

**INTERGOVERNMENTAL AGREEMENT BETWEEN MARICOPA COUNTY AND
CITY OF MESA FOR RIGHT OF WAY ASSISTANCE FOR SIGNAL BUTTE ROAD
FROM WILLIAMS FIELD ROAD TO PECOS ROAD**

(C-64-20- ____ - 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, an Arizona 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. §§ 11-251 and 28-6701 *et seq.* authorize the County to lay out, maintain, control and manage public roads within the County.
2. A.R.S. § 9-240 authorizes the City to lay out and improve new streets, avenues and alleys.
3. A.R.S. § 11-951 *et seq.* authorize public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.

BACKGROUND

4. Signal Butte Road is located in southeastern Maricopa County and under the jurisdiction of the City.
5. The City is currently developing design plans to improve Signal Butte Road from Williams Field Road to Pecos Road identified under City's Capital Improvement Plan (Project No. CP0729). The City plans construction in Fiscal Years 2021 and 2022.
6. When completed, Signal Butte Road will be widened to two through lanes in each direction and will align with the Arizona Department of Transportation's future improvements for State Route 24/Signal Butte Road Traffic Signal interchange (**Project**).
7. The City may require assistance from the County's Real Estate Department (**MCRED**) in acquiring right-of-way and/or temporary construction easements for the completion of this Project.
8. The City will be solely responsible for the financial contribution related to the design, right-of-way acquisitions and construction for this Project.

9. The Project is federally funded with Regional Area Road Funds (RARF) and Surface Transportation Block Grant Program (STBG) funds designated in the Maricopa Association of Governments' Transportation Improvement Program.
10. The City and the County shall be required to follow all applicable ADOT and FHWA laws, regulations, and requirements for obtaining Right-of-Way Project activities.

PURPOSE OF THE AGREEMENT

11. The purpose of this Agreement is to identify and define the responsibilities of the County and the City for right-of-way acquisitions related to this Project.

TERMS OF THE AGREEMENT

12. Responsibilities of County:

- 12.1 The County shall not review Project plans for compliance with the City's design standards and shall not be liable for design deficiencies.
- 12.2 The County shall perform the duties of assisting the City in obtaining the required right of way acquisitions for this Project as described in Paragraph B of Exhibit A, which is attached to this Agreement and incorporated into this Agreement by reference.
- 12.3 The County shall invoice the City on a monthly basis for MCRED Personnel's dedicated staff time as it relates to the Project. This will include supporting documentation from the Right-of-Way agent assigned to the Project.

13. Responsibilities of the City:

- 13.1. Upon execution of this Agreement, the City shall act as the lead agency and shall assume responsibility and liability for the design, right-of-way acquisitions, utilities and utility relocation, construction and construction management, inspection, operation, maintenance and other aspects of the Project.
- 13.2. The City shall perform the duties of attempting to acquire the required right of way for this Project as described in Paragraph A of Exhibit A, which is attached to this Agreement and incorporated into this Agreement by reference.
- 13.3. The City shall be financially responsible for MCRED Personnel's dedicated staff time, as it relates to the Project.
- 13.4. The City shall pay invoices submitted by the County within thirty (30) days of receipt.

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 Party 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 negligent 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 negligence of the 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 become effective as of the date it is approved by the Maricopa County Board of Supervisors and remain in full force and effect until all stipulations previously indicated have been satisfied except that it may be amended upon written Agreement by all Parties. Any Party may terminate this Agreement upon furnishing the other Party with a written notice at least thirty (30) days prior to the effective termination date.
- 16) This Agreement shall be subject to the provisions of A.R.S. § 38-511.
- 17) 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 years, whichever is longer.
 - b) 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.
 - 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.

- 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) The following shall constitute a material breach of this Agreement and an event of default ("Default"): 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.
- 20) All notices required under this Agreement to be given in writing shall be sent to:

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

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

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.

- 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.

- 23) 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.
- 24) 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.
- 25) 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.
- 26) 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.
- 27) 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.
- 28) 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.
- 29) 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.
- 30) 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.
- 31) 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.

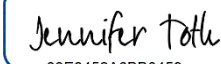
- 32) Sections and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 33) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.
- 34) 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.
- 35) 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.
- 36) 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:
 6/18/2020
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Jennifer Toth, P.E.. Date
Transportation Director

Approved and Accepted by:

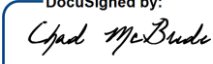
Chairman Date
Board of Supervisors

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 under the laws of the State of Arizona.

DocuSigned by:
 6/19/2020
9B0782D9F1CF48E...

Deputy County Attorney Date

IN WITNESS WHEREOF, the Parties have executed this Agreement.

CITY OF MESA

Recommended by:

Christopher J. Brady
City Manager

Attest by:

City Clerk Date

APPROVAL OF 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 City I under the laws of the State of Arizona.

