

INTERGOVERNMENTAL AGREEMENT
BETWEEN MARICOPA COUNTY AND THE CITY OF MESA
FOR THE EXCHANGE OF TRAFFIC CONTROL PERMIT FEES
(C-64-17-____-M-00)

This Intergovernmental Agreement (**Agreement**) is between the County of Maricopa, a political subdivision of the State of Arizona (**County**), and the City of Mesa, a municipal corporation (**City**). The County and City are collectively referred to as the **Parties** or individually as a **Party**.

STATUTORY AUTHORIZATION

1. A.R.S. Section 11-251 and Sections 28-6701 *et. seq.* authorize the County to lay out, maintain, control and manage public roads within the County.
2. A.R.S. Sections 11-951 *et. seq.* authorize public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.
3. A.R.S. Section 9-240 and Sections 9-276 *et. seq.* authorize the City to lay out and establish, regulate and improve streets within the City and to enter into this Agreement.

BACKGROUND

4. The Parties desire to develop and implement a cooperative agreement to waive traffic control permit fees under certain circumstances.
5. There are instances where the City is constructing a project adjacent to or near the County's right-of-way, but the County is not a partner in the project and the project work is not in the County's right-of-way. These projects may require traffic control devices to be set up in the County's right-of-way.

6. There are other instances where the County is constructing a project adjacent to or near the City's right-of-way, but the City is not a partner in the project and the project work is not in the City's right-of-way. These projects may require traffic control devices to be set up in the City's right-of-way.
7. In the cases described in Paragraphs 5 and 6, it may be reasonable to consider waiving traffic control permit fees because each Party derives a benefit.
8. The City currently waives traffic control permit fees for the County under circumstances described in Paragraph 6. This Agreement will formalize a reciprocal practice between the Parties.

DURATION

9. 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 through June 30, 2021. Any Party may terminate this Agreement for any reason upon furnishing the other Party with a written notice at least thirty (30) days prior to the effective termination date.

PURPOSE OF THE AGREEMENT

10. The purpose of this Agreement is to formalize a reciprocal agreement to waive traffic control permit fees in certain circumstances.

TERMS OF THE AGREEMENT

11. **Responsibilities of the County and the City:**
 - 11.1 Each Party shall ensure that each permit issued under authority of this Agreement includes the following:
 - 11.1.2 A description of the project, location, and any affected roadways.
 - 11.1.3 A copy of the traffic control plans highlighting the activity areas that are to be located in the other Party's jurisdiction.
 - 11.1.4 The value of the permit fees that are proposed to be waived.

- 11.1.5 A statement that the applying Party will assume responsibility for plan review, inspections, and traffic control for the listed roadways and shall notify the permitting Party in advance of approving any lane closures and/or roadway restrictions.
- 11.1.6 A statement requiring the applying Party to ensure any contractor liability insurance is acquired and lists the permitting Party as additional insured. Each Party shall also provide a copy of the insurance certificate to the permitting Party, as applicable.
- 11.1.7 Other terms as may be deemed necessary by the County Transportation Director (or designee) and the City Manager (or designee).

12. Responsibilities of the County:

- 12.1 The County Transportation Director (or designee) may, in coordination with the City Manager (or designee), determine projects suitable for eligibility to waive traffic control permit fees.
- 12.2 Upon receipt of proper documentation, the County shall waive all traffic control permit fees for City projects meeting the criteria in Paragraph 5.
- 12.3 The County Transportation Director (or designee) shall retain appropriate files related to any permit issued under the authority of this Agreement until all terms provided in the Agreement and the pertinent permit have been satisfied, or as otherwise required by law.

13. Responsibilities of the City:

- 13.1 The City Manager (or designee) may, in coordination with the County Transportation Director (or designee), determine projects suitable for eligibility to waive traffic control permit fees.
- 13.2 Upon receipt of proper documentation, the City shall waive all traffic control permit fees for County projects meeting the criteria in Paragraph 6.
- 13.3 The City Manager (or designee) shall retain appropriate files related to any permit issued under the authority of this Agreement until all terms provided in the Agreement and the pertinent permit have been satisfied, or as otherwise required by law.

GENERAL TERMS AND CONDITIONS

14. 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 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 performance 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.
15. This Agreement shall be subject to the provisions of A.R.S. Section 38-511.
16. The Parties warrant that they are in compliance with A.R.S. Section 41-4401 and further acknowledge that:
 - 16.1 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.
 - 16.2 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.
 - 16.3 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.
 - 16.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.

17. 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.
18. 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.
19. All notices required under this agreement to be given in writing shall be sent to:

County:

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

City:

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.

20. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.
21. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.
22. 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.
23. 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.
24. 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.
25. This Agreement and all Exhibits attached to this Agreement set forth all of the covenants, promises, agreements, conditions and understandings between the Parties to this Agreement, 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, and those agreements which are executed contemporaneously with 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. This Agreement cannot be modified or changed except by a written instrument executed by all of the Parties hereto. 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. Except as otherwise provided in this Agreement, all covenants, agreements, representations and warranties set forth in this Agreement or in any certificate or instrument executed or delivered pursuant to this Agreement shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.
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. Nothing in this Agreement or any permit shall be construed as committing the Parties to incur capital expenditures for equipment, facilities, or otherwise, or to incur expenses associated with a project the Party is not a partner to.
35. Nothing in this Agreement or any permit shall be interpreted to enlarge or expand the County's or City's authority.

36. 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.
37. This Agreement shall be governed by the laws of the State of Arizona.

End of Agreement - Signature Page Follows

IN WITNESS WHEREOF, the Parties have executed this Agreement.

MARICOPA COUNTY

CITY OF MESA

Recommended by:

Recommended by:




Jennifer Toth, P.E.
Transportation Director

08/26/2016
Date

Christopher Brady
City Manager

Date

Approved and Accepted by:

Approved and Accepted by:

Clint Hickman, Chairman
Board of Supervisors

Date

John Giles
Mayor

Date

Attest by:

Attest by:

Clerk of the Board

Date

City Clerk

Date

APPROVAL OF DEPUTY COUNTY ATTORNEY AND CITY 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.

Deputy County Attorney

Date

City Attorney

Date