JPA No.: 04-073 I
AG Contract No.: KR04-1337TRN
**Amendment No. One**
Project: SR 95, landscaping & irrigation improvements
Section: Swanson - Mesquite
TRACS No.: H6409 01C
Budget Source Item No.: 75008

**AMENDMENT NO. One**
**TO**
**INTERGOVERNMENTAL AGREEMENT**

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF LAKE HAVASU CITY

**THIS AGREEMENT** is entered into this date December 26th, 2007, Amendment No. One to JPA No. 04-073, A.G. Contract No.: KR04-1337TRN, filed with the Secretary of State under No. 27476, 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 LAKE HAVASU CITY, acting by and through its MAYOR and CITY COUNCIL (the "City "). 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 Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

**The purpose of this Amendment One is to reduce the Scope of Work, thereby deleting the cost data and only making the City responsible for maintenance and no initial funding.**

**Article I, Paragraph 5 is deleted and replaced in full as follows:**

5. Incident to a State project on SR 95 for landscaping and irrigation improvements at MP 181.9 – 182.2, the State will design and construct said improvements at State expense, while the City will maintain them, hereinafter referred to as the "Project." The Project location will be along SR 95, from the south side of Swanson to the North side of Mesquite.

**THEREFORE**, in consideration of the mutual covenants expressed herein, this Agreement is amended as follows:

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27476
12/26/07

## II. SCOPE OF WORK

1. The State shall:

**Article II, Paragraphs 1.a through 1.g are deleted in full and replaced as follows:**

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction.

b. Prepare plans, specifications and an estimate for the Project and will submit them to the City for comments as appropriate.

c. Construct the Project approved by FHWA, if such funds are available for construction. Request the maximum federal funds available including construction, engineering and administration costs. Proceed to advertise for, and open bids with the aid and consent of the FHWA. Enter into a contract(s) with a firm(s) to whom the award is made with the concurrence of the FHWA. Enter into a Project Agreement with FHWA, while such Project is to be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation (ADOT).

d. Be responsible for contractor claims for additional compensation caused by Project delays attributable to the State.

e. Not be obligated to maintain this Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

f. Grant or confirm, per established procedures of the State's Kingman District Permit Office, that the City has a valid annual citywide Encroachment Permit on file, for routine/normal maintenance and emergency maintenance work provided by the City within the State's rights of way.

2. The City shall:

**Article II, Paragraphs 2.a through 2.d are deleted in full and replaced as follows:**

a. Review the design documents required for construction of the Project, and provide comments as appropriate to the State. Be responsible for contractor claims for additional compensation caused by Project delays attributable to the City.

b. Upon completion of said Project, provide for at its own cost and as an annual item in its budget, perpetual and proper maintenance of the improvements, including but not limited to landscaping, the irrigation system, pay for the irrigation systems electrical power, including all testing, adjusting, repairing and operation of the irrigation system, and furnish all electrical power necessary to operate the irrigation system. Landscape maintenance shall consist of the care of all landscaping 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 landscaping as it was designed and established at the completion of the Project.

c. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of work called for in this agreement, the City shall be obligated to incur any expenditures in excess of State and Federal funds. Such changes require the prior approval of the State.

d. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through-traffic. All traffic control will meet the requirements of the most recent Arizona Department of Transportation's "Uniform Traffic Control Manual".

e. Obtain, per established procedures of the State's Kingman District Permit Office, a valid annual citywide Encroachment Permit for the routine/normal maintenance and emergency maintenance work provided by the City within the State's rights of way. Agree, any new construction or installation shall require a separate permit as per the Kingman District's established procedures.

## III. MISCELLANEOUS PROVISIONS

**Article III, Paragraphs 1 through 11 are deleted in full and replaced as follows:**

1. This Agreement shall remain in force and effect until completion of the said Project and reimbursements; provided, however, this Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty (30) days written notice to the other party. Should this Agreement be terminated later for any reason, any provisions for maintenance shall be perpetual and survive any termination of this Agreement.

2. This Agreement shall become effective upon filing with the Secretary of State.

3. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

4. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

6. 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 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding" Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract 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.

8. All notices or demand upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

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|---|---|
| Arizona Department of Transportation<br>Joint Project Administration<br>205 S. 17th Avenue, Mail Drop 616E<br>Phoenix, AZ 85007 | City of Lake Havasu<br>City Manager<br>2330 McCulloch Blvd. N.<br>Lake Havasu City, AZ 86403 |

9. Pursuant to Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein 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.

**EXCEPT AS AMENDED** herein, **ALL OTHER** terms and conditions of the original Agreement 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 LAKE HAVASU CITY**

By _____
MARK NEXSEN
Mayor

ATTEST:

By _____
CARLA SIMENDICH
Clerk

**STATE OF ARIZONA**
Department of Transportation

By _____
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operations

G:\Lake Havasu City Amendment One
Initial draft 10/24/07 ghc
FINAL approved by AG 11/13/07 ghc

**JPA 04-073 I Amendment One**

**ATTORNEY APPROVAL FORM FOR THE CITY OF LAKE HAVASU CITY**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 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.

DATED this 3rd day of December, 2007.

Kelly Garry for
City Attorney Paul Lenkausky

TERRY GODDARD
Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
Writer's Direct Line:
602.542.8855
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# INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR04-1337TRN (**JPA 04-073-I**), an Agreement between public agencies, i.e., The State of Arizona and The City of Lake Havasu City, has been reviewed pursuant to A.R.S. § 11-952, as amended, 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.

DATED: December 17, 2007

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:108081
Attachment