

**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN MARICOPA COUNTY AND THE CITY OF PEORIA**  
**FOR IMPROVEMENTS TO: PINNACLE PEAK ROAD**  
**FROM 99TH AVENUE TO 91ST AVENUE**

**(TT0554)**

**(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 Peoria 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. Pinnacle Peak Road from 99th Avenue to 91st Avenue is a two-lane arterial road owned and maintained by the County. Unincorporated Maricopa County borders Pinnacle Peak Road to the north and City of Peoria borders Pinnacle Peak Road to the south.
5. The City plans to improve Pinnacle Peak Road from 99th Avenue to 91st Avenue to a five-lane arterial road with a raised median and upgrade the traffic signal at the intersection of Pinnacle Peak Road and 91st Avenue (**Project**).

6. The Project is expected to be completed in two phases by the City and developers for The Meadows. Phase One will include improvements on Pinnacle Peak Road from 95th Avenue to 91st Avenue, including the signal improvements at 91st Avenue. Phase Two will include improvements on Pinnacle Peak Road from 99th Avenue to 95th Avenue. The County agrees to participate financially in the Project improvements for both phases of the Project, funding the improvements for the north half street section.
7. Phase One of the Project is currently under design and is programmed to begin construction in fiscal year 2018. Phase Two of the Project is dependent on development and does not have anticipated dates for design or construction.
8. Based on the Project cost estimate, the County has agreed to contribute \$2,997,000 toward improvements as its share of the financial responsibility. The County's total cost share contribution includes road improvements, right-of-way acquisition, and utility relocation for the north half street section. The County's total cost share contribution is expected to be paid in two (2) payments in fiscal year 2018.
9. County financial participation shall be limited to aspects of the Project that are essential for the establishment of a safe roadway. The County will not financially participate in Project enhancements such as landscaping, irrigation, street lighting, visual mitigation, decorative pavers, street furniture or any other items unless there is a benefit to the County that can be demonstrated by a benefit/cost analysis.

#### **PURPOSE OF THE AGREEMENT**

10. The purpose of this Intergovernmental Agreement is to identify and define the responsibilities of the Parties for various elements of the Project which include, but are not limited to, cost sharing, design, permitting, environmental clearances, right-of-way acquisitions, utilities, construction and construction management, and annexation of the roadway.

#### **TERMS OF THE AGREEMENT**

**11. Responsibilities of the County:**

- 11.1 The County shall provide no-cost permits for construction and traffic control, as applicable, to the City for any Project-related work that lies within unincorporated County boundaries, including permits required under Paragraph 12.7. The County shall not be responsible for plan review and approval, traffic control, nor inspection and construction approval.

- 11.2 The County shall provide the City with as-builts, drainage reports, maintenance records, utility permit records, utility prior rights information, and sign inventory for the existing improvements of the Project area, as applicable and available.
- 11.3 The County shall provide all necessary documentation requested by the City to prove that all existing right-of-way to be annexed by the City has been dedicated and accepted by the County.
- 11.4 The County shall cost share in the Project, not to include any City-requested enhancements as described in Paragraph 9 of this Agreement. The County's total cost share contribution shall not exceed \$2,997,000.
- 11.5 Upon the award of contract for the construction of Phase One of the Project and receipt of an invoice from the City, the County shall remit payment to the City within thirty (30) days for fifty percent (50%) of the County's total cost share contribution, not to exceed \$1,498,500.
- 11.6 Upon the completion of annexation of the entire Project area and receipt of an invoice from the City, the County shall remit payment to the City within thirty (30) days for the remaining fifty percent (50%) of the County's total cost share contribution. The total invoice is not to exceed \$1,498,500.
- 11.7 Should the annexation of the Project area be terminated pursuant to Paragraphs 12.16 and 12.17, the County shall remit payment to the City for the remaining fifty percent (50%) of the County's total cost share contribution within thirty (30) days of receipt of an invoice and written notification of the termination.

**12. Responsibilities of the City:**

- 12.1 The City shall act as the lead agency on all elements of work for the Project, including but not limited to design, right-of-way acquisition, utility relocation, environmental clearance, construction, and construction management.
- 12.2 The City shall provide the County with a project schedule and at least quarterly project status reports for both Phase One and Phase Two of the Project.
- 12.3 The City shall apply for no-cost permits, as applicable, for any Project-related work that lies within unincorporated County boundaries.
- 12.4 The City shall ensure contractor liability insurance and will have the contractor list Maricopa County as Additional Insured for Phase One of the Project.

