

INTERGOVERNMENTAL AGREEMENT
FOR THE
MESA MAIN STREET BUS RAPID TRANSIT PROJECT
BETWEEN
THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY
AND
CITY OF MESA

AGREEMENT NO. 145-41-2009

This Agreement is entered into by and between the Regional Public Transportation Authority (“RPTA”) of Maricopa County, a political subdivision of the State of Arizona, acting by and through its Board of Directors, and the City of Mesa (“CITY”), a municipal corporation under the laws of the State of Arizona acting by and through its City Council and Public Transportation Department. RPTA and the CITY may be referred to collectively as “PARTIES” and individually as “PARTY.”

This Agreement shall become effective as of the date executed by all Parties.

AUTHORIZATION

1. RPTA is authorized, pursuant to A.R.S. § 11-951, et seq., and A.R.S. § 48-5101, et seq., to operate and maintain public transportation services, property and facilities, and to enter into agreements with other government entities to provide such public transit services. RPTA has been authorized by its Board of Directors to enter into this Agreement.
2. CITY is authorized, pursuant to A.R.S. § 11-951, et seq., Mesa City Charter, Article 1, § 101 and Article X, § 1007, to acquire, provide, operate and maintain public transit services, property and facilities, and to enter into agreements with other government entities to provide such public transit services. CITY has been authorized by the Mesa City Council to enter into this Agreement. (See, Mesa City Council Resolution No. _____ attached as Exhibit A.)

BACKGROUND

1. As part of the Regional Transportation Plan for the area, which consists of alternative approaches to meeting the region’s transportation needs, RPTA and CITY desire to jointly design and construct a bus rapid transit (“BRT”) route (“PROJECT”).
2. Because RPTA cannot purchase right-of-way utilizing eminent domain, CITY will do so for the benefit of the project.

3. The Project consists of an arterial BRT route with twenty-eight (28) stops connecting Superstition Springs Transit Center to the Sycamore Light Rail Transit (LRT) Center. (See Project Description and Project diagram, attached as Exhibit B.)
4. The route or corridor will extend east on Main Street from the Sycamore Transit Center to Power Road where it will turn south to connect with the Superstition Springs Center at U.S. Highway 60 (Superstition Freeway).
5. This Project is funded 100% by Public Transportation Funds under the Regional Transportation Plan (RTP) as approved for RPTA in the Transit Life Cycle Plan. It is anticipated that the total cost of the Project, including design, right of way acquisition and construction, will be approximately \$15 million.
6. Sums payable pursuant to this Agreement are subject to the RPTA's Board of Directors' annual approval.
7. Construction conducted by utility companies and contractors for RPTA will occur between April 1, 2008 and June 20, 2009. All utility companies and contractors shall obtain any and all necessary permits from CITY.

PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to identify and define the responsibilities of RPTA and CITY for funding, design, right-of-way acquisition, construction, construction management, and operation and maintenance of the PROJECT.

TERMS OF THE AGREEMENT

1. RPTA and CITY shall:

1.1 Good Faith. The Parties agree to fully cooperate and work together in all phases of the approval process, property acquisition, and as otherwise required to fulfill the terms of this Agreement.

1.2 Time. Time is of the essence and the Parties shall each make their best efforts to expedite the approval process and property acquisition in order to make the BRT operational as quickly as possible.

1.3 Limitation of Liability. Neither Party shall be liable to the other for damages to the extent caused or contributed to by matters beyond the respective Party's reasonable control or by the other Party.

1.4 Compliance with Law. In performing its obligations under this Agreement, the Parties shall comply in all material respects with all applicable federal, state and local laws, regulations, ordinances, and rulings, including but not limited to, those pertaining to health, safety, employment and environmental matters.

