

ADOT CAR No.: IGA 22-0008901-I
AG Contract No.: P0012022001671
Project Location/Name: Sossaman Road;
Ray Road to Warner 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 will construct the extension of Sossaman Road from Ray Road to Warner Road as a four lane roadway. The roadway extends approximately 0.6 miles (the "Project"). The area that passes underneath the Santan Freeway (SR Loop 202) within ADOT right of way, is 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.

THEREFORE, the Recitals set forth above and Exhibit A, 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, 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. Be responsible for the maintenance and structural integrity of the existing ADOT drainage channels and the gates and ramps used to access the existing drainage channels as shown on Exhibit A, to conduct State maintenance operations. When major maintenance operations occur requiring temporary traffic control, communicate with the City to ensure adequate safety precautions are taken.
- d. 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.
- e. Be responsible for the structural integrity of the existing SR Loop 202 freeway 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.

2. 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 of the Project Limits.
- b. Not proceed with construction until ADOT has concurred with, 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 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. Within the Project limits, widen the Sossaman channel on the north side of SR Loop 202 under the new City bridge to a minimum width of 6' 10', with a minimum vertical clearance of 4.2'. The 6' 10" bottom width must extend at least 10' past the width of the overhead bridge on both sides.
 - e. On the channel on the south side of SR Loop 202, maintain a minimum vertical clearance of 5'-11" from the bottom of the channel to the bottom of the new City bridge. Build two new access ramps on the north side of the channel.
 - f. Serve as the point of contact for complaints regarding the Project's operation and maintenance.
 - g. Be responsible for maintenance and operation of all items installed by the City and defined as City maintained and operated within the Project Limits as set forth in Exhibit A.
 - h. Install, maintain, and operate lighting within the Project limits including under deck lighting on SR Loop 202 Bridge. Be responsible for all costs associated with the power, installation, and maintenance of all lighting within Project limits.
 - i. Be responsible for wildlife mitigation and aviary and pest control measures throughout the Project Limits.
 - j. Be responsible for major and minor maintenance within the Project Limits of areas and features including but not limited to, street surfaces, shoulders, curbs and gutters, driveways, sidewalks, ADA ramps, median dividers, bridges, screen/sound walls, 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.
 - k. 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.
 - l. 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.

- m. Install grates on any storm drain system discharging into ADOT channel, and not discharge any debris into the ADOT channel, within the Project Limits.
- n. During construction, protect in place any existing State facilities set to remain. Replace any State facilities that are damaged during construction to state standards.
- o. Be responsible for the new bridges constructed and installed by the City as part of the Project in ADOT right of way within the Project Limits.
- p. Repair damage to fencing, landscaping, grates, or gates that are within the Project due to any maintenance vehicles and/or equipment accessing the area for cleanup/repairs.
- q. Install roll curb, thickened sidewalk, and gates, as shown on Exhibit A, to provide ADOT maintenance access from Sossaman Road to both channels on the east and west side of Sossaman Road.
- r. Install roll curb, thickened sidewalk, and gates, as shown on Exhibit A, to provide ADOT maintenance access from Ray Road to the south side of the existing ADOT drainage channel on both sides of the new bridge.

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 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 Parties 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: Maria Angelica 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: Maria Angelica 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 using 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

A.G. Contract No. P0012022001671 (ADOT IGA 22-0008901-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