

**INTERGOVERNMENTAL TRANSPORTATION FUNDING AGREEMENT  
BETWEEN  
THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY  
AND  
TOWN OF ORO VALLEY  
FOR  
IMPROVEMENTS TO  
LA CHOLLA BLVD: OVERTON ROAD TO TANGERINE ROAD**

This Agreement (hereinafter “the Agreement”) is entered into by and between the Regional Transportation Authority of Pima County (“RTA” or “the Authority”), a special taxing district formed pursuant to Title 48 Chapter 30 of the Arizona Revised Statutes (A.R.S.), and Town of Oro Valley, a body politic and corporate of the State of Arizona (“the Lead Agency”) pursuant to A.R.S. § 11-952.

**RECITALS**

- A. A.R.S. § 48-5301, et seq., authorizes the Authority to act as a regional taxing authority for the purpose of funding multi-modal transportation operations and improvements identified in the Regional Transportation Plan (“the Plan”) approved by the voters at the special election held in Pima County, Arizona, on May 16, 2006.
- B. The governing board of the Authority is composed of representatives of each member of the regional council of governments in accordance with A.R.S. § 48-5303.
- C. Pursuant to A.R.S. § 48-5304 (12), the governing board of the Authority has sole authority to implement the elements of the Plan.
- D. Pursuant to A.R.S. § 48-5304 (13), the governing board of the Authority shall coordinate the implementation of the Plan among the local jurisdictions.
- E. A Regional Transportation Fund was established by the Arizona Legislature per A.R.S. § 48-5307 to be the repository for those funds collected for the purpose of funding the transportation projects identified in the Plan.
- F. The Authority is authorized by A.R.S. §§ 48-5304 (16) and 48-5308 to administer and distribute the regional transportation funds to the members of the Authority and to sell bonds in furtherance of that purpose to fund those projects or programs identified in the Plan.
- G. The Lead Agency is authorized by A.R.S. § 11-251 (4) to design, maintain, control and manage public roads within the Lead Agency’s jurisdictional boundaries.
- H. The Lead Agency may have a legal contract with one or more jurisdictions within Pima County empowering the Lead Agency to perform roadway and other improvements outside the Lead Agency’s jurisdictional boundaries.
- I. The Lead Agency and the Authority wish