1.5 Dispute Resolution. The Parties shall use all reasonable efforts to resolve any dispute or claim through good faith negotiations. If the parties are unable to resolve the dispute or claim through negotiations, upon the written request of either Party, Mesa's Public Transit Department Director, or designee, and RPTA's Deputy Executive Director, or designee, will attempt to resolve the matter within fifteen (15) calendar days of the date the matter was referred to them, or within any other time period mutually agreed upon by the Parties. If the matter is still not resolved, the matter will be immediately referred to Mesa's Deputy City Manager, or designee, and RPTA's Executive Director, or designee. If the matter is still not resolved within fifteen (15) calendar days, the Parties agree that the dispute or claim shall be decided by binding arbitration to be held at a mutually agreeable location. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association. The Parties shall select a mutually acceptable arbitrator within fifteen (15) days after notice that a Party desires to resolve a dispute by arbitration. If the Parties cannot agree on a specific arbitrator within such fifteen (15) days period, the American Arbitration Association shall appoint the arbitrator. The arbitrator shall control discovery and award to the prevailing Party its attorney's fees, expert witness fees, and all other dispute-related costs.

1.6 Entire Agreement. Modification (No Oral Modification). This Agreement, and any Exhibits, Attachments, or Schedules attached hereto, constitute the full and complete understanding and agreement of the Parties. It supersedes and replaces any and all previous representations, understandings, and agreements, written or oral, relating to its subject matter. This Agreement, and its terms, may not be modified or changed except in writing signed by both Parties. There shall be no oral alteration or modification of this Agreement.

1.7 Invalidity of Any Provisions. This Agreement shall remain in full force and effect even if one or more of its terms or provisions have been held to be invalid or unenforceable. Such a holding shall result in the offending term or provision being ineffective to the extent of its invalidity or unenforceability without invalidating the remaining terms and provisions hereof; this Agreement shall thereafter be construed as though the invalid or unenforceable term or provision were not contained herein.

1.8 Applicable Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Arizona.

1.9 Conflicts of Interest. All parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

1.10 Non-waiver. Should either party fail or delay in exercising or enforcing any right, power, privilege or remedy under this Agreement, such failure or delay shall not be deemed a waiver, release or modification of the requirements of this Agreement or of any of its terms or provisions.

1.11 Assignment. Neither Party shall have the right to assign its rights or obligations under this Agreement without obtaining the prior written consent of the other Party (consent not to be unreasonably withheld), nor any attempted assignment without such prior written consent shall be void. Permitted assigns and successors in interest shall have the benefit of, and shall be bound by, all terms and conditions of this Agreement.

1.12 Headings. The headings in this Agreement are for convenience and reference only, and shall not affect the interpretation of this Agreement.

1.13 No Joint Venture. CITY and RPTA, and their respective contractors shall perform the duties pursuant to this Agreement as independent agencies. This Agreement shall not create the relationship of employer and employee, partnership, joint venture or other association between the Parties.

1.14 Notice. Any notice, consent, or other communication (“NOTICE”) required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

David Boggs, Executive Director
Regional Public Transportation Authority
302 North First Avenue, Suite 700
Phoenix, AZ 85003

Christopher J. Brady, City Manager
City of Mesa
20 E. Main Street
Mesa, AZ 85211

With a copy to:

Attn: Mike James,
Deputy Trans. Director, Planning & Transit
300 East Sixth Street
P.O. Box 1466
Mesa, AZ 85211-1466

NOTICE shall be deemed received at the time it is personally served or, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, ten (10) days after the notice is deposited in the United States mail as above provided. Any time period stated in a NOTICE shall be computed from the time the notice is deemed received. Either Party may change its mailing address, FAX number, or the person to receive notice by notifying the other Party as provided in this section. NOTICE sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate NOTICE is not intended to change the effective date of the NOTICE sent by facsimile transmission.

1.15 Waiver. No waiver by either Party of any one or more defaults by the other in the performance of any provision of this Agreement shall operate or be construed as a waiver of any default or defaults, whether of a like or different character. No waiver or modification of this Agreement shall occur as the result of any course of performance or usage of trade unless agreed to by each Party in writing.

