

**INTERGOVERNMENTAL AGREEMENT BETWEEN MARICOPA
COUNTY, THE CITY OF SURPRISE, AND THE CITY OF GLENDALE
FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF THE
TRAFFIC SIGNAL AT PEORIA AVENUE AND REEMS ROAD
(TT0672)**

(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 Surprise (**Surprise**), a municipal corporation, and the City of Glendale (**Glendale**), a municipal corporation. The County, Surprise 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.* authorize 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 for joint or cooperative action.
3. A.R.S. Section 9-240 and Sections 9-276 *et. seq.* authorize Surprise and Glendale to lay out and establish, regulate and improve streets within their respective jurisdictions and to enter into this Agreement.

BACKGROUND

4. The intersection of Peoria Avenue and Reems Road is an existing unsignalized four-way intersection with stop control (see Exhibit A). The County's jurisdiction includes the west half of the south leg. Surprise's jurisdiction includes the west leg, the north leg, and the north half of the east leg. Glendale's jurisdiction includes the south half of the east leg and the east half of the south leg.
5. The intersection meets signal warrants. The proposed project is to install a new traffic signal at the Peoria Avenue and Reems Road intersection (**Project**).
6. The Project design for the signal has been completed and approved by Surprise and Glendale. The Project is anticipated to be constructed in Fiscal Year 2021.

7. The estimated total Project cost is currently \$270,805 (Exhibit B). The adjacent Developer previously paid the Design and Right-of-Way costs.
8. The County will not financially participate in Project enhancements inconsistent with the County's Roadway Design Manual, including but not limited to landscaping, irrigation, street lighting, visual mitigation, decorative pavers, street furniture and any other items inconsistent with the County's Roadway Design Manual, unless otherwise specifically identified in this Agreement.

PURPOSE OF THE AGREEMENT

9. The purpose of this Agreement is to identify and define the responsibilities of the County, Surprise, and Glendale for the Project, including but not limited to cost-sharing, permitting, utility relocation, construction, and construction management.

TERMS OF THE AGREEMENT

10. This Agreement does not alter the ownership, operation, liabilities, or maintenance responsibilities of the Parties for the Project roadways.
11. This agreement includes an estimated cost for the Project. The final cost shares shall be based on the actual cost of constructing the Project.

12. **Responsibilities of County:**

- 12.1 County shall be responsible for twenty-five percent (25%) of the Net Project Cost and shall not to exceed \$75,000.
- 12.2 County shall remit payment within thirty (30) days of the receipt of an invoice from Glendale.
- 12.3 County shall issue no-cost permits for any necessary Project related work performed within the County.
- 12.4 County shall participate in the Project's substantial completion, final inspection, and acceptance of the Project.

13. **Responsibilities of Glendale:**

- 13.1 Glendale, or their representative, shall construct the Project and apply to the County and Surprise for no-cost permits for any necessary Project related work performed outside of their jurisdictions.

- 13.2 Glendale's construction plans, as-built plans, and the completed project shall first be reviewed and approved by the City of Surprise and Maricopa County before the City of Surprise accepts responsibility for maintenance as set forth herein in paragraph 14.2. In the event Surprise finds, decides, or determines, in Surprise's sole discretion, that any aspect of the construction plans or the construction itself is unsafe or hazardous in any way, Glendale shall cure such hazard to Surprise's satisfaction before Surprise accepting maintenance responsibilities.
- 13.3 Glendale shall be responsible for twenty-five percent (25%) of the Net Project Cost. In the event the Net Project Cost exceeds \$300,000, Glendale shall be responsible for thirty-seven, and one-half percent (37.5%) of the Net Project Cost in excess of \$300,000.
- 13.4 Glendale shall participate in the Project's substantial completion, final inspection, and acceptance of the Project.
- 13.5 Upon the substantial completion of the Project, Glendale shall invoice the County for the County's Net Project Cost-share contribution for the intersection. Glendale shall not invoice the County before July 1, 2021.
- 13.6 Upon the substantial completion of the Project, Glendale shall invoice Surprise for Surprise's Net Project Cost-share contribution for the intersection. Glendale shall not invoice Surprise before July 1, 2022.

14. Responsibilities of Surprise:

- 14.1 Surprise shall lead the Project's substantial completion, final inspection and acceptance of the Project.
- 14.2 After reviewing and approving Glendale's pre-construction plans, as-built plans, and final construction of the project, Surprise shall assume full responsibility for the operation and maintenance costs of the Project, including electrical power and communication to the traffic signal and any associated luminaries.
- 14.3 Surprise shall be responsible for fifty percent (50%) of the Net Project Cost. Surprise shall be credited for work already completed towards the installation of the Project. This credit is estimated to be \$82,650. In the event the Net Project Cost exceeds \$300,000, Surprise shall be responsible for sixty-two and one-half percent (62.5%) of the Net Project Cost in excess of \$300,000.
- 14.4 Surprise shall remit payment within thirty (30) days of the receipt of an invoice from Glendale.

- 14.5 Surprise shall issue no-cost permits to Glendale for any necessary Project related work performed within Surprise.

GENERAL TERMS AND CONDITIONS

15. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify, defend and save and hold 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 others 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 Parties. 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.
16. This Agreement shall become effective as of the date it is approved by Glendale City Council, the Surprise City Council, and 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.
17. This Agreement shall be subject to the provisions of A.R.S. Section 38-511.
18. The Parties warrant that they are in compliance with A.R.S. Section 41-4401 and further acknowledge that:
- 18.1 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.
- 18.2 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.

- 18.3 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.
- 18.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
19. 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.
20. 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.
21. 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 of Surprise:

City of Surprise
Attn: City Manager
16000 North Civic Center Plaza
Surprise, Arizona 85374

City of Glendale:

City of Glendale
Attn: City Manager
6210 West Myrtle Avenue
Glendale, Arizona 85301

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.

22. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.
23. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.
24. 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.
25. 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 Surprise and Glendale City Councils 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.
26. 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.

27. 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.
28. 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.
29. 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.
30. 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.
31. 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.


32. 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.
33. 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.
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. Faxed, copied and scanned signatures are acceptable as original signatures.
35. 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.
36. 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.
37. 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:
 7/9/2020
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Jennifer Toth, P.E. Date
 Transportation Director

Approved and Accepted by:

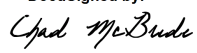
Clint L. Hickman, Chairman Date
 Board of Supervisors

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.

DocuSigned by:
 7/13/2020
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Deputy County Attorney Date