1.
- u. Use rip rap to cover the surface of existing and re-graded cut ditch within the Project Corridor. Rip Rap specifications must adhere to Section 913 of ADOT Standard Specifications for Road and Bridge Construction 2021.
- v. Re-grade the Project Corridor and meander the pathway to avoid the State's cut ditch where feasible, to best maintain the current structural integrity and functionality of such State facilities. Remove weeds, debris and litter from cut ditch located within the Project Corridor.
- x. Protect in place any existing State facilities set to remain. Replace any State facilities damaged during construction.
- y. Provide access for ADOT's operation and maintenance for all necessary maintenance.

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 City acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
8. This Agreement shall be governed by and construed in accordance with Arizona laws.
9. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
10. 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.
11. 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."

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. 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. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
15. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01.
16. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
17. 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

18. 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.

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
Infrastructure Delivery and Operations
Divisions

By _____ Date: _____
CHRISTOPHER J. BRADY
City Manager

By _____ Date: _____
STEVE BOSCHEN, PE
Division Director

ATTEST:

**Transportation Systems Management and
Operations Division**

By _____ Date: _____
DEEANN MICKELSEN
City Clerk

By _____ Date: _____
BRENT A. CAIN, PE
Division Director

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