

INTERGOVERNMENTAL AGREEMENT
BETWEEN MARICOPA COUNTY AND THE CITY OF MESA
FOR THE WATER FACILITY RELOCATION AT
ELLSWORTH ROAD AND PUEBLO AVENUE INTERSECTION
(TT0646)

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. The County is authorized, pursuant to Arizona Revised Statutes (**A.R.S.**) § 11-251 and §§ 28-6701 *et. seq.*, to lay out, maintain, control, and manage public roads within the County.
2. The City is authorized, pursuant to A.R.S. § 9-240 and §§ 9-276 *et. seq.*, to lay out and establish, regulate, and improve streets within the City and to enter into this Agreement.
3. Public agencies are authorized, pursuant to A.R.S. §§ 11-951 *et. seq.*, to enter into Intergovernmental Agreements for the provision of services or joint or cooperative action.

BACKGROUND

4. The County has assessed the intersection of Ellsworth Road and Pueblo Avenue and determined that the intersection meets traffic signal warrants based on the warrant conditions from the 2009 Manual on Uniform Traffic Control Devices.
5. After evaluating the intersection, the County has proposed plans to construct a traffic signal at Ellsworth Road and Pueblo Avenue, widen the west leg of Pueblo Avenue and reconfigure 92nd Street. All improvements will be built within the existing MCDOT right of way (**Project**).
6. The Project will include the design and relocation of existing water facilities, including hydrants, manholes and valves (**Relocation**), which are owned, operated and maintained by the City.
7. The City is responsible for the cost of the Relocation components of the Project, currently estimated at \$101,167.33. The Parties have agreed the City will be financially responsible for the total of the actual cost of the Relocation.
8. The County shall be responsible for designing, constructing, replacing and installing the Relocation using the County's approved construction contractor retained for the Project.

9. The County will design the Relocation to the City of Mesa Engineering Design Standards and Standard Details and Specifications per the current version in effect at the time of design.

PURPOSE OF THE AGREEMENT

10. The purpose of this Intergovernmental Agreement is to identify and define the responsibilities of the County and the City regarding the Relocation.

TERMS OF THE AGREEMENT

11. The County agrees to:

- 11.1 Complete the Relocation to City Engineering and Design Standards and in accordance with all applicable laws, including Title 34 of the Arizona Revised Statutes.
- 11.2 Provide design and construction documents (plans and specifications) for review by the City at the appropriate stages of submittals for design and construction, and allow for inspection by the City at appropriate stages during installation, construction and testing.
- 11.3 Use County standards for the removal of the existing water facilities.
- 11.4 The County, or its Contractor, shall apply and pay for all permits to the City for any Project-related work or Relocation-related work within City boundaries or on City facilities.
- 11.5 Work with the City's Engineering Public Relations staff to provide proper notification to City water and sewer customers impacted by the Relocations.
- 11.6 Notify the City of any change order requests related to the Relocation but retain sole discretion (which shall not be exercised unreasonably) to execute any commercially reasonable change order, so long as the cumulative value of all change orders does not exceed 20% of the current estimated cost of Relocation. If the cumulative value exceeds 20% of the current estimated cost of Relocation, concurrence by the City will be required (which should not be unreasonably withheld).
- 11.7 The City's cost for Relocation is currently estimated at \$101,167.33. The City is responsible for the total of the actual cost of the Relocation.
- 11.8 Upon completion of each stage of the Relocation, the County shall allow the City to complete an exterior inspection within six (6) calendar days of notification. Provided the completed water improvements are consistent with the City's Engineering Standards, and the Approval of Construction (AOC) certificate has been issued by the Maricopa County Environmental Services Department (MCESD), the City shall accept ownership thereof.

- 11.9 Upon completion of the Project, the County shall invoice the City for the design, construction and installation of the Relocation.

12. The City Agrees to:

- 12.1 Review submitted construction documents for the Project and provide comments to the County within twenty (20) calendar days of receipt.
- 12.2 Assist the County, through the City's Engineering Public Relations staff, with notification letters to City water customers that the Relocation will impact.
- 12.3 Should the City object to any change order relevant to the Relocation, it shall notify the County within ten (10) calendar days of receipt of the change order request.
- 12.4 Be solely responsible for the total of the actual cost of the Relocation, as set forth in Paragraph 11.7, above, including but not limited to removal, design, and construction.
- 12.5 Upon completion of the Project, final acceptance by the City of the Project, and receipt of an invoice from the County, the City shall reimburse the County for the completion of the Relocation in amounts up to the Relocation Cost and any approved change orders.
- 12.6 Own, operate and maintain the completed water improvements resulting from the Waterline Relocation after completion of the work and final acceptance by the City.

