



MARICOPA ASSOCIATION OF GOVERNMENTS
ROADWAY SAFETY PROGRAM

JOINT AGENCY AGREEMENT

MAG Roadway Safety Program, Joint Agency Agreement No. 1071
MAG TIP Project # ELM20-870D, ELM21-870C
City of El Mirage Capital Improvement Plan # EM20-TS02

This Joint Agency Agreement (Agreement) by and between the Maricopa Association of Governments (MAG) and the City of El Mirage (City), an Arizona Municipal Corporation, will become effective on the day, which it is executed by the MAG Executive Director. MAG and the City are referred to in this Agreement each individually as a “Party” and collectively as the “Parties”.

RECITALS

A. MAG is the regional planning agency for Maricopa County and portions of Pinal County. MAG is governed by a regional council, which includes the mayor or chief executive of each member agency (Regional Council). Pursuant to state law, MAG has developed, and the necessary parties have approved, a twenty-year comprehensive, performance based, multimodal MAG 2040 Regional Transportation Plan (RTP). The Regional Roadway Safety Improvement Program (RSP) is a component of the RTP that includes safety improvements with a revenue allocation through 2025.

B. Funds for the RSP are administered by the Arizona Department of Transportation (ADOT) through its Highway User Revenue (HURF) sub-account for local agency streets designated collector or above, and through allocations of Surface Transportation Block Grant (STBG) Funds that are allocated to the MAG region and administered by ADOT. Funds will be disbursed by ADOT once an invoice is reviewed and approved in concurrence with MAG. Highway User Revenue funds (HURF) for the RSP are provided by ADOT are allocated to the RSP via a funding exchange with the MAG region. Eligible activities must adhere to article IX, section 14, Constitution of Arizona.

C. The RSP includes a safety improvement project that is for the design and installation of flashing yellow arrows located at 10 traffic signals throughout the City of El Mirage (Project). The Project is described in greater detail in the Project Application (Project Application) submitted by the City, dated October 28, 2019 and on file in the offices of the City and MAG.

D. The Project will be designed and constructed in accordance with the standards adopted by the City.

E. The regional reimbursement schedule for the Project are as follows:

Type of Work	Fiscal Year of Work	Reimbursement	Type of Reimbursement Funds	Fiscal Year for Reimbursement
Pre-Design	N/A	\$0.00	Local	N/A
Design	FY 2020	\$45,000.00	Local	N/A
Right-of-Way	N/A	\$0.00	Local	N/A
Procurement	N/A	\$0.00	HURF	N/A
Construction	FY 2021	\$306,878.00	HURF	FY 2021
Total Programmed for Reimbursement		\$351,878.00		

F. The Parties are authorized to enter into this agreement by the provisions of Arizona Revised Statutes Section 28-6501 et seq. and A.R.S. Section 11-951 et seq. (where applicable).

AGREEMENTS

NOW, THEREFORE, for good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- A. Purpose. The purpose of this Agreement is to identify and define the responsibilities of the City and MAG for the design, acquisition of right of way, construction and financing of the Project, as established in the RSP.
- B. Responsibilities of the Parties.
 - 1. MAG's Responsibilities. MAG agrees to:
 - a. Administer the RSP, pursuant to the RSP Policies and Procedures;
 - b. Provide to the City the required format for submitting requests for payment, invoices, progress reports, and backup documentation;
 - c. Review and approve invoices for projects to be reimbursed with HURF subject to the terms of this Agreement;
 - d. Submit approved invoices to ADOT for payment by ADOT to the City. The payments from ADOT to the City will be based on the reimbursement amounts and schedule as noted in the Recitals, Section E. The basis for payment to City shall be reimbursement for costs in conformance with the RSP and the Policies and Procedures.

