

INTERGOVERNMENTAL AGREEMENT
BETWEEN MARICOPA COUNTY AND THE CITY OF GOODYEAR
FOR THE WEST VALLEY DYNAMIC MESSAGE SIGNS (DMS) PROJECT
(TT419)

MAG #: MMA13-904

CFDA #: 20.205

FEDERAL AID #: CM-MMA-0(234)A

TRACS #: SS973 01C

(C-91-11- _____ -2-00)

Goodyear Con – 13-2583

This Intergovernmental Agreement (**Agreement**) is between the County of Maricopa, a political subdivision of the State (**County**), and the City of Goodyear, an Arizona municipal corporation (**City**). The County and 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 the Maricopa County Board of Supervisors and the Goodyear City Council.

STATUTORY AUTHORIZATION

1. A.R.S. §11-251 and §§28-6701 *et seq.* authorize the County to layout, maintain, control and manage public roads within the County.
2. A.R.S. §§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. §§9-240 and §9-276 *et seq.* authorize the City to layout and establish, regulate and improve streets within the City, and to enter into this Agreement.

BACKGROUND

4. The City of Goodyear and the Maricopa County Department of Transportation (MCDOT) are members of the regional traffic management and traveler information system known as AZTech™. Led by MCDOT, AZTech™ develops and supports traffic management projects along many of the Valley's heavily traveled roadways.
5. Associated with the AZTech™ Program, this project is part of an ongoing joint effort by MCDOT and the City of Goodyear to provide for the efficient management of traffic on McDowell Road and MC 85 in Maricopa County's West Valley.
6. Both McDowell Road and MC 85 are identified as key east-west arterials in the I-10 Integrated Corridor Management System.
7. Dynamic Message Signs (DMS) provide important roadway congestion notices for motorists and provide real time advance notification of traffic incidents or road construction plans and events.
8. In association with the AZTech™ Program, the current "Project" consists of the installation of five (5) DMS signs on MC-85 and McDowell roads. Two of the DMS signs will become the property of the City upon completion of the Project and three of the signs will become the property of the County upon completion of the Project.
9. The Project is funded from local and federal funds. The estimated construction cost is \$1,000,000 with federal funds of \$943,000 and a local match of \$57,000 (60% from County and 40% from City).

PURPOSE OF THE AGREEMENT

10. The purpose of this Agreement is to identify and define the responsibilities of the County and City for the cost sharing, design, construction and construction management, and future ownership, maintenance and operations of the Project.

TERMS OF THE AGREEMENT

11. This Agreement is contingent upon the City's compliance with the Single Audit Act of 1984 and the availability of federal funds through the MAG TIP:
 - 11.1 CFDA #: 20.205
 - 11.2 Funding Source: FHWA
 - i. 94% (\$943,000) Federal Funds - CMAQ (Congestion Mitigation and Air Quality)
 - ii. 6% (\$57,000) Local Funds (60% from County, 40% from City)
 - 11.3 Contract Number: CM-MMA-0(234)A
 - 11.4 Contract Period: FY 2013

11.5 Grant Amount: \$943,000

11.6 Contact Information:

- i. Name: Tom Larson
- ii. Agency: Maricopa County DOT
- iii. Phone: 602-506-2166
- iv. Email: ThomasLarson@mail.maricopa.gov

12. Responsibilities of the County:

- 12.1 The County shall provide the construction documents for the Project to the City's representative when completed.
- 12.2 The County shall request from the City any necessary right-of-way, utility and environmental clearance background information.
- 12.3 The County shall apply for no-cost permits for Project work within the City boundaries.
- 12.4 The County shall install five (5) DMS on MC-85 and McDowell Road and connect the equipment for the two McDowell Road signs to the existing City backbone traffic management fiber optic line to County standards. The County shall also connect the equipment for the three MC-85 signs to the existing MCDOT Traffic Management Center Communications Network.
- 12.5 At sign locations where trunk line fiber optic communication cable does not exist, other technologies, including wireless connections, will be considered to connect the signs to the traffic operations center.
- 12.6 The County shall be the lead agency on all construction and construction management, and shall provide certification of right-of-way with the assistance of the City.
- 12.7 The County shall contribute sixty (60) percent of the local match requirements of the construction costs.
- 12.8 Upon completion of construction and approval and acceptance by the City, the County shall invoice the City for forty (40) percent of the local match requirement of the construction costs of the Project.
- 12.9 The County shall turn over ownership and maintenance to the City of two (2) DMS signs upon completion of the Project.
- 12.10 The County shall work cooperatively with the City to provide operations according to the Southwest Valley Operations Plan of the installed DMS. The final terms of the Southwest Valley Operations Plan, which is currently being developed, will be established by the mutual agreement of the Parties.

13. Responsibilities of the City:

- 13.1 The City shall allow the County to connect into the traffic management fiber optic line for the installation of two (2) DMS signs which will become the property of the City upon completion of the Project.
- 13.2 The City shall provide the County any necessary right-of-way, utility and environmental clearance background information.
- 13.3 The City shall contribute forty (40) percent of the local match requirement of the construction cost, which shall not exceed \$22,800, within thirty (30) days of receiving the invoice from the County.
- 13.4 The City shall provide timely review of all design and installation documents provided by the County. The City shall provide comments to the County within 30 calendar days after receiving documents for review from the County.
- 13.5 The City shall issue the County no-cost permits for Project work within the City boundaries.
- 13.6 The City shall assume ownership and maintenance of two (2) DMS signs upon completion of the Project, which means final acceptance by the City.
- 13.7 The City shall provide a project manager or project contact person during the actual installation phase of the project to assist with proper oversight and inspection.
- 13.8 The City shall work cooperatively with the County to provide operations according to the Southwest Valley Operations Plan of the installed DMS. The final terms of the Southwest Valley Operations Plan, which is currently being developed, will be established by the mutual agreement of the Parties.

GENERAL TERMS AND CONDITIONS

- 14. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will 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, 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 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.

15. 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 Parties with a written notice at least thirty (30) days prior to the effective termination date.
16. This Agreement shall be subject to the provisions of A.R.S. Section 38-511.
17. The Parties warrant that they are in compliance with A.R.S. Section 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. 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.
 - 17.2 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.
 - 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 in order 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. The Parties warrant that they do not have scrutinized business operations in Sudan or Iran, as prohibited by A.R.S. Sections 35-391.06 and 35-393.06, and further acknowledge that any contractor or subcontractor who is contracted by a party to perform work on the Project shall warrant that they do not have scrutinized business operations in Sudan or Iran.
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:

Maricopa County Department of Transportation
Attn: West Valley Intergovernmental Liaison
2901 W. Durango St.
Phoenix, AZ 85009

City of Goodyear
Attn: City Engineer
195 N. 145th Avenue
Goodyear, Arizona 85338

With a copy to:
City Attorney
190 N. Litchfield Rd
Goodyear, Arizona 85338

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 City of Goodyear 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.
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.
38. 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 hereto have executed this Agreement.

MARICOPA COUNTY

CITY OF GOODYEAR

Recommended by:

Recommended by:

John B. Hauskins, P.E. Date
Transportation Director

City of Goodyear Mayor Date

Approved and Accepted by:

Approved and Accepted by:

Max Wilson, Chairman Date
Board of Supervisors

City of Goodyear Mayor Date

Attest by:

Attest by:

Clerk of the Board Date

City of Goodyear Clerk Date

APPROVAL OF DEPUTY COUNTY ATTORNEY AND CITY OF GOODYEAR 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 Parties by their respective governing bodies under the laws of the State of Arizona.

Deputy County Attorney Date

City Attorney Date