

**INTERGOVERNMENTAL AGREEMENT AMONG MARICOPA COUNTY  
AND THE CITIES OF EL MIRAGE, PEORIA, AND GLENDALE FOR THE  
REIMBURSEMENT FOR THE CONSTRUCTION OF BUTLER DRIVE AND 129<sup>TH</sup> AVENUE  
(TT0498)  
(C-64-25-\_\_\_\_\_-X-00)**

This Intergovernmental Agreement (**Agreement**) is among the County of Maricopa, a political subdivision of the State of Arizona (**County**), the City of El Mirage (**El Mirage**), a municipal corporation, the City of Peoria (**Peoria**), a municipal corporation and the City of Glendale (**Glendale**), a municipal corporation. The County, El Mirage, Peoria, and Glendale 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.* authorizes the County to lay out, maintain, control, and manage public roads within the County.
2. A.R.S. Section 11-951 *et. seq.* authorizes public agencies to enter into Intergovernmental Agreements for the provision of services or joint or cooperative action.
3. A.R.S. Section 9-240 and Sections 9-276 *et. seq.* authorizes the Cities to lay out and establish, regulate, and improve streets within their respective jurisdictions and to enter into this Agreement.

**RECITALS**

4. On December 26, 2008, the Maricopa County Board of Supervisors approved an Intergovernmental Agreement (IGA) (C-91-09-081-M-00) (**2008 IGA**) between Maricopa County and the Cities of El Mirage, Glendale, and Peoria for improvements to Northern Parkway from State Route 303 (Bob Stump Memorial Parkway) to U.S. 60 (Grand Avenue). The 2008 IGA identified and defined responsibilities for cost sharing, design, construction, construction management, right-of-way acquisition, utility relocation, and maintenance of the full length of the Northern Parkway Program (**NPP**).
5. Dermody Properties (**Developer**) is developing a project called LogistiCenter at Copperwing. The proposed development is in El Mirage, Arizona on the northeast corner of Dysart Road and Northern Parkway Westbound (WB) Frontage Road.
6. As part of the improvements to the NPP, the Parties constructed the Butler Drive extension and 129<sup>th</sup> Avenue (**Project Roadways**) within the Developer's project area, as depicted in Exhibit A attached hereto and incorporated herein by reference.
7. The Developer requested a change in land use and site access and has also requested the abandonment and removal of the Project Roadways that were previously constructed by the Parties, as shown in Exhibit A (Road File No. A669-R).

8. The County, is the lead agency for the Program and acts on behalf of the Parties, to administer the federal aid reimbursement process under Section 134 of Title 23 of the U.S.C. and Section 5303 of Title 49 of the U.S.C.
9. The Parties have determined that the Project Roadways are no longer necessary for public use as roadways.
10. The NPP is included in the Maricopa Association of Governments (**MAG**) Regional Transportation Plan (**RTP**) and Arterial Life Cycle Program (**ALCP**).
11. Federal-Aid Highway Funds have been apportioned to the Arizona Department of Transportation (**ADOT**) for reimbursement of the Sub-Recipient's activities.
12. The Parties have been in communication with the Federal Highway Administration (**FHWA**), ADOT, and MAG and have been directed that, following abandonment, all federal expenditures and local matching funds must be reimbursed in full.
13. In exchange for the County's May 22, 2024, rescindment (C-64-20-123-M-01) (**Rescindment**) of the County's roadway declaration for the Project Roadways, the Developer deposited into escrow the sum of eight million dollars (\$8,000,000.00) to be used by the County only to reimburse all federal and local matching funds associated with the Project Roadways (**Reimbursement**). Any excess funds provided by the Developer that are not expended by the Project will be returned to the Developer.
14. It is anticipated the federal funds repaid to the FHWA will be reallocated by MAG to the NPP in accordance with the ALCP.
15. Upon County Rescindment, the Project Roadways passed to the exclusive ownership, possession, and control of El Mirage, and El Mirage became solely responsible for (i) the operation and maintenance of the Project Roadways, and (ii) any further dispositions or abandonment of the Project Roadways under terms and conditions as fixed by El Mirage in its sole discretion.

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

16. The purpose of this Agreement is confirm the Parties consent to the Rescindment and the Reimbursement and to identify and define the responsibilities of the Parties related to the Rescindment (C-64-20-123-M-01) and Reimbursement for the improvements associated with the previous construction of the Project Roadways.

