

INTERGOVERNMENTAL AGREEMENT BETWEEN MARICOPA COUNTY AND THE CITY OF MESA FOR THE WATERLINE RELOCATION AT UNIVERSITY DRIVE FROM POWER ROAD TO HIGLEY ROAD

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C-64-23-____-X-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**.

This Agreement shall become effective as of the date it is has been approved by both the Maricopa County Board of Supervisors and the Mesa City Council and signed in accordance with Arizona Revised Statutes (**A.R.S.**) §11-952, as amended.

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. Sections 9-240 and 9-499.01 authorize the City to lay out and improve new streets, avenues and alleys.

BACKGROUND

4. The County's Active Transportation Plan (ATP) has identified the need to upgrade ADA ramps, sidewalks, driveways, bus stops, and signal equipment on University Drive from Power Road to Higley Road to meet 2010 ADA standards. (**Project**).
5. To accommodate the ADA upgrades, part of the Project includes the relocation of existing waterline and wastewater facilities including hydrants, manholes and valves (Waterline Relocation), which are owned and maintained by the City's Water Resources Department as part of the Project.

6. The cost of the Waterline Relocations is currently estimated at \$22,000 and the City will contribute the amount of \$22,000 towards the construction costs of the relocations. The County shall be responsible for the installation of the Waterline Relocations using the County's approved construction contractor retained for the Project.
7. The County will design the Waterline Relocation to the City Standards.

PURPOSE OF THE AGREEMENT

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

TERMS OF THE AGREEMENT

9. **The County agrees to:**

- 9.1 Design and construct the Waterline Relocations to City Standards.
- 9.2 Provide construction documents (plans and specifications) for review by the City at the appropriate stages of submittals for design and construction.
- 9.3 Use County standards for the removal of the existing water line facilities.
- 9.4 Request and obtain permits from the City for work on the Project within incorporated limits, and on all City facilities.
- 9.5 Work with the City's Engineering Public Relations staff to provide proper notification to City water customers that will be impacted by the Waterline Relocations.
- 9.6 Upon completion of the Waterline Relocation, the County shall allow the City the opportunity to inspect and accept such Improvements if consistent with the City's Engineering Standards.
- 9.7 Upon completion of Project, the County shall invoice the City for the construction and the installation of the Waterline Relocations.

10. **The City Agrees to:**

- 10.1 Review submitted construction documents for the Project and provide comments to County within twenty (20) working days of receipt.

- 10.2 Assist the County, through the City's Engineering Public Relations staff, with notification letters to City water customers that will be impacted by the Waterline Relocations.
- 10.3 Issue the County permits to work within the incorporated limits of the City or on City facilities will be issued to the County or its contractor subject to submission of the appropriate application and payment of generally applicable fees.
- 10.4 Upon completion of the Project, final acceptance by the City, and receipt of an invoice from the County, the City shall reimburse the County for the construction and the installation of the Waterline Relocations.
- 10.5 Own, operate and maintain the Waterline Relocations after completion of the work and final acceptance by the City.

GENERAL TERMS AND CONDITIONS

11. Each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "Indemnitee") from and against all claims, losses, liability, costs, and expenses (including reasonable attorneys' fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims, which result in vicarious liability to Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of Indemnitor, its officers, agents, employees, or authorized volunteers.
12. 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.
13. 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,
14. This Agreement may be amended only upon written Agreement by all Parties.
15. This Agreement shall be subject to the provisions of A.R.S. § 38-511.
16. The Parties warrant that they are in compliance with A.R.S. § 41-4401 and further acknowledge that:
 - a. 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.

- b. 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.
- c. 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.
- d. Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.

17. Any contractor or subcontractor who engages in for-profit activity and has 10 or more employees, if the value of the contract is a minimum of \$1,000,000, certify 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.

18. 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.

19. 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 to cure 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.

20. 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

City of Mesa
Attn: City Engineer
P.O. Box 1466
Mesa, Arizona 85211

Either Party may by written notice to the other specify a different address for notice. 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 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 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.

21. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.
22. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement. 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 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.
25. This Agreement cannot be modified or changed except by a written instrument executed by all of the Parties hereto.
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. 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.

30. 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.
31. 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.
32. 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

Recommended by:

DocuSigned by:
 8/17/2022

 Jennifer Toth, P.E. Date
 Transportation Director

Approved and Accepted by:


 Chairman Date
 Board of Supervisors

Attest by:

 Clerk of the Board Date

APPROVAL OF DEPUTY COUNTY 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 Maricopa County by their respective governing body under the laws of the State of Arizona.

DocuSigned by:
 8/17/2022

 Deputy County Attorney Date

