

INTERGOVERNMENTAL AGREEMENT BETWEEN MARICOPA COUNTY AND THE CITY OF MESA FOR THE PAVEMENT REHABILITATION OF ADOBE ROAD FROM HIGLEY ROAD TO RECKER ROAD

TT0566

C-64-18-____-M-00

This Agreement is between the County of Maricopa, a body politic, acting through the Maricopa County Department of Transportation (**County**), and the City of Mesa, a municipal corporation (**City**).

STATUTORY AUTHORIZATION

1. A.R.S. §§11-251 and 28-6701, et seq., authorize the County to layout, maintain, control and manage public roads within the County, and enter into this Agreement.
2. A.R.S. §11-951, et seq., authorizes public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.

BACKGROUND

3. The County is initiating its annual pavement preservation program in the northeast part of Maricopa County.
4. Adobe Road, between Higley Road and Recker Road lie within the City's jurisdiction. This portion of the existing roadway includes an inverted crown and an asphalt valley gutter.
5. The County is proposing to improve Adobe Road, by milling and replacing the existing pavement with three (3) inches of rubberized asphalt concrete pavement. The County will also construct a six (6) foot wide concrete valley gutter along the center of this section of Adobe Road (**Project**).
6. The Parties will share in the cost of the construction in relative proportion to the area in each Party's respective jurisdiction.

7. The County and the City are using the most efficient and cost-effective methods to complete this work in a cooperative manner.
8. The City is prepared to actively participate in this project to the extent set forth in this agreement.

PURPOSE OF THE AGREEMENT

9. The purpose of this Intergovernmental Agreement is to identify and define the responsibilities of the County and the City for the cost sharing, design, construction, and construction management.

TERMS OF THE AGREEMENT

10. The County agrees to:

- 10.1 Act as the lead agency for all aspects of the Project.
- 10.2 The County shall design and construct the Project to County standards.
- 10.3 The County shall apply to the City for no-cost permits for any necessary Project related work performed within City jurisdiction.
- 10.4 The County shall invoice the City for the City's cost of improvements based upon the jurisdictional boundaries, currently estimated at \$54,417.

11. The City Agrees to:

- 11.1 Provide a no-cost permit to the County to work within the City's jurisdictional boundaries as necessary to complete the Project.
- 11.2 Remit payment to the County within 30 days of receipt of a proper invoice for the City's cost of improvements currently estimated at \$54,417, based upon the jurisdictional boundaries of Adobe Road.
- 11.3 Be responsible for maintenance of the improvements within the City's jurisdiction after construction is completed.

GENERAL TERMS AND CONDITIONS

12. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify, defend and save the other Parties harmless, including any of the Parties' departments, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage or claim of any nature whatsoever which is

caused by any activity, condition or event arising out of the negligent performance or nonperformance by the indemnifying Party of any of the provisions of this Agreement. By entering into this Agreement, each Party indemnifies the other against all liability, losses and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement, except such injury or damage as shall have been caused or contributed to by the negligence of that other Party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Party, its departments, agencies, officers, employees, elected officials or agents. In the event of an action, the damages which are the subject of this indemnity shall include costs, expenses of litigation and reasonable attorney's fees.

13. This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors and remain in full force and effect until all stipulations previously indicated have been satisfied, except that it may be amended upon written Agreement by all Parties. Any Party may terminate this Agreement upon furnishing the other Party with a written notice at least thirty (30) days prior to the effective termination date.
14. This Agreement shall be subject to the provisions of A.R.S. Section 38-511.
15. The Parties warrant that they are in compliance with A.R.S. Section 41-4401 and further acknowledge that:
 - 15.1 Any contractor or subcontractor who is contracted by a Party to perform work on the Project shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. Section 23-214(A), and shall keep a record of the verification for the duration of the employee's employment or at least three (3) years, whichever is longer.
 - 15.2 Any breach of the warranty shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
 - 15.3 The Parties retain the legal right to inspect the papers of any contractor or subcontractor employee who works on the Project to ensure that the contractor or subcontractor is complying with the warranty above and that the contractor agrees to make all papers and employment records of said employee available during normal working hours in order to facilitate such an inspection.
 - 15.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
16. Each Party to this Agreement warrants that neither it nor any contractor or vendor under contract with the Party to provide goods or services toward the accomplishment of the objectives of this Agreement is suspended or debarred by any federal agency which has provided funding that will be used in the Project described in this Agreement.

