

INTERGOVERNMENTAL AGREEMENT
BETWEEN MARICOPA COUNTY AND THE CITY OF PEORIA
FOR OPERATION AND MAINTENANCE OF EL MIRAGE ROAD
FROM JOMAX ROAD TO STATE ROUTE 303

This Intergovernmental Agreement (**Agreement**) is between Maricopa County, a political subdivision of the State of Arizona (**County**) and the City of Peoria, an Arizona municipal corporation (**City**). The County and City are collectively referred to as the **Parties** or individually as a **Party**.

STATUTORY AUTHORIZATION

1. The County is authorized, pursuant to Arizona Revised Statutes (**A.R.S.**) § 11-251 and §§ 28-6701 *et. seq.*, to lay out, maintain, control and manage public roads within the County.
2. The City is authorized, pursuant to A.R.S. § 9-240 and §§ 9-276 *et. seq.*, to lay out and establish, regulate and improve streets within the City and to enter into this Agreement.
3. Peoria is empowered by Article VIII, Section 1 of the Peoria City Charter to enter into this Agreement, has resolved to enter into this Agreement, and has authorized the undersigned to execute this Agreement on behalf of Peoria.
4. Public agencies are authorized, pursuant to A.R.S. §§ 11-951 *et. seq.*, to enter into Intergovernmental Agreements for the provision of services or joint or cooperative action.

BACKGROUND

5. The City, in conjunction with the Arizona Department of Transportation (ADOT), the Maricopa Association of Governments (MAG), and the County, is evaluating improvements to El Mirage Road, between Jomax Road and State Route 303 to accommodate current and projected traffic needs (**Project**).
6. Growth and development north of State Route 303 has increased the need for this additional north/south arterial roadway.
7. The proposed Project improvements, illustrated in Exhibit A which is attached to this Agreement and incorporated by reference, include:
 - 7.1 An over one-mile extension of El Mirage Road, from Happy Valley Road to State Route 303;
 - 7.2 Capacity improvements from Happy Valley Road to Desert Sun Lane;
 - 7.3 An approximately one-thousand foot (1,000') extension from Jomax Road to Desert Sun Lane;

- 7.4 Constructing crossings where necessary, including the McMicken Wash and the Beardsley Canal; and
 - 7.5 Improving intersections with appropriate treatment, including a traffic signal at the intersection of El Mirage Road and Happy Valley Road.
8. This Agreement is necessary to allow the City to move forward with design, construction, and ownership prior to annexation of the land or roadways in this area. The City will be responsible for the construction, maintenance, ownership, and operation of El Mirage Road, from Jomax Road to State Route 303, and all rights of way, drainage facilities, traffic signals, lighting, structures and roadway improvements, until annexation by the City occurs.

PURPOSE OF THE AGREEMENT

9. The purpose of this Agreement is to identify and define the responsibilities of the County and the City for the design, construction, and construction management (i.e. permitting, inspections, etc.), rights of way acquisition, utility relocation, ownership, operation and maintenance until the annexation of the roadway by the City.

TERMS OF THE AGREEMENT

10. **Responsibilities of County:**

- 10.1 Shall have no financial contribution towards the Project design, construction, operations and maintenance, or for right of way acquisition.
- 10.2 Provide no-cost permits for design, construction, and traffic control, as necessary, to the City for any Project-related work that lies within County boundaries.
- 10.3 Upon execution of this Agreement, dedicate to the City all existing County rights of way or easements within the Project corridor to the City.
- 10.4 Convey all ownership, operations and maintenance of El Mirage Road, within the Project Area, to the City.
- 10.5 Provide the City with maintenance records, as-builts, plats, and/or existing legal descriptions/exhibits upon request.
- 10.6 Coordinate with the City on any future development that may improve or impact El Mirage Road and/or the Project.
- 10.7 Coordinate with the City on any proposed improvements to Happy Valley Road that may impact the Project.

11. **Responsibilities of the City:**

- 11.1. Act as lead agency for all aspects of the Project.

