

**INTERGOVERNMENTAL AGREEMENT BETWEEN MARICOPA COUNTY, PINAL
COUNTY AND THE CITY OF APACHE JUNCTION FOR IMPROVEMENTS TO THE
INTERSECTION OF BASELINE ROAD
AND MERIDIAN ROAD**

(TT0591)

(C-64-20- _____ -M-00)

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

This Agreement shall become effective as of the date it is approved by all Parties.

STATUTORY AUTHORIZATION

1. A.R.S. Section §11-251 and Sections 28-6701 *et. seq.* authorize each County to lay out, maintain, control and manage public roads within its respective County to acquire and condemn property necessary for such purposes, and to enter this Agreement.
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. Maricopa County has identified Baseline Road and Meridian Road as Principal Arterial roadways. The intersection of Meridian Road and Baseline Road forms the boundary between Maricopa County and Pinal County.
5. Maricopa County has assessed the intersection of Baseline Road and Meridian Road and determined that the intersection meets traffic signal warrants based on the warrant conditions from the 2009 Manual on Uniform Traffic Control Devices (MUTCD).

6. The purpose of the improvements is to improve the Intersection of Baseline Road and Meridian Road by constructing a traffic signal, reconstruction of a drainage feature under Meridian Road just north of the intersection and rehabilitating the pavement approximately 1,460 feet north of the intersection on Meridian Road and 1,000 feet on the east and west legs of the intersection on Baseline Road (**Project**).
7. The Project design is expected to begin in fiscal year 2020 and the construction is expected to begin in fiscal year 2022.
8. The anticipated Project Costs, excluding City Project Enhancements, are as follows:

8.1	Design	\$170,000
8.2	Construction:	\$2,000,000
8.3	Construction Management:	<u>\$190,000</u>
	Total Project Costs:	\$2,360,000
9. The County's 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 the City Project Enhancements such as landscaping, irrigation, street lighting, visual mitigation, decorative pavers, underground utilities or street furniture which shall be the sole responsibility of Pinal County and/or the City.
10. A separate agreement will be drafted with the City to address Fire and Emergency Medical Services Preemption Equipment needs for the traffic signals.
11. The City shall provide Fire and Emergency Medical Services Preemption Equipment and be solely responsible for the costs associated with the installation of the Emergency Vehicle Preemption Equipment on the County's traffic signals.

PURPOSE OF THE AGREEMENT

12. The purpose of this Agreement is to identify and define the responsibilities of Maricopa County, Pinal County and the City for the Project, including cost sharing, design, traffic signals, traffic control, permits, construction, and construction management.

TERMS OF THE AGREEMENT

13. **Responsibilities of Maricopa County:**
 - 13.1 Maricopa County shall be the lead agency for all aspects of the Project, including design, construction, construction management, and traffic control.
 - 13.2 Maricopa County shall request that permit fees related to the Project be waived by Pinal County and the City.

- 13.3 Maricopa County shall provide Pinal County and the City with a set of design plans for review at each stage submittal.
- 13.4 Maricopa County shall be responsible for 50% of the estimated total Project Costs share contribution, currently estimated at \$1,180,000.
- 13.5 Upon substantial completion of the Project, Maricopa County shall invoice Pinal County for Pinal County's estimated total Project Costs share contribution for the Project.
- 13.6 Upon substantial completion of the Project, Maricopa County shall invoice the City for the City's estimated total Project Costs share for the Project.
- 13.7 Maricopa County shall operate and maintain the traffic signals and cabinet upon completion of the Project.
- 13.8 Maricopa County shall operate and maintain the roadway and intersection after the completion of the Project

14. Responsibilities of Pinal County:

- 14.1 Pinal County shall waive permit fees related to the Project for Maricopa County.
- 14.2 Pinal County shall review the stage submittals and provide comments to Maricopa County within fifteen (15) working days of receipt.
- 14.3 Pinal County shall be responsible for 25% of the estimated total Project Costs share contribution, currently estimated at \$590,000.
- 14.4 Pinal County shall remit payment to Maricopa County within thirty (30) days of receipt of an invoice from Maricopa County.
- 14.5 Upon completion of the Project, Pinal County shall maintain and operate the drainage basin on the northeast corner of Meridian Road and Baseline Road.

15. Responsibilities of the Apache Junction:

- 15.1 Apache Junction shall waive permit fees related to the Project for Maricopa County.
- 15.2 Apache Junction shall review plans and provide comments to the County within fifteen (15) working days of receipt.
- 15.3 Apache Junction shall be responsible for 25% of the estimated total Project Costs share contribution, currently estimated at \$590,000.
- 15.4 Apache Junction shall remit payment to Maricopa County within thirty (30) days of receipt of an invoice from Maricopa County.

GENERAL TERMS AND CONDITIONS

16. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will defend, indemnify 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 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 (including but not limited to vicarious 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 that is occasioned 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.
17. 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.
18. This Agreement shall be subject to the provisions of A.R.S. Section 38-511.
19. The Parties warrant that they are in compliance with A.R.S. Section 41-4401 and further acknowledge that:
 - 19.1 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 the E-Verify program under 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 years, whichever is longer.
 - 19.2 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.
 - 19.3 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 to require that the contractor make all papers and employment records of said employee available during normal working hours in order to facilitate such an inspection.
 - 19.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.

20. 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.
21. 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 continues 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 the circumstances to cure the default. In the event a Defaulting Party fails to perform any of its material obligations under this Agreement and is in Default, 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.
22. All notices required under this Agreement to be given in writing shall be sent to:

Maricopa County Department of Transportation
Intergovernmental Relations
2901 West Durango Street
Phoenix, AZ 85009

Pinal County Public Works Department
Attn: Director
31 North Pinal Street
Building F
Florence, Arizona 85132

City of Apache Junction
Public Works Department
Attn: Director
300 E Superstition Boulevard
Apache Junction, Arizona 85119

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.

23. 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.
24. 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, the Pinal County Board of Supervisors and the Apache Junction 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. 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.
30. 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.

31. 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.
32. 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.
33. 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.
34. 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.
35. 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.
36. This Agreement shall be governed by the laws of the State of Arizona.
37. 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

Recommended by:

 02/04/2020

Jennifer Toth, 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 County by the Board of Supervisors under the laws of the State of Arizona.

Deputy County Attorney Date

IN WITNESS WHEREOF, the Parties have executed this Agreement.

PINAL COUNTY

Recommended by:

Greg Stanley Date
County Manager

Approved and Accepted by:

Chairman Date
Board of Supervisors

Attest by:

Natasha Kennedy Date
Clerk of the Board

APPROVAL OF PINAL COUNTY COUNSEL

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 Party by their respective governing bodies under the laws of the State of Arizona.

Deputy County Attorney Date

IN WITNESS WHEREOF, the Parties have executed this Agreement.

CITY OF APCHE JUNCTION

Recommended by:

Bryant Powell
City Manager

Date

Approved and Accepted by:

Jeff Serdy
City Mayor

Date

Attest by:

Jennifer Peña
City Clerk

Date

APPROVAL OF CITY COUNSEL

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 Party by their respective governing bodies under the laws of the State of Arizona.

City Attorney _____ Date _____