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

17. The Recitals and Purpose of the Agreement that are set forth above, and Exhibit A are hereby incorporated herein by reference as if set forth in full in the body of this Agreement. On behalf of the NPP, the County shall accept the Reimbursement from the Developer, through a separate Reimbursement Agreement with the Developer. The County shall use the Reimbursement only to pay in full all the Federal Highway Administration and Local Match funds associated with the Project Roadways. If any amount of the \$8,000,000.00 remains after the Reimbursement, not later than December

31, 2024, the County shall return to the Developer any amount remaining with the County after all funds have been reimbursed to FHWA and NPP.

18. The County shall retain the Local Match funds for use on the future NPP projects identified in the ALCP.
19. The Parties shall execute all documents and preform any and all tasks necessary to ensure that the Reimbursement is use as provided for in this Agreement and any balance is returned to the Developer.
20. In the event any Party notifies any other Party that some action or documentation is necessary to effectuate this IGA, each Party shall perform the required action and/or execute the necessary documents in a reasonable time.

### **GENERAL TERMS AND CONDITIONS**

21. To the extent permitted by law, each Party will indemnify, defend, and save the other Parties or any other Party harmless, including any of each Parties' departments, agencies, officers, employees, elected officials, or agents, from and against all liability, 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, 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.
22. This Agreement shall become effective as of the date it is executed through appropriate action by all the governing bodies of the Parties and shall remain in full force and effect until all stipulations previously indicated have been satisfied.
23. This Agreement may be amended or terminated prior to expiration only upon written Agreement by all Parties.
24. This Agreement is subject to the provisions of A.R.S. § 38-511.
25. The Parties warrant that they are following A.R.S. § 41-4401 and further acknowledge that:
  - 25.1 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.
  - 25.2 Any breach of the warranty shall be deemed a material breach of this agreement of which the breaching party may be liable for penalties including termination of this Agreement.
  - 25.3 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.

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

26. 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 according to 50 U.S.C. § 4842.
27. 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:
  - 27.1 The forced labor of ethnic Uyghurs in the People's Republic of China.
  - 27.2 Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
  - 27.3 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.
  - 27.4 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 before said one hundred eighty (180) day period.
28. 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.
29. 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 El Mirage  
Attn: City Manager  
10000 North El Mirage Road  
El Mirage, Arizona 85335

City of Glendale  
Attn: City Manager  
5850 West Glendale Avenue  
Glendale, Arizona 85301

City of Peoria  
City Manager's Office  
8401 W. Monroe Street  
Peoria, Arizona 85345

City of Peoria  
Director of Development and Engineering  
9875 N. 85<sup>th</sup> Avenue  
Peoria, Arizona 85345

City of Peoria  
City Attorney's Office  
8401 W. 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 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.

30. 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.
31. 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.
32. 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.
33. 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.
34. 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.
35. 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.

36. The venue for any claim arising out of or in any way related to this Agreement shall be Maricopa County, Arizona.
37. This Agreement shall be governed by the laws of the State of Arizona.

***End of Agreement - Signature Pages Follow***



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

**CITY OF GLENDALE**

***Recommended by:***

\_\_\_\_\_  
City Manager Date

***Approved and Accepted by:***

\_\_\_\_\_  
Mayor Date

***Attest by:***

\_\_\_\_\_  
City Clerk Date

**APPROVAL OF CITY ATTORNEY**

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

\_\_\_\_\_  
City Attorney Date

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

**CITY OF PEORIA**

***Recommended by:***

\_\_\_\_\_  
Henry Darwin, City Manager                      Date

***Approved and Accepted by:***

\_\_\_\_\_  
Jason Beck, Mayor    Date

***Attest by:***

\_\_\_\_\_  
Agnes Goodwine, City Clerk    Date

**APPROVAL OF CITY ATTORNEY**

I hereby state that I have reviewed the proposed Intergovernmental Agreement on behalf of the City of Peoria, Arizona, 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.

\_\_\_\_\_  
Emily Jurmu, City Attorney    Date

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

**MARICOPA COUNTY**

***Recommended by:***

\_\_\_\_\_  
Jesse Gutierrez, 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 Parties by their respective governing bodies under the laws of the State of Arizona.

\_\_\_\_\_  
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Deputy County Attorney Date

# EXHIBIT "A"

