

**INTERGOVERNMENTAL AGREEMENT**  
**FOR THE RIO SALADO PARKWAY PAVEMENT PROJECT**  
**BETWEEN**  
**THE CITY OF MESA**  
**AND**  
**THE CITY OF TEMPE**  
**C2022-**

**THIS AGREEMENT** is entered into this \_\_\_\_\_ of 2022, between the CITY OF MESA, an Arizona municipal corporation (“Mesa”), and the CITY OF TEMPE, an Arizona municipal corporation (“Tempe”). Mesa and Tempe are each a “Party” and collectively referred to herein as “Parties.”

**I. RECITALS**

- A. Arizona Revised Statutes ("A.R.S."), §§ 11-951 et seq., authorize Mesa and Tempe to enter into intergovernmental agreements for the provision of services, or for joint or cooperative actions. Tempe and Mesa are authorized by A.R.S. § 9-240 to provide the street planning, design and construction required under this Agreement, and are additionally so authorized by A.R.S. § 9-276.
- B. A.R.S. § 48-572 also empowers the Mesa and Tempe to enter into this Agreement, and they have by resolution (copies of which are attached and made a part of) resolved to enter into this Agreement and authorized the undersigned to execute this Agreement on behalf of the Parties.
- C. This agreement does not supersede or negate prior IGAs with the Arizona Department of Transportation or Tempe such as JPA 94-113 (95-A044) JPA 05-053 (06-A039) and IGA 90-A-35.
- D. Mesa and Tempe desire to formalize the ownership and maintenance roles and responsibilities regarding the Rio Salado Parkway corridor in order to continue coordinating traffic control, as needed for maintenance work to be accomplished.
- E. Mesa plans to perform pavement preservation activities along Rio Salado Parkway between North Price Road and North Evergreen Road (“the Project”) as shown on Exhibit A. The pavement preservation will take place up to the Portland cement concrete pavement (not encroaching the State’s Right-of-Way), extending across both the north half and south half of Rio Salado Parkway.
- F. The jurisdictional boundary between Mesa and Tempe is the centerline of Rio Salado Parkway, and as such maintenance for the southern half of the roadway is Tempe’s responsibility. Nevertheless, the Parties wish for Mesa to perform pavement preservation across both sides of the roadway concurrently because doing so will save time, reduce burden to the travelling public, and is economically advantageous. Tempe has agreed that it will pay for its proportional share of the Project pavement preservation work performed within on the portion of Rio Salado Parkway and within Tempe’s jurisdiction only as shown on Exhibit A (the “Reimbursable Work”), including but not limited to costs of design, construction, staff time, overhead, and change orders.

- G. This Agreement sets forth the roles and responsibilities of the Parties with respect to the Project, including procurement of engineering design services, design review, construction, construction administration, construction permitting and inspection, ownership, and maintenance of the completed work.

**THEREFORE**, in consideration of the mutual terms expressed in this Agreement, it is agreed as follows:

## **II. SCOPE**

### **1. Responsibilities of Mesa:**

- 1.1. Shall provide Tempe with a proposed scope and schedule for Project completion, including Project plans, specifications, schedule and cost estimates for review and approval. The scope shall include, but shall not be limited to, a requirement that all pavement marking must match the existing marking pattern.
- 1.2. Assume the lead for the procurement and management of design and construction services needed to complete Project and ensure that such procurement is consistent with Title 34 of the Arizona Revised Statutes.
- 1.3. Shall, upon award of the contract, provide Tempe with an updated cost estimate for the Project and an invoice for one-half of the Reimbursable Work. Mesa shall immediately notify Tempe prior to incurring any cost in excess of the contract award amount and any contingency.
- 1.4. Ensure that the construction contract includes a one-year warranty for material and workmanship, utilizing Mesa's standard contract provisions.
- 1.5. Shall obtain all permits and provide all notifications necessary for performing work related to the Project.
- 1.6. Inspect and provide all quality assurance (QA) and quality control (QC) material testing. If tests are completed as part of the normal construction sequencing, Mesa shall provide Tempe with copies of the results. Regardless of the results, Mesa will have the sole responsibility to accept, reject or request that additional mitigation measures be taken by the contractor as a result of any inspection or testing.
- 1.7. Shall, upon completion of the Project and acceptance by Mesa, provide Tempe with a certified statement of services performed and an invoice for the remaining costs for the Reimbursable Work, as well as any Additional Work (defined below) Tempe requests pursuant to section 2.2.
- 1.8. Warrant compliance with all federal immigration laws and regulations that relate to compliance with the E-verify requirements under A.R.S. §23-214(A). Mesa will require

any Contractor, and all subcontractors, to provide the same assurance. Failure by Mesa, Mesa's Contractor, or subcontractors, to comply with such requirements shall be deemed a material breach of this Agreement and may result in the termination of this Agreement.

