

INTERGOVERNMENTAL AGREEMENT

BETWEEN MARICOPA COUNTY AND

THE CITY OF MESA

FOR THE CONNECTED VEHICLE INTELLIGENT TRANSIT & FREIGHT SIGNAL PRIORITY

(TE073)

MAG #: MMA22-060C

Fed Aid #: MMA-0(289) D

CFDA #: 20.205

TRACS #: T0333 01D/01C

(C-64-22- _____ -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 (**City**). County and City are collectively referred to as the **Parties** or individually as a **Party**.

STATUTORY AUTHORIZATION

1. A.R.S. §§11-251 and 28-6701, *et seq.*, authorize County to layout, maintain, control and manage public roads within its respective County, to acquire and condemn property necessary for such purposes, and to enter into this Agreement.
2. A.R.S. § 11-951, *et seq.*, provides that public agencies may enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.

BACKGROUND

3. In association with the Maricopa Association of Governments (**MAG**) System Management and Operations (**SM&O**) Plan, County will (i) install and configure roadside unit (RSU) devices at traffic signals along MC-85/Buckeye Road between 107th Ave (MC-85 corridor) and 59th Ave Rural Road between Loop 202 Red Mountain Freeway and US 60, and Power and Sossaman Road between Loop 202 Santan and ASU Polytechnic Campus/Innovation Way; (ii) install and configure on-board unit (OBU) devices on Phoenix Public Transit buses and Arizona State University intercampus shuttle buses as well as select freight vehicles from Swift Transportation and/or other freight partners within the MC-85 corridor; (iii) upgrade traffic signal controllers at ten intersections along these routes to support connected vehicle (CV) applications; and (iv) develop, integrate and configure the Multimodal Intelligent Traffic Signal System (**MMITSS**) application at equipped traffic signals (the "Project").

4. CV technology is a new and emerging technology that has and continues to be researched and tested at the SMARTDrive ProgramSM in Anthem, AZ in collaboration with MCDOT, ADOT and University of Arizona. The testbed was established in 2011 but the work initially began, outside of Anthem, in 2007.
5. The Project is funded from local and federal funds through the MAG Transportation Improvement Program (**TIP**). The total Project cost in MAG TIP is \$848,700 with a federal aid portion of \$800,324 (CMAQ) and a local match of \$48,376 paid by County.
6. This Agreement is contingent upon City's compliance with the Single Audit Act of 1984 and the availability of federal funds through the MAG TIP:
 - 6.1 Federal Contract Number: MMA-0(289)D
 - 6.2 Catalog of Federal Domestic Assistance (**CFDA**) Number: CFDA# 20.205
 - 6.3 Fiscal Years: FY 2022
 - 6.4 Total Project Cost in MAG TIP: \$848,700
 - 6.5 Federal Obligation Award: \$800,324
 - 6.6 Funding Sources:
 - i. Congestion Mitigation and Air Quality Funds (**CMAQ**) – \$800,324 Federal Highway Administration (**FHWA**)
 - ii. Highway User Revenue Funds (**HURF**) and local revenues – \$48,376 Local Match.
 - 6.7 Project Contact Information:
 - i. Name: April Wire, Arterial Operations Program Manager
 - ii. Agency: Maricopa County Department of Transportation
 - iii. Phone: 602-506-7174
 - iv. Email: April.Wire@maricopa.gov

PURPOSE OF THE AGREEMENT

7. The purposes of this Agreement are to identify the roles and responsibilities or the Parties with respect to the Project and define the cost sharing of the local match for the Project.

TERMS OF THE AGREEMENT

8. **County shall:**
 - 8.1 Be the lead agency for all construction and construction management and shall provide certification of right-of-way with the assistance of City.
 - 8.2 Request from City any necessary right-of-way, utility and environmental clearance background information.
 - 8.3 Provide design and installation documents to City for review in a timely

manner.

- 8.4 Apply for no-cost Temporary Traffic Control permits for Project work within City boundaries.
- 8.5 Receive and administer the Project federal-aid funding for the duration of the Project.
- 8.6 Contribute the local match for the costs associated in County's jurisdiction, currently estimated at \$48,376.
- 8.7 Provide the final documents for the Project to City's representative when completed.
- 8.8 Provide support for the MMITSS software platform and the data exchanges.

9. City shall:

- 9.1 Provide County any necessary right-of-way, utility and environmental clearance background information.
- 9.2 Provide timely review of all documents associated with this Project provided by County. City shall provide comments to County within 30 calendar days after receiving documents for review from County.
- 9.3 Issue County no-cost Temporary Traffic Control permits for Project work within City boundaries.
- 9.4 Own, operate and maintain the equipment installed within City's jurisdiction as part of this Project upon completion of the Project.

GENERAL TERMS AND CONDITIONS

- 10. To the extent permitted by law, each Party will defend, indemnify 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. 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.
- 11. This Agreement shall become effective as of the date it is approved by the latter of the Maricopa County Board of Supervisors and the Mesa City Council and remain in full force and effect until all stipulations of this Agreement have been satisfied. This Agreement shall be subject to cancelation pursuant to A.R.S. Section 38-511.
- 12. The Parties warrant that they are in compliance with A.R.S. Section 41-4401 and further acknowledge that:
 - 12.1 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 the E-Verify program under 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 years, whichever is longer.

- 12.2 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.
 - 12.3 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 to require that the contractor make all papers and employment records of said employee available during normal working hours in order to facilitate such an inspection.
 - 12.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
- 13. No Party or 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.
 - 14. 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 continues 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 the circumstances to cure the default. In the event a Defaulting Party fails to perform any of its material obligations under this Agreement and is in Default, 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.
 - 15. All notices required under this agreement to be given in writing shall be sent to:
Maricopa County Department of Transportation
Transportation Director
2901 West Durango Street
Phoenix, AZ 85009

City of Mesa
City Traffic Engineer
P.O. Box 1466
Mesa, AZ 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, and shall be deemed sufficiently given if served in a manner specified in this paragraph. 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 courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the notice to the Postal Service or courier.

16. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.
17. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.
18. 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.
19. Any funding provided for in this Agreement, other than in the current fiscal year, is contingent upon being budgeted and appropriated by the Parties 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.
20. Neither Party shall assign its interest in this Agreement without the prior written consent of the other Party.
21. 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 concerning the subject matter hereof, 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.

22. 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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. Electronic signatures are acceptable as original signatures.
29. 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.
30. This Agreement shall be governed by the laws of the State of Arizona. The venue for any claim arising out of or in any way related to this Agreement shall be Maricopa County, Arizona.

End of Agreement - Signature Page Follows

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

MARICOPA COUNTY

Recommended by:

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 the County by the Board of Supervisors under the laws of the State of Arizona.

Deputy County Attorney Date

Recommended by:

Attest by:

APPROVAL OF CITY ATTORNEY

City Attorney _____ Date _____