- 11.2. Be financially responsible for the Project design, construction, ownership, operations and maintenance.
- 11.3. Apply to the County for no-cost permits for design, construction, and traffic control, as necessary, for any Project-related work that lies within County boundaries.
- 11.4. Design and construct the Project to City standards and be responsible for review and approval of all plans and for construction inspection and approval.
- 11.5. Ensure that all the applicable requirements of all statutes, acts, ordinances, regulations, codes and standards of all legally constituted authorities are complied with.
- 11.6. Acquire the necessary right of way, easement and/or land use right for the Project. The City will accept conveyance of existing County rights of way or easements within the Project corridor upon execution of this Agreement.
- 11.7. Upon conveyance of all existing rights of way or easements within the Project corridor to the City, accept all ownership, operations and maintenance of El Mirage Road.
- 11.8. Notify the County of the notice to proceed for construction date within one (1) business day of issuance.
- 11.9. Upon issuance of the notice to proceed for construction for the Project, construct, operate, and maintain all components of the Project. This responsibility will include permitting of utilities or other future modifications within the City right of way such as new utilities, repair of existing utilities, and modification to the roadway by other agencies or entities due to future development or improvements. The City will assume liability and responsibility for the Project extents in accordance with applicable laws.
- 11.10. Own, operate and maintain the future traffic signal at the intersection of Happy Valley Road and El Mirage Road as part of the City of Peoria Traffic Signal System.
- 11.11. Submit to Maricopa County Real Estate Department (**MCRED**), for review and approval, the draft ordinance with a legal description and exhibit defining the exterior boundary of the area to be conveyed.
- 11.12. Annex the County right of way within the Project limits, at such time that the City, pursuant to A.R.S. § 9-471, determines that said annexation is possible.

GENERAL TERMS AND CONDITIONS

12. The County shall not be responsible for review of Project plans, drawings, or specifications for compliance with the City's design standards and shall not be liable for design deficiencies, traffic control, construction, or inspection approvals.

13. To the extent permitted by law, each Party will indemnify, defend, and hold the other Party harmless, including any of the Party's departments, agencies, officers, employees, elected officials, or agents, from and against all liability, loss, expense, damage or claim of any nature whatsoever that 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.
14. 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 for 10 years, or until all responsibilities of the Parties in this Agreement have been completed. Any and all obligations of maintenance hereunder shall remain perpetual and shall survive any termination hereof and the assignment or assumption of this Agreement or the Project by another competent jurisdiction or entity.
15. This Agreement may be amended only upon written agreement by all Parties.
16. This Agreement is subject to the provisions of A.R.S. § 38-511.
17. The Parties warrant that they are following A.R.S. § 41-4401 and further acknowledge that:
 - 17.1 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.
 - 17.2 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.
 - 17.3 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.
 - 17.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
18. Any contractor or subcontractor who engages in for-profit activity and has ten or more employees, certifies 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.

19. 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:
- 19.1 The forced labor of ethnic Uyghurs in the People's Republic of China.
 - 19.2 Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
 - 19.3 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.

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 prior to said one hundred eighty (180) day period.

20. 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 curing 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.
21. 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
TaiAnna.Yee@maricopa.gov

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

Development and Engineering
Director (or Designee)
9875 N. 85th Ave
Peoria, Az 85345
Enadmin@peoriaaz.gov

With a copy to:
City of Peoria
City Attorney's Office
8401 W. Monroe Street
Peoria, Arizona 85345
cityattorney@peoriaaz.gov

All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered by e-mail, 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. Notice given by e-mail shall be deemed delivered one business day after the e-mail was sent.

22. 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.
23. 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. If a court of competent jurisdiction finds that any provision is invalid, all remaining provisions shall remain in full effect.
24. 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. No waiver of any term of this Agreement shall be deemed to be a continuing waiver of such term.
25. 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.
26. 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.
27. The Parties will execute and 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.
28. The venue for any claim arising out of or in any way related to this Agreement shall be Phoenix, Arizona.
29. This Agreement shall be governed by the laws of the State of Arizona.

End of Agreement - Signature Page Follows

EXHIBIT A PROPOSED PROJECT IMPROVEMENTS