City Attorney _____ Date _____

EXHIBIT A

RIGHT-OF-WAY (ROW) ASSISTANCE

In an effort to streamline the process for appraising and acquiring land rights for the Project in unincorporated County and reduce duplicative effort and cost to City and County taxpayers,

A. The City shall:

- I. Extend invitations, via e-mail, to Project kick-off and status meetings to the Maricopa County Real Estate Department (**MCRED**) Real Property Manager, and/or designee, throughout project scoping and design in an effort to better understand and coordinate the following:
 - a. Project need, objectives, and goals.
 - b. Project funding sources, scope, schedule, and budget.
 - c. Maximum scope, and proposed timing, of Right of Way (**ROW**) assistance that may be required from the County which includes a spreadsheet of the land rights that are anticipated to be acquired from each larger parcel to build the proposed Project (new ROW; permanent easements, including, but not limited to, utility, slope, and drainage; and temporary easements). The spreadsheet shall, at a minimum, include Assessor Parcel Numbers (**APNs**), full names of ownership entities, larger parcel square footage, zoning, information on whether the property is vacant or improved, and the proposed improvements within the acquisition area and impacts of the ROW acquisition on the remainder.
- II. Periodically provide design plans submittals at major milestones as well as identify and refine the spreadsheet referenced above for all Project acquisition parcels and proposed relocations (if any) that are located in unincorporated County. At a minimum, design submittals will be required at 30%, 60%, 95% and 100%, or per the City's in-house or contracted design schedule milestones.
- III. Facilitate a focused ROW phase meeting between appropriate representatives from the City's Project team and the MCRED Real Property Manager, and/or designee, prior to initiating the appraisal process. The goal of this meeting is to identify best practices for the coordination between the City and the County's acquisition teams to include discussing:
 - a. The Project acquisition schedule.
 - b. Prioritization of the appraisal assignment and acquisitions based on information obtained in the title reports, the complexity of the appraisal, acquisition, and/or the need for relocation. Parcels within unincorporated County shall be considered for the first priority appraisals and acquisitions to allow additional time should the file need to be transferred to the County for offer and/or eminent domain filing.
 - c. Collaborate on the drafting of the appraisal scope of work, discuss if contracting with multiple appraisers should be considered, and discuss whether review appraisers will also be required.
 - d. Discuss appropriate appraisal products and required elements of the appraisal which include adding the County as an intended user, offering the owner and acquisition/relocation agents (City and County) a reasonable opportunity to

attend the appraisal inspection, a determination of the larger parcel for the purposes of the appraisal, a well-supported highest and best use analysis, conducting before and after analyses for partial acquisitions, and accounting for the acquisition and/or movement of all improvements within the acquisition area and providing applicable cost-to-cure estimates based on bids. See 49 Code of Federal Regulations (**CFR**) Part 24.103 and 24.104 for additional guidance.

IV. Be responsible for:

- a. Ordering and paying for appraisal services.
- b. Making every effort to contact the property owner impacted by the Project to obtain current/correct mailing addresses and names of the points of contact or representatives for the offers.
- c. Preparing and presenting a purchase offer to the identified property owner(s) for the acquisition of the required land rights. The purchase offer shall, at a minimum, include the items required by Arizona State Law and 49 CFR 24.102 as applicable and every effort shall be made to present the offer in person to those property owners that reside or maintain a place of business within 50 miles of the Project.
- d. Negotiating in good faith with the property owner to reach an agreement for the purchase in accordance with 49 CFR Part 24.102, Arizona State Law, and City Code.
- e. Providing relocation assistance to occupants that need to be relocated out of the acquired ROW and/or for movement of personal property out of the acquired ROW in accordance with 49 CFR 24.201 through 24.503.
- f. Compensating the property owner for the land rights acquired, any severance damages, cost-to-cure, all cost incidentals to the transfer of title to the agency (i.e. escrow fees and related costs), and paying approved reasonable and necessary relocation benefits based on an approved determination.
- g. Maintaining typed communication logs of the ongoing negotiations, relocation activities, and concerns raised by the owners, and any responses/resolutions offered by the City.

V. Provide all required documentation for County assistance to proceed as well as agree and acknowledge that:

- a. If, after a good faith effort and reasonable time for a property owner to consider the offer, the City believes it will be unsuccessful in reaching an agreement to acquire the required land rights from property located within unincorporated County, all actions to resolve concerns have been exhausted, and City's management approves; the City shall contact the MCRED Real Property Manager, or designee, without delay, to set up a meeting/teleconference with MCRED to discuss the acquisition, proposed Project schedule, and, if appropriate, transfer of the file to MCRED for preparation and presentation of an offer. At a minimum, the following items shall be included in the file that is transferred to MCRED before MCRED will be able to mobilize staff to assist the City:
 1. A transmittal e-mail or letter requesting that the County initiate proceedings to acquire the parcel on the City's behalf.
 2. Recordable legal descriptions, maps, and exhibits.
 3. Title Report.

