JPA / ECS File No.: 05-142
AG Contract No.: KR06-0350TRN
Project No.:CM-MES-0(030)X
Project: Purchase Radio
Communications Equipment
Section: Citywide - Mesa
**TRACS No.: SS597 01C**
**Budget Source Item No.: n/a**

**INTERGOVERNMENTAL AGREEMENT**

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF MESA

**THIS AGREEMENT** is entered into this date August 30th, 2006, 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 MESA, acting by and through its MAYOR and CITY COUNCIL (the "City").

## I. RECITALS

1. The State is empowered by Arizona Revised Statues § 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 Statues § 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.

3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities.

4. The interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations, under which funds for the project are authorized to be expended.

5. The City, in order to obtain federal funds for the design of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA.

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NO. 28398
Filed with the Secretary of State
Date Filed: 8/30/06
Secretary of State
By:

6. The work embraced in this Agreement is for the purchase of radio communication equipment, hereinafter referred to as the "Project." This equipment is necessary to communicate with remote traffic signals primarily in East Mesa, so that the traffic signals can be centrally monitored and controlled. This equipment will enhance traffic signal connectivity to the signal system for intersections east of Power Road, and will allow Mesa TMC monitoring and control. The State and the City will be responsible for jointly administering the purchase of this equipment. The estimated cost of the Project is as follows:

| | |
|---|---|
| Estimated Project Cost (**TRACS No.: SS597 01C**) | $ 295,000.00 |
| Federal-aid funds @ 94.3% of $295,000.00 | $ 278,185.00 (capped) |
| City Funds @ 5.7% of $295,000.00 | $ 16,815.00 |

**THEREFORE**, in consideration of the mutual agreements expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

1. The State shall:

a. Submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Approve the Project if such project funds are available by FHWA for the Project. Be the designated authorized agent for the City, and through the State's Procurement Process, advertise for, receive and open bids with the aid and consent of the City and the FHWA.

c. Upon execution of this Agreement, coordinate with the City regarding the specifics of the equipment ordered by the State to best ensure the requirements of the Project are met. Enter into a contract(s) with a firm(s) to whom the award is made for the purpose of the Project.

d. Instruct the vendor to deliver equipment directly to the City for final acceptance and to bill the City directly. The State will reimburse the City with capped federal funds up to $278,185.00 within thirty-days (30) after receipt and approval of an invoice for equipment purchased under this Agreement. Therefore, the City agrees to set aside funds in an amount equal to the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

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

2. The City shall:

a. If such project is approved by FHWA and the funds are available for the Project, hereby designate the State as authorized agent for the City. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage

b. Agree the cost of the analysis and works covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA

c. Coordinate with the State during the procurement process of the Project.

d. Upon acceptance of equipment by the City, invoice the State for 94.3% of related Project costs up to the capped federal funds of $278,185.00 as provided for in this Agreement. The City is

entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement, whether covered by federal funding or not.

e. Will install all equipment purchased under this Agreement and maintain all improvements provided by this Project for the entire design life of the system and equipment.

f. Should unforeseen conditions or circumstances increase the cost of said work, such that a change in the extent or scope of the work called for in this Agreement becomes necessary, be obligated to incur and will pay for said increased costs.

## III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements, provided herein. This Agreement may be cancelled at any time prior to the award of a Project purchase contract, upon thirty-days (30) written notice to either party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans and specifications, reports and the engineering in connection therewith the improvements contemplated, cost over-runs and claims. It is understood and agreed that the State's participation is confined solely to securing Federal Aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that, to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or non performance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of it agents, officers and employees or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees, shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

3. The cost of equipment purchase covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

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

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

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. 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.

8. 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:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

City of Mesa
Attn: City Manager
P.O. Box 1466
Mesa, Arizona 85211-1466
480-644-3000
480-644-2175 Fax

9. This Agreement is subject to all applicable provisions of the Americans with Disability 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".

10. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment 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.

11. In accordance with Arizona Revised Statues § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.

**CITY OF MESA**

By _____
CHRISTOPHER J. BRADY
City Manager

**STATE OF ARIZONA**
Department of Transportation

By _____
for CYNTHIA MILLS
Joint Project Administrator

**ATTEST:**

By _____
BARBARA JONES
Clerk

CITY OF MESA CORPORATE SEAL MARICOPA COUNTY, AZ.

G:\05-142 Mesa Radio Communication Equipment
Draft 2-16-06 ghc

**JPA 05-142**

**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 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 17th day of August, 2006.

Debbie Spencer

Attorney

RESOLUTION NO. 8783

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR THE PURCHASE OF COMMUNICATION EQUIPMENT FOR THE TRANSPORTATION MANAGEMENT CENTER

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:

Section 1: That the agreement between the State of Arizona Department of Transportation and the City of Mesa for the purchase of communication equipment for the Transportation Management Center (ADOT JPA No. 05-142); is hereby approved.

Section 2: That the City Manager, Christopher J. Brady, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 14th day of August, 2006.

CITY OF MESA CORPORATE SEAL MARICOPA COUNTY, AZ.

APPROVED:

Keno Hawker

Mayor

ATTEST:

City Clerk

TERRY GODDARD
Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
Writer's Direct Line:
602.542.8855
Facsimile: 602.542.3646
E-mail: Susan Davis@azag.gov

# INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR06-0350TRN (**JPA 05-142**), an Agreement between public agencies, i.e., The State of Arizona and City of Mesa, 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: August 23, 2006

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:975803
Attachment