1.16 Force Majeure. Force Majeure is a circumstance beyond a Party's control, including but not limited to, fire, flood, labor dispute, or acts of God that excuse the Party from performing its obligations under this Agreement during the period of such disability. The Party claiming Force Majeure shall promptly notify the other when it learns of the existence of a Force Majeure condition and shall similarly notify the other within two (2) days, excluding weekends and holidays, after the Party claiming Force Majeure believes the Force Majeure condition has terminated.

1.17 Indemnification. To the extent permitted by law, the PARTIES agree to defend, indemnify and hold harmless each other and their agents, officers, members, employees or directors from and against any and all claims, liabilities and causes of action attributable, directly or indirectly to the extent caused by reason of the negligence, error, omission or intentional acts of the indemnifying Party or any of its agents, officers, or employees in connection with the performance of this Agreement. The applicable Party shall cause any contractor providing materials or service in connection with the Project to agree to indemnify each of the Parties pursuant to a form of indemnity in the substantial form of this Section 1.17.

1.18 Insurance. The contractor for RPTA shall obtain insurance fully indemnifying and holding RPTA and CITY harmless in such amounts as may be required by CITY and with the interests of CITY and RPTA endorsed on the insurance policy as an additional insured.

1.19 Ownership and Maintenance Upon completion of the Project, bus stop facilities will be the property of CITY, and CITY shall own and maintain such facilities. CITY shall comply with all applicable laws, ordinances, regulations and codes of federal,

state and local governments. In performing hereunder, CITY shall adhere to RPTA's Transit Life Cycle Program and its approved policies, as the Transit Life Cycle Program or policies may be amended from time to time, (collectively referred to as the "TLCP"), including but not limited to a right of first refusal granted the RPTA by a member city owning any project funded in whole or part by the RPTA pursuant to the TLCP.

1.20 Duration. The term of this Agreement shall commence on the date it is fully executed by the Parties and properly filed and/or recorded. It expires on whichever of the following shall first occur: (a) completion, acceptance and full payment of all sums due; or, (b) by amendment canceling the Project and the obligations hereunder. This agreement may be extended for up to four (4) one (1) year options periods.

1.21 Termination. This Agreement is terminable only upon the termination or completion of the Project. RPTA's payment obligation shall persist until whichever of the following shall first occur: (a) completion, acceptance and full payment of all sums due as and for the Project's funding; (b) by amendment canceling the Project and RPTA's obligations hereunder; or (c) upon the failure of the RPTA Board of Directors to appropriate funds, pursuant to Section 1.22.

1.22 Non-Appropriations. This Agreement is subject to the availability of funding. The RPTA's obligation hereunder is contingent upon the availability of appropriated funds from which payment for the Agreement purposes can be made available to the RPTA Deputy Executive Director of Finance for this Agreement and until the City receives notice of such availability, to be confirmed in writing by the Deputy Executive Director of Finance. Any award of Agreement hereunder will be conditioned upon said availability of funds for the Agreement.

2. CITY shall:

2.1 Acquire all necessary rights-of-way and easements required for the improvements by purchase, dedication, donation or through eminent domain, if necessary. A resolution of the Mesa City Council shall suffice to allow acquisition by eminent domain. City is entitled to reimbursement from RPTA for all costs and expenses incurred regarding acquisition of all necessary rights-of-way and easements from RPTA Board approved funds pursuant to the Transit Life Cycle Program. Attached hereto, and by this reference incorporated herein, is the following Exhibit to be used by City in seeking reimbursement:

Exhibit C RPTA Reimbursement Request Form

2.2 Not less than once a month, submit to RPTA a request for reimbursement on RPTA's Reimbursement Request Form (Exhibit C to this Agreement) and provide a report summarizing Project progress made on the dates referenced in the reimbursement

request. This report and form shall be submitted electronically to the staff designated by RPTA, in writing, as their authorized recipient.

2.3 Keep and maintain for a period of five (5) years after PROJECT completion all books and records reasonably necessary to support the reimbursement sought from RPTA. If requested by RPTA, such records shall be made available to RPTA for annual audit, upon not less than fourteen (14) calendar days prior written notice to CITY. RPTA shall be solely responsible for any and all costs associated with such audits.