- 1.9. Shall own and maintain the northern half of the Rio Salado Parkway corridor that is within Mesa's jurisdiction.

## **2. Responsibilities of Tempe:**

- 2.1. Shall return review comments to Mesa on all proposed plans, schedules, specifications, cost estimates, and scope of work related to the Project within fifteen (15) calendar days of receipt.
- 2.2. Shall notify Mesa as early as reasonably possible of any need to perform work other than pavement preservation within Tempe's jurisdictional area ("Additional Work"). Should Tempe request the performance of Additional Work, then Tempe shall reimburse Mesa for 100% of all costs associated with the Additional Work.
- 2.3. Shall remit payment to Mesa within 30 days of receipt of an invoice issued pursuant to Sections 1.3 and 1.7, above. The current total estimated cost due from Tempe for its proportional share of the reimbursable work is \$251,198.89. (Exhibit B).
- 2.4. Shall provide Mesa with no-fee permits for Project-related work performed on Rio Salado Parkway and within Tempe's jurisdiction.
- 2.5. Respond within 48 hours to Mesa's requests for Project related information or change orders.
- 2.6. Shall own and maintain the southern half of the Rio Salado Parkway corridor that is within Tempe's jurisdiction. Following acceptance of the work and after the expiration of the one-year contractor's warranty, Tempe shall perform all necessary maintenance and repairs on the improvements within its jurisdiction and completed under this Agreement.

## **3. Term:**

- 3.1. The term of this Agreement shall commence on the date it is fully executed.
- 3.2. The Project shall be constructed according to the City of Mesa Engineering & Design Standards.

## **4. General Provisions:**

- 4.1. Each Party reserves all rights that it may have to cancel this Agreement for conflicts of interest under A.R.S. § 38-511.
- 4.2. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, the Parties certify that they do not have scrutinized business operations in Sudan or Iran as set forth in A.R.S § 35-391 or 35-393,

as applicable.

- 4.3. This Agreement contains the entire understanding between the Parties with respect to the subjects addressed and supersedes all prior negotiations and agreements.
- 4.4. This Agreement may be amended only by an instrument in writing signed by authorized representatives of the Parties.
- 4.5. Each Party shall (as “Indemnitor”) indemnify, defend, and hold harmless the other Party, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as “Indemnitee”) 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 Indemnitee on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused in whole or in part by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of Indemnitor, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. Indemnitor’s obligations under this paragraph shall not extend to Claims attributable to the negligence of the Indemnitee. The obligations under this paragraph shall survive the termination of this Agreement.
- 4.6. The Parties are governmental agencies which rely upon the appropriation of funds by their respective governing bodies to satisfy their obligations. If a Party reasonably determines that it does not have funds to meet its obligations under this Agreement, such Party shall have the right to terminate this Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such a termination, such terminating Party agrees to provide written notice of its intent to terminate 30 days prior to the termination date.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on or as of the day and year first written above.

**City of Tempe**, an Arizona Municipal Corporation

By: \_\_\_\_\_  
Corey D. Woods  
Mayor

Date: \_\_\_\_\_

Attest

By: \_\_\_\_\_

Carla R. Reece, City Clerk

*Approved as to Form:*

Undersigned counsel has reviewed the foregoing Agreement pursuant to A.R.S. § 11-952 (D) and has determined it is in proper form and within the powers and authority granted under the laws of this state to the County and City.

\_\_\_\_\_  
Sonia M. Blain, City Attorney  
Attorney for City of Tempe

\_\_\_\_\_  
Date

**City of Mesa**, an Arizona Municipal  
Corporation

By: \_\_\_\_\_  
Christopher J. Brady  
City Manager

Date: \_\_\_\_\_

Attest

By: \_\_\_\_\_

Holly Moseley, City Clerk

*Approved as to Form:*

Undersigned counsel has reviewed the foregoing Agreement pursuant to A.R.S. § 11-952 (D) and has determined it is in proper form and within the powers and authority granted under the laws of this state to the County and City.

\_\_\_\_\_  
Jim Smith, City Attorney  
Attorney for City of Mesa

\_\_\_\_\_  
Date