

**INTERGOVERNMENTAL AGREEMENT
BETWEEN PINAL COUNTY AND THE CITY OF APACHE JUNCTION
DEFINING RESPONSIBILITY FOR ROAD MAINTENANCE OF SUPERSTITION
MOUNTAIN DRIVE, SOUTH MOUNTAIN VIEW ROAD AND SOUTHERN AVENUE**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") dated the ____ day of _____, 2018, is made by and between PINAL COUNTY, a political subdivision of the State of Arizona ("Pinal") and CITY OF APACHE JUNCTION, an Arizona municipal corporation ("Apache Junction"), both collectively referred to as the "Parties" or individually as a "Party".

RECITALS

- A) The Pinal County Board of Supervisors and Apache Junction City Council both look to limit capital and infrastructure maintenance costs through intergovernmental operation.
- B) Both Parties have the desire and ability to assist each other.
- C) There is also a need for mutual cooperation between the Parties on street maintenance issues.
- D) Pinal County is empowered by 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, and to enter into this Agreement pursuant to A.R.S. § 11-951 *et seq.*
- E) Apache Junction is empowered by A.R.S. § 9-240 and § 9-276 to lay out, maintain, control, and manage public roads within the City, and to enter into this Agreement pursuant to A.R.S. § 11-951, *et seq.*
- F) Pinal County is authorized by A.R.S. § 28-6707(A) to enter into cooperative agreements for the construction, improvement and maintenance of roadways within an incorporated city or town.

AGREEMENT

1. For public safety and welfare of the public, the Parties hereto agree to maintain portions of paved and unpaved roadways known as Superstition Mountain Drive-US 60 to approximately 300' north as shown in Exhibit A, Mountain View Road-US 60 to 32nd Avenue as shown in Exhibit B, Southern Avenue-Delaware Drive to Ironwood Drive as shown in Exhibit C, Southern Avenue-Mariposa Road to Tomahawk Road and Tomahawk Road-US 60 to approximately 615' north as shown in Exhibit D hereinafter called the "Project," which is located within the jurisdictions of Pinal County and the City of Apache Junction.
2. The purpose of this Agreement is to define the responsibilities of the Parties for the regular and routine roadway maintenance of the Project.

TERMS OF THE AGREEMENT

3. The foregoing recitals are hereby incorporated into this Agreement by reference as if more fully stated herein.
4. Pinal County agrees to provide regular and routine roadway maintenance on the portions of the roadways depicted in Exhibits A, B, and D lying within the City of Apache Junction jurisdiction. This includes:
 - A. Superstition Mountain Drive-US 60 to approximately 300' north
 - B. Mountain View Road-US 60 to 32nd Avenue
 - C. Tomahawk Road-US 60 to approximately 615' north
5. The City of Apache Junction agrees to widen and provide regular and routine roadway maintenance on portions of the roadways known as Southern Avenue - Delaware Drive to Ironwood Drive - as shown in Exhibit C, and provide routine roadway maintenance to Southern Ave. from Mariposa Road to Tomahawk Road - as shown in Exhibit D, lying within Pinal County's jurisdiction.

GENERAL TERMS AND CONDITIONS

6. Each Party hereby indemnifies the other Party 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 in whole or in part with the performance or nonperformance of this Agreement, except such injury or damage as shall have been occasioned solely 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, their departments, agencies, officers, employees, elected officials or agents and in the event of an action, court costs, expenses for litigation and reasonable attorney fees.
7. This Agreement shall be effective upon execution by the last Party hereto and remain in full force and effect until completion of the Project or termination as provided within this Agreement.
8. Either Party may terminate this Agreement by providing the other Party thirty (30) calendar days written notice of termination. Upon termination, the Parties to this Agreement shall be responsible for the maintenance of roadways described in Exhibits A, B, and C.
9. Pursuant to A.R.S. § 11-952 (F), as amended, attached to this Agreement are copies of appropriate action by ordinance, resolution or otherwise authorizing the respective Parties to enter into this Agreement.
10. This Agreement may be cancelled for conflict of interest without further obligation or penalty, in accordance with A.R.S. §38-511.

11. This Agreement shall not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein.
12. This Agreement shall be strictly constructed against creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein.
13. This Agreement shall not be modified or extended except by written instrument adopted in accordance with the requirements for adopting a new agreement.
14. All notices or demands required under this Agreement from either Party to the other shall be in writing and shall be deemed to have been given when the notice is delivered in person or deposited in a U.S. mailbox in a postage prepaid envelope addressed as follows:

County Manager
Pinal County
P. O. Box 827
Florence, AZ 85132

With a copy to:
Public Works Director
Pinal County
P. O. Box 727
Florence, AZ 85132

Public Works Director
City of Apache Junction
575 E. Baseline Ave.
Apache Junction, AZ 85119

15. The Terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing Party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.
16. Apache Junction and Pinal County each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring either Party to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements

effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

17. This Agreement and any attachments represent the entire agreement between Apache Junction and Pinal and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto. Written and signed amendments shall automatically become part of the supporting documents, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.
18. Time is of the essence with respect to all provisions in this Agreement. Any unreasonable delay in performance by either Party shall constitute a material breach of this Agreement.
19. This Agreement has been arrived at by negotiation and shall not be construed against either Party or against the Party who prepared the last draft.
20. This Agreement shall be recorded with the Pinal County Recorder by Pinal.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

PINAL COUNTY

CITY OF APACHE JUNCTION

Recommended by:

Recommended by:

Louis Andersen Date
Director
Department of Public Works

Mike Wever Date
Director
Public Works Department

Approved and Accepted:

Approved and Accepted:

By: _____
Chairman Date
Board of Supervisors

By: _____
Jeff Serdy Date
Mayor
City of Apache Junction

Attest:

Attest:

By: _____
Clerk of the Board Date

By: _____
Kathy Connelly Date
City Clerk
City of Apache Junction

APPROVAL AS TO FORM

I hereby state that I have reviewed the proposed Intergovernmental Agreement, between Pinal County and the Town of Florence pursuant to A.R.S. § 11-952, and declare the Agreement to be in proper form and within the powers and authority granted to their respective governing bodies under the laws of the State of Arizona.

Mark J. Langlitz, Pinal County Deputy
Attorney

Richard J. Stern, Apache Junction City Attorney

Date

Date