GENERAL TERMS AND CONDITIONS

13. To the extent permitted by law, each Party will indemnify, defend, and hold the other Party harmless, including any of the Party's departments, agencies, officers, employees, elected officials, or agents, from and against all liability, loss, expense, damage or claim of any nature whatsoever that 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, including but not limited to injuries or death of persons or damages to or destruction of property. In the event of an action, the damages that are the subject of this indemnity shall include costs, expenses of litigation, and reasonable attorney's fees.
14. This Agreement shall become effective as of the date it is executed by all the governing bodies of the Parties and shall remain in full force and effect until all stipulations previously indicated have been satisfied.
15. This Agreement may be amended only upon written agreement by all Parties.
16. This Agreement is subject to the provisions of A.R.S. § 38-511.

17. The Parties warrant that they are following A.R.S. § 41-4401 and further acknowledge that:
 - 17.1 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. § 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.
 - 17.2 Any breach of the warranty shall be deemed a material breach of this agreement, of which breaching party may be liable for penalties including termination of the agreement.
 - 17.3 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 to facilitate such an inspection.
 - 17.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
18. Any contractor or subcontractor who engages in for-profit activity and has ten or more employees, certifies it is not currently engaged in and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
19. Each Party warrants and certifies that no contractor or vendor under contract with the Party to provide goods or services toward the accomplishment of the objectives of this Agreement currently has, and for the duration of the contract will not, use:
 - 19.1 The forced labor of ethnic Uyghurs in the People's Republic of China.
 - 19.2 Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
 - 19.3 Any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If any Party becomes aware during the term of the Agreement that any contractor or vendor is not in compliance with this paragraph, the Party shall notify the other Party within five business days after becoming aware of the noncompliance. Failure of the Party to provide a written certification that the contractor or vendor has remedied the noncompliance within one hundred eighty (180) days after notifying the public entity of its noncompliance, this Agreement shall terminate unless the Term of this Agreement shall end prior to said one hundred eighty (180) day period.

20. It shall be a material breach of this Agreement for a Party to fail to observe or perform any of the material covenants, conditions, or provisions of this Agreement, where such failure shall continue for a period of thirty (30) days after the non-defaulting Party provides the defaulting Party with written notice of such failure; provided, however, that such failure shall not be a Default if the defaulting Party has commenced curing the Default within such thirty (30) day period and thereafter is diligently pursuing such cure to completion. The total aggregate cure period shall not exceed ninety (90) days unless the Parties otherwise agree in writing. In the event of Default, the non-defaulting Party, at its option, may terminate this Agreement without waiving any available remedies at law or in equity.

21. All notices required under this Agreement to be given in writing shall be sent to:

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

City of Mesa
Attn: City Engineer
P.O. Box 1466
Mesa, Arizona 85211
Engineering-Admin@MesaAZ.gov

All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered by e-mail, in person (by hand or courier) or may be sent by regular or certified mail or U.S. Postal Service Express Mail, with postage prepaid, or by commercial delivery service performed with receipt. Any notice sent by 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 the United States Express Mail or overnight delivery service that guarantees next-day delivery shall be deemed given 24 hours after delivery of the notice to the Postal Service or courier for delivery. Notice given by e-mail shall be deemed delivered one business day after the e-mail was sent.

22. Any funding provided for in this Agreement, other than in the current fiscal year, is contingent upon being budgeted and appropriated by the governing bodies of the Parties in such fiscal year.

23. This Agreement shall be construed as a whole and under its fair meaning and without regard to any presumption or other rule requiring construction against the party drafting this Agreement.

24. 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 because of the continuation of any matter previously waived.

25. Except as otherwise provided in this Agreement, all covenants, agreements, representations, and warranties outlined in this Agreement, or any certificate or instrument executed or delivered according to this Agreement shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.
26. 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. Electric signatures are acceptable as original signatures.
27. The Parties will 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 according to this Agreement.
28. The venue for any claim arising out of or in any way related to this Agreement shall be Maricopa County Superior Court.
29. 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.

CITY OF MESA

Approved and Accepted by:

Scott Butler Date
City Manager

Attest by:

City Clerk Date

APPROVAL OF CITY ATTORNEY

The foregoing Agreement has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Attorney, who has determined that it is in proper form and within the powers and authority granted to the Mesa City Council under the laws of the State of Arizona.

City Attorney Date

IN WITNESS WHEREOF, the Parties have executed this Agreement.

MARICOPA COUNTY

Recommended by:

Signed by:

Jesse Gutierrez

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9/10/2025

Jesse Gutierrez, P.E.
Transportation Director

Date _____

Approved and Accepted by:

Chairman

Board of Supervisors

Date _____

Attest by:

Clerk of the Board

Date _____

APPROVAL OF DEPUTY COUNTY ATTORNEY

The foregoing Agreement has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Deputy County Attorney, who has determined that it is in proper form and within the powers and authority granted to the Board of Supervisors under the laws of the State of Arizona.

Signed by:

Max G. Carpinelli

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9/10/2025

Deputy County Attorney

Date _____