2 City of El Mirage's Responsibilities. The City agrees to:

- a. Be responsible for all project costs and submit invoices to MAG for reimbursement. The City will: 1) be responsible for the completion of all surveys, design, plans and specifications, including contractor selection documents; 2) conduct contractor selection process(es), award contract(s) for construction pursuant to the applicable laws and ordinances, and provide necessary construction management and inspections, unless noted otherwise in an Intergovernmental Agreement (IGA); 3) if necessary, purchase or condemn right of way required for the completion of the Project, unless otherwise provided in an IGA; 4) be responsible for all utility relocations, and 5) review and approve invoices from its contractors and subcontractors before submitting an invoice to MAG;
- b. Abide by the RSP Policies and Procedures throughout the completion of the Project.
- c. Be responsible for meeting all applicable federal requirements for the Project when using local funding (e.g. National Highway System requirements);
- d. Obtain appropriate indemnifications and insurance from all contractors and subcontractors involved in the Project;
- e. Be responsible for all Project costs in excess of the maximum amount of the RSP-MAG funds allocated for the Project in the amount of \$351,878.00 (Allocated Funds). The amount of funds to be paid to the City pursuant to this Agreement will not exceed the Allocated Funds as included in the MAG approved Transportation Improvement Program (TIP). The allocated funds are expressed in Year of Expenditure dollar amounts, which will not be adjusted for inflation;
- f. Provide invoices and progress reports to MAG consistent with the RSP Policies and Procedures; and
- g. Otherwise comply with all requirements of this Agreement.
- h. The City's authorized representative to sign, approve and submit invoices to MAG is the Deputy City Manager/Finance Director or designee.

C. Records and Audit Rights. The City's work and accounting records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by MAG to substantiate charges and claims related to this Agreement shall be open to inspection and subject to audit and/or reproduction by authorized representatives of MAG, ADOT and the Auditor General of the State of Arizona (collectively Auditors), as applicable to the extent necessary to adequately permit evaluation and verification of the performance and cost of the work, and to conduct and prepare all audits and reports required by law. Auditors shall be afforded access, at reasonable times and places, to all of the City's records and personnel, pursuant to the provisions of this Section, throughout the term of this Agreement, and for a period of five (5) years after last or final payment.

D. Term and Termination. The Agreement is valid through the payment of the final invoice for completion of construction, by the end of fiscal year 2021, or July 30, 2022 as noted in the reimbursement schedule of the Recitals, section E, subject to earlier termination as specifically provided herein.

1. Termination by MAG. MAG reserves the right to terminate this Agreement in the event that MAG determines, in its discretion, that local or MAG allocated funds are not available to meet the City's financial responsibilities in regard to the Project or in the event of an act of God or act of war or terror that makes continuation of work pursuant to this Agreement no longer in the public interest. MAG will give sixty (60) days advance notice of such termination, unless such notice is impracticable, in which case MAG will provide such notice as is practicable under the circumstances. In the event of such termination, MAG will recommend to ADOT that it reimburse the City as provided in this Agreement, for work satisfactorily performed to the date of termination.

MAG also reserves the right to terminate this Agreement in the following circumstances: 1) no Material Project Reimbursement Request (MPRR) has been submitted to MAG for a period of at least eighteen (18) months from the date of the last Project Reimbursement Request (PRR), or the effective date of this Agreement, whichever is later; 2) no Substantial Project Reimbursement Request (SPRR) has been submitted to MAG for a period of twenty (20) months from the date of the last PRR, or the effective date of this Agreement, whichever is later; or 3) in the event of a Substantial Project Change.

2. Termination by the City. The City reserves the right to terminate this Agreement in the event that the City determines, in its discretion, that local funds are not available to meet the City's financial responsibilities in regard to the Project or in the event of an act of God or act of war or terror that makes continuation of work pursuant to this Agreement no longer in the public interest. The City will give sixty (60) days advance notice of such termination, unless such notice is impracticable under these circumstances, in which case the City will provide such notice, as is practicable.
3. Termination by Mutual Consent. The Parties may terminate this Agreement by mutual consent in the event that they determine that such termination is in furtherance of the goals of the RSP and is in the best interests of the Parties.
4. In the event of termination pursuant to this Section "D," the City agrees that it will leave the Project in condition that is safe for use by the public.

E. Availability of Funds. Each Party's obligations under this Agreement are conditioned upon the availability of funds, appropriated or allocated, for the payment of such obligation. No liability shall accrue to MAG in the event MAG declines to review and/or approve invoices for payment on the basis that funds are not available for payment of such invoices and MAG terminates the Agreement in accordance with section D.1.

F. Indemnification. Each Party to this Agreement (Indemnitor) agrees to defend, indemnify and hold harmless the other Party, and such Party's officers, officials, employees, agents, and directors (collectively the Indemnitee) from and against any and all claims, demands, losses, liabilities, causes of action and costs (including expert witness fees, attorneys fees and costs of defense and appellate

appeal) (collectively Claims), which may be imposed upon, incurred by or asserted against the Indemnitee, attributable (directly or indirectly) to, or arising in any manner by reason of, the negligence, error, or omission of any agent, officer, servant, or employee of the Indemnitor, or anyone for whom Indemnitor may be legally liable, in the performance of this Agreement.