4. Appraisal and appraisal review (if applicable) with City approval for use in negotiation.
 5. Offer letter with all attachments.
 6. Typed communication logs.
 7. Relocation determinations (if applicable).
 8. All Correspondence.
- b. Once the requested file components have been transmitted, and County receipt is confirmed, City staff shall cease and desist all contact with the property owner and/or their representative, and all responsibility for the acquisition of the land rights located within unincorporated County jurisdiction necessary for the Project shall pass to the County. Any and all questions and concerns regarding the transmitted acquisition and/or relocation files shall be sent to the assigned MCRED ROW Agent.
 - c. The City will provide any information requested by the County on the proposed construction or related Project issues in order to assist in the County's acquisition of the acquisitions and/or relocations.
 - d. Acknowledge that, due to statutory timeframes required to complete the County's Open and Declare process, and for owner review of offer(s), as well as potential workload/staffing constraints, the County's time needed to close escrow on, or obtain possession of, the required land rights may require ten (10) months or more. The City further acknowledges that work on County projects has priority for County staff.
- VI. Reimburse the County for MCRED staff time and/or pay the County's vendor directly, (at the County's discretion) for all expenses incurred by the County for ROW Assistance, including, but not limited to:
- a. Title Reports (i.e. Commitments for Title Insurance, Litigation Guarantees, updates).
 - b. Appraisals & Appraisal Reviews.
 - c. Compensation paid for the acquisition of any and all land rights to include any non-stipulated amount (i.e. a court ordered amount); however, stipulated costs of acquisition in excess of 30% of the County's most current appraised fair market value shall require authorization by the City Council.
 - d. Escrow and closing costs.
 - e. All Maricopa County Real Estate Division (MCRED) and Attorney's Office (MCAO) fees and costs related to condemnation proceedings.

Responsibilities of the County:

B. The County shall:

- I. Collaborate and communicate with the City's Project team on a regular basis to ensure the MCRED staff understands the Project's proposed scope, schedule, and budget to properly plan for potential future work. A MCRED representative will attend Project meetings as necessary and attend appraisal inspections and offer presentation for the parcels located in unincorporated County if possible.

- II. Provide ROW phase best practice guidance, training, and sample forms upon request.
- III. Attend a focused ROW phase meeting with the City's Project acquisition and design team prior to initiating the appraisal process.
- IV. If the City has followed the appraisal, acquisition, and relocation steps/guidance set forth above, has negotiated in good faith to address and/or resolve property owners' concerns, and is unsuccessful at acquiring the required land rights from properties within unincorporated County, the County (MCRED staff or outside consultant depending on availability of resources) will assist with the acquisition of the land rights required for the Project upon the City's request (**ROW Assistance**). When a property to be acquired extends into both municipal and county jurisdiction, the County and the City shall confer and attempt to develop a plan whereby all the needed property can be acquired in a single action, rather than have two litigations proceed at the same time against an owner. Upon receipt of the items set forth in Paragraph A (V)(a) of this Exhibit A, the County will:
 - a. Assume all responsibility for the management of the acquisition and proceed in accordance with the statutes, policies, and procedures that govern the County's ability to acquire the land rights.
 - b. Initiate the Open and Declare process.
 - c. Request an updated Title Commitment with the County as the proposed insured.
 - d. Review the submitted products for statutory and policy compliance.
 - e. Determine, in the County's sole discretion, if the submitted appraisal and/or appraisal review of the areas to be acquired can be used as the basis for the County's offer and/or an eminent domain filing. If a new appraisal and/or appraisal review is required, the County will order the appraisal.
 - f. Present an offer to the property owner based on the City's appraisal or obtain new appraisals and present a revised offer.
 - g. Negotiate in good faith to try and address/resolve the property owner's concerns and obtain agreement to the purchase.
 - h. If the County is unsuccessful in acquiring the required land rights by agreement from an owner, the MCRED Director will review the file for next steps and, if approved to proceed to eminent domain action, MCRED staff will forward the file to the MCAO, or outside counsel if directed due to workload, for condemnation action.
 - i. The County will keep the City Project team apprised of the status of each acquisition via periodic status updates.
 - j. The County shall, within no less than ten (10) days prior to concluding any administrative settlement to purchase property rights required for the Project, seek and duly consider the City Engineer's written comments with regards to such proposed settlement; provided, however, that the County shall retain final decision-making authority with regard to same.
- V. Provide the ROW Assistance outlined above within a realistic timeframe as determined by the accessibility of available agents and timely delivery by the City of the items set forth in Paragraph A (V)(a) of this Exhibit A.
- VI. Determine whether the method of compensation by the City for the costs that are set forth in Paragraph A (VI.) of this Exhibit A shall be direct payment by the City to the County or City's vendor or shall be a reimbursement to the County.
- VII. Invoice the City on a monthly basis for any ROW Assistance expenses, including MCRED

staff time, which are not subject to direct payment. The County shall provide an invoice that includes an itemization of expenses being requested for payment.