17. Each of the following shall constitute a material breach of this Agreement and an event of default ("Default") hereunder: A Party's failure to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by that Party ("Defaulting Party"), where such failure shall continue for a period of thirty (30) days after the Defaulting Party receives written notice of such failure from the non-defaulting Party provided, however, that such failure shall not be a Default if the Defaulting Party has commenced to cure the Default within such thirty (30) day period and thereafter is diligently pursuing such cure to completion, but the total aggregate cure period shall not exceed ninety (90) days unless the Parties agree in writing that additional time is reasonably necessary under such circumstances to cure such default. In the event a Defaulting Party fails to perform any of its material obligations under this Agreement and is in Default pursuant to this Section, the non-defaulting Party, at its option, may terminate this Agreement. Further, upon the occurrence of any Default and at any time thereafter, the non-defaulting Party may, but shall not be required to, exercise any remedies now or hereafter available to it at law or in equity.
18. All notices required under this agreement to be given in writing shall be sent to:

Maricopa County Department of Transportation
Attn: Intergovernmental Liaison
2901 W. Durango Street
Phoenix, Arizona 85009

City of Mesa
Attn: Transportation Director
P.O. Box 1466
Mesa, Arizona 85211

All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this paragraph. Either Party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given 72 hours after the notice is addressed as required in this paragraph and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the notice to the Postal Service or courier.

19. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.

20. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.
21. This Agreement does not grant authority to control the subject roadway, except to the extent necessary to perform the tasks expressly undertaken pursuant to this Agreement.
22. Any funding provided for in this Agreement, other than in the current fiscal year, is contingent upon being budgeted and appropriated by the Maricopa County Board of Supervisors and the Mesa City Council in such fiscal year. This Agreement may be terminated by any Party at the end of any fiscal year due to non-appropriation of funds.
23. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assignees. Neither Party shall assign its interest in this Agreement without the prior written consent of the other Party.
24. This Agreement, including all Exhibits attached to this Agreement, sets forth all of the covenants, promises, agreements, conditions and understandings between the Parties, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties other than as set forth in this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party drafting this Agreement.
25. Each Party has reviewed this Agreement and has had the opportunity to have it reviewed by legal counsel.
26. The waiver by any Party of any right granted to it under this Agreement is not a waiver of any other right granted under this Agreement, nor may any waiver be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
27. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalid or prohibited under the law, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.
28. The indemnification and insurance provisions of this Agreement shall survive the termination of this Agreement.
29. Nothing contained in this Agreement shall create any partnership, joint venture or other agreement between the Parties hereto. Except as expressly provided in this Agreement, no term or provision of this Agreement is intended or shall be for the benefit of any person or entity not a party to this Agreement, and no such other person or entity shall have any right or cause of action under this Agreement.

30. Time is of the essence concerning this Agreement. Unless otherwise specified in this Agreement, the term "day" as used in this Agreement means calendar day. If the date for performance of any obligation under this Agreement or the last day of any time period provided in this Agreement falls on a Saturday, Sunday or legal holiday, then the date for performance or time period shall expire at the close of business on the first day thereafter which is not a Saturday, Sunday or legal holiday.
31. Sections and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
32. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument. Faxed, copied and scanned signatures are acceptable as original signatures.
33. The Parties agree to execute and/or deliver to each other such other instruments and documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by such Party pursuant to this Agreement.
34. The Parties hereby agree that the venue for any claim arising out of or in any way related to this Agreement shall be Maricopa County, Arizona.
35. This Agreement shall be governed by the laws of the State of Arizona.
36. Unless otherwise lawfully terminated by the Parties, this Agreement expires upon completion and acceptance of the Project and fulfillment of all terms of the Agreement.

End of Agreement - Signature Page Follows

IN WITNESS WHEREOF, the Parties have executed this Agreement.

CITY OF MESA

MARICOPA COUNTY

Recommended by:



Jennifer Toth, P.E.
Transportation Director

06/30/2017

Date

Approved and Accepted by:

Approved and Accepted by:

Christopher J. Brady Date
City Manager

Denny Barney, Chairman Date
Board of Supervisors

Attest by:

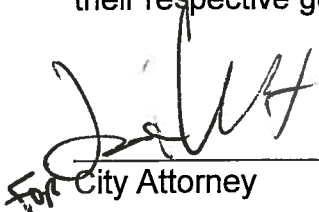
Attest by:

City Clerk Date

Clerk of the Board Date

APPROVAL OF CITY ATTORNEY AND DEPUTY COUNTY ATTORNEY

I hereby state that I have reviewed the proposed Intergovernmental Agreement and declare the Agreement to be in proper form and within the powers and authority granted to the Parties by their respective governing bodies under the laws of the State of Arizona.



7/17/17

Date

Deputy County Attorney Date