G. Conflict of Interest. This Agreement is subject to termination for conflict of interest, pursuant to the provisions of A.R.S. § 38-511.

H. Ownership of Improvements upon Termination. Upon the expiration or other termination of this Agreement, ownership of the Project and the improvements constructed under this Agreement shall be vested in the City.

I. General Provisions.

1. INCORPORATION OF RECITALS. The Recitals are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.
2. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended, except by a written document, signed by authorized representatives of each Party.
3. OFFICIAL COPIES. Upon date of execution by the MAG Executive Director, the City shall receive a signed copy of the agreement within 14 days of execution.
4. ARIZONA LAW. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
5. MODIFICATIONS. Except as otherwise specifically provided in this Agreement, any amendment, modification or variation from the terms of this Agreement shall be in writing and shall be effective only after written approval of all Parties.
6. ATTORNEY'S FEES. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, or on account of any breach or default of this Agreement, the prevailing Party shall be entitled to received from the other Party reasonable attorneys' fees and reasonable costs and expenses, as determined by the arbitrator or court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable, whether or not such action is prosecuted to judgment.
7. NOTICES. All notices or demands required to be given, pursuant to the terms of this Agreement, shall be given to the other Party in writing, delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

If to the City:

City Engineer
City of El Mirage
10000 N. El Mirage Road
El Mirage, AZ 85335
Tel: (623) 876-2976
Fax: (623) 876-4605

If to MAG:

Executive Director
Maricopa Association of Governments
302 No. First Avenue
Suite 300
Phoenix, Arizona 85003
Tel: (602) 254-6300
Fax: (602) 254-6490

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United State Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission. E-mail is not an acceptable means for meeting the requirements of this section unless otherwise agreed in writing.

8. FORCE MAJEURE. Neither Party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures or power failures.
9. ADVERTISING. No advertising or publicity concerning MAG using any contractor's or subcontractor's services shall be undertaken without prior written approval of such advertising or publicity by MAG's Executive Director.
10. COUNTERPARTS. This Agreement may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Agreement shall be deemed to possess the full force and effect of the original.
11. CAPTIONS. The captions used in this Agreement are solely for the convenience of the Parties, do not constitute a part of this Agreement and are not to be used to construe or interpret this Agreement.
12. SEVERABILITY. If any term or provision of this Agreement shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Agreement

shall remain in full force and effect, and such term or provision shall be deemed to be deleted.

13. AUTHORITY. Each Party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each Party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.
14. E-VERIFY.
 - a. Warrant of Compliance. Pursuant to the provisions of A.R.S. §41-4401, each Party warrants to the other that it is in compliance with all Federal Immigration laws and regulations that relate to its employees and with the E-Verify Program under A.R.S. §23-214(A).
 - b. Breach of Warranty. A breach of this warranty by a Party or any of its subcontractors will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement or any subcontract.
 - c. Right to Inspect. Each Party retains the legal right to inspect the papers of any employee who works on this Agreement or any subcontractor to ensure compliance with the warranty given above.
 - d. Random Verification. Either Party may conduct a random verification of the employment records of the other to ensure compliance with this warranty.
 - e. Federal Employment Verification Provisions – No Material Breach. A Party will not be considered in material breach of this Agreement if it establishes that it has complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).
 - f. Inclusion of Article in Other Contracts: The provisions of this Article must be included in any contract either Party enters into with any and all of its contractors or subcontractors who provide services pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their duly authorized officers. (The order for obtaining the signatures is as follows: the MAG General Counsel, the appropriate representative of the City of El Mirage, and the MAG Executive Director).

MAG:

Maricopa Association of Governments, an
Arizona non-profit Corporation

Date

By: _____
Eric Anderson
Executive Director

City of El Mirage:

City of El Mirage, an Arizona Municipal
Corporation

Date

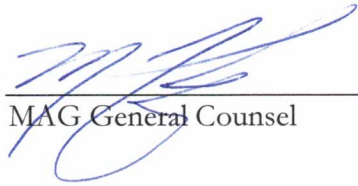
By: _____
J. Crystal Dyches
City Manager

ATTEST:

Sharon Antes, City Clerk

Reviewed Approved as to form:

Approved as to form:

By: 
MAG General Counsel

By: _____
Attorney for the City of El Mirage