2.4 Shall comply with all applicable laws, ordinances, regulations and codes of federal, state and local governments. Further, CITY shall be solely responsible for obtaining all approvals and permits necessary. RPTA shall be solely responsible for any and all costs associated with obtaining such approvals and permits from RPTA Board approved funds pursuant to the Transit Life Cycle Program.

2.5 In performing hereunder, CITY will look to the TLCP for guidance and direction.

2.6 Either through its own funds or through other funding sources be responsible for all Project costs above the allocated amounts set forth in Exhibit "B" unless a change in the TLCP is requested and approved, and as the procuring entity, be responsible for all aspects of the Capital Projects described herein.

2.7 CITY shall provide quarterly reports to the RPTA summarizing the previous quarter's activities. The quarterly reports shall be due to RPTA 15 days after the end of the quarter. Quarters shall be Jan-March, April-June, July-September and October-December.

2.8 In addition to the indemnity obligations of Section 1.17, the CITY shall indemnify, defend, save and hold harmless RPTA (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising solely out of its providing funding to CITY under this Agreement. CITY's indemnification under this Agreement extends to the bodily injury of any person (including death) or property damage, to the extent, but only to the extent, that such Claims result in vicarious/derivative liability to the Indemnitee and are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents employees, or volunteers

2.9 The City of Mesa will be responsible for securing the sole source software needed for the Transit Signal Priority system. The RPTA will reimburse the City of Mesa upon receipt of the vendor invoice.

2.10 The City of Mesa will secure demolition services for the Superstition Springs park and ride modifications required to allow bus circulation from the Superstition Freeway frontage road to the Superstition Springs mall ring road. The RPTA will reimburse the City of Mesa upon receipt of an invoice for this activity.

3. RPTA shall:

3.1 Serve as the lead agency for the design, construction and construction management of the PROJECT.

3.2 Provide to CITY in a timely manner submittals of all plans and specifications for review and comment, and work to resolve and/or incorporate such comments into the final design plans and specifications.

3.3 Coordinate with CITY for the relocation of utilities within the acquired rights-of-way without prior rights, prior to construction of the PROJECT. Utilities with prior rights shall be relocated and included in the PROJECT cost.

3.4 Disburse PTF funds to CITY, as approved in the Transit Life Cycle Plan and in RPTA's annual budget to fund the obligations set forth in this Agreement, but the amount funded shall not exceed the amount set forth below.

FY 2007-08 to 2008-09	\$1,000,000.00
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To the extent practicable, and as supported by actual expenditures, disbursements shall be made monthly after receipt of a completed Reimbursement Request Form, attached as Exhibit C; provided, however: (1) expenditures eligible for reimbursement in excess of the amount authorized for that year's reimbursement shall be carried forward to future years until either reimbursement shall have been made or until all allocated sums have been disbursed; and, (2) authorized but unexpended reimbursements shall be carried forward to future years until all allocated sums have been disbursed.

3.5 Be solely responsible for any and all costs associated with audits of CITY expenditures as specified in Section 2.3, above.

3.6 RPTA shall act as Lead City Agency (as that term is defined in the TLCP policies) and fulfill lead Agency responsibilities.

3.7 RPTA shall ensure that Design Concept Report (Exhibit B) is completed and approved through the RPTA committee process prior to start of construction.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the _____ day of _____ 2008.

City of Mesa

Regional Public Transportation Authority (RPTA)

By:

By:

Christopher J. Brady
City Manager

David A. Boggs
Executive Director

ATTEST:

ATTEST:

Mesa City Clerk

Jon Medwin
Manager of Contracts and Procurement

Approved as to Form:

ATTEST:

James W. Fritz
Assistant City Attorney
Mesa City Attorney's Office

Michael Taylor
Acting Deputy Executive Director
Finance

Approved as to Form:

William J. Sims III
Attorney for RPTA

EXHIBIT A
MESA CITY COUNCIL RESOLUTION

EXHIBIT B DESIGN CONCEPT

Design Concept Report

Project Description

Project Name	Mesa Main Street BRT
Facility Type	Right-of-Way Improvements
MAG Project #	
RTP Phase	1
Year Open for Service	FY 2009
Advancement or Deferral?	
PAR Preparer	Paul Hodgins
Preparation Date	8/8/2007
Last Update	8/8/2007
Proposed Schedule (FY)	
Pre-Design	2007
Design	2008
Land	2008
Construction	2009
Project Objective	Site, design, purchase and construct right-of-way improvements for BRT service.