- 12.5 The City shall construct the Project to City standards in compliance with the approved plans and specification. The City shall be responsible for review and approval of all plans for Phase One and Phase Two of the Project.
- 12.6 The City shall inspect and approve construction for Phase One and Phase Two of the Project.
- 12.7 The City shall be responsible for traffic control during construction of Phase One and Phase Two of the Project, and shall notify the County in advance of approving any lane closures and/or roadway restrictions. If roadway improvements, including permanent traffic elements, or traffic control extend to other County roadways beyond the Project, the City shall apply to the County for separate construction and traffic control permits.
- 12.8 The City shall assume responsibility and liability for the design, permitting, construction, inspection, operation, maintenance, and repair for the Project roadways, traffic control devices, and street lights while the area remains under County jurisdiction, until annexation has been completed.
- 12.9 The City shall be responsible for contacting property owners, submitting an offer to property owners for the acquisition of the right-of-way, negotiating with property owners for the acquisition of right-of-way, and paying property owners for the right-of-way.
- 12.10 Upon the award of contract for the construction of Phase One of the Project, the City shall invoice the County for fifty percent (50%) of the County's total cost share contribution, not to exceed \$1,498,500.
- 12.11 Upon the completion of annexation of the entire Project area, the City shall invoice the County for the remaining fifty percent (50%) of the County's total cost share contribution, not to exceed \$1,498,500.
- 12.12 Should the actual costs of utility relocation be paid, in whole or in part, by any utility company, the City shall reimburse the County for their share of utility relocation costs.
- 12.13 Should the actual costs of construction of the Project be less than estimated, the City shall reimburse the County for their share of construction costs.
- 12.14 The City shall assume operation, maintenance, and liability responsibilities for the Project area located within Phase One of the Project at the start of construction of Phase One until such time as the City is able to complete the annexation process.

12.15 The City shall annex Pinnacle Peak Road from 99th Avenue to 91st Avenue, including the intersection at 91st Avenue, within the limits of the Project within 180 days of completion of Phase One of the Project.

12.16 The City shall promptly notify the County, in writing, of completion of the pending annexation process, or of any act or event that makes it not legally possible to proceed with the annexation process...

12.17 Should annexation be terminated pursuant to Paragraph 12.16, the City shall be responsible for the operation and maintenance of the entire Project area and accept all liability.

### **GENERAL TERMS AND CONDITIONS**

13. 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 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 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.
14. 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.
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 West Durango Street  
Phoenix, Arizona 85009

City:

City of Peoria  
Attn: City Manager  
8401 West Monroe Street  
Peoria, Arizona 85345

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 Peoria 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. 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.
35. This Agreement shall be governed by the laws of the State of Arizona.
36. Unless otherwise lawfully terminated by the Parties, this Agreement expires upon completion and acceptance of the Project and fulfillment of all terms of the Agreement.

***End of Agreement - Signature Page Follows***

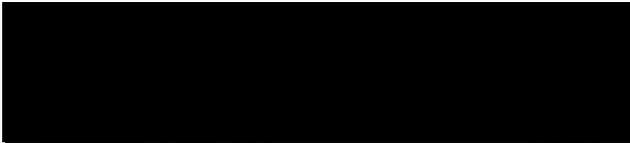
IN WITNESS WHEREOF, the Parties have executed this Agreement.

**MARICOPA COUNTY**

**CITY OF PEORIA**

**Recommended by:**

**Recommended by:**



Jennifer Toth, P.E. \_\_\_\_\_ Date  
Transportation Director

Carl Swenson \_\_\_\_\_ Date  
City Manager

**Approved and Accepted by:**

**Approved and Accepted by:**

\_\_\_\_\_  
Chairman \_\_\_\_\_ Date  
Board of Supervisors

\_\_\_\_\_  
Cathy Carlat \_\_\_\_\_ Date  
Mayor

**Attest by:**

**Attest by:**

\_\_\_\_\_  
Clerk of the Board \_\_\_\_\_ Date

\_\_\_\_\_  
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