Design

	Quantity\Size	Standard or Enhanced \Comments
Project Elements		
Total Station Locations	TBD	TBD
Pullouts	TBD	TBD
Site Lighting Fixtures	TBD	TBD
Security Cameras	TBD	TBD
Passenger Platforms	TBD	TBD
Passenger Shelters	TBD	TBD
Drinking Fountains	TBD	TBD
Passenger Information Kiosks	TBD	TBD
Security\Passenger Buildings	TBD	TBD
Landscaping (acreage)	TBD	TBD
Signage	TBD	TBD
Special Features	TBD	TBD

Project Budget

Programmed Budget (year of expenditure)	Total	PTF	Federal
Pre-Design (FY 2007)	\$123,070	\$123,070	\$0
Design (FY 2008)	\$250,000	\$250,000	\$0
Land (FY 2008)	\$1,000,000	\$1,000,000	\$0
Construction (FY 2008)	\$6,477,289	\$6,477,289	\$0
Construction (FY 2009)	\$7,328,537	\$7,328,537	\$0
Total	\$15,178,896	\$15,178,896	\$0

Preliminary Design Cost Estimate

Site Preparation	TBD
Irrigation	TBD
Landscaping	TBD
Site Features\Amenities including constructi	TBD
Traffic Control Devices	TBD
Overhead Costs (permits, insurance, etc.)	TBD
Total	TBD

Final Design Cost Estimate

Site Preparation	TBD
Irrigation	TBD
Landscaping	TBD
Site Features\Amenities including constructi	TBD
Traffic Control Devices	TBD
Overhead Costs (permits, insurance, etc.)	TBD
Total	TBD

**EXHIBIT C
REIMBURSEMENT REQUEST FORM**

Regional Public Transportation Authority PTF Expenditure Reimbursement Request					
The information provided will be used by the Regional Public Transportation Authority (RPTA) to monitor designated lead agency cash flow to ensure compliance with ARS 48-5103. No further monies may be paid out under this program unless this report is completed and filed as required.					
RECIPIENT ORGANIZATION NAME AND ADDRESS		PROJECT AGREEMENT NUMBER		REQUEST NO.	
		REPORTING PERIOD (Dates)			
		FROM:		TO:	
		TOTAL		PTF SHARE	
TOTAL ELIGIBLE COSTS		\$	-	\$	-
TOTAL PREVIOUS PAYMENTS		\$	-	\$	-
CURRENT PAYMENT REQUESTED		\$	-	\$	-
REMAINING FUNDING		\$	-	\$	-
REQUIRED SIGNATURE					
This document must be signed by the recipient's Chief Financial Officer or their designated representative.					
CERTIFICATION					
I certify the financial expenditures submitted for reimbursement with this report, including supporting documentation, are eligible and allowable expenditures consistent with the project goals and requirements, have not been previously requested, and that payment is due. I also certify that all matching requirements have been met and sufficient documentation exists in our files and are available upon request or in the event of an audit.					
SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL				DATE REQUEST SUBMITTED	
TYPED OR PRINTED NAME AND TITLE				TELEPHONE	
Instructions					
1. Keep a copy of everything submitted.					
2. All project records, including financial records, must be maintained for 3 years beyond project completion.					
<i>For RPTA use only</i>					
Date request received:			Life cycle compliance review (signature/date)		
Approved for funds availability (signature/date)			Date of funds transfer (signature/date)		
Comments					
Project	WBS	Phase	Activity	GL Account (Finance Only)	Amount
			7901		
			7901		
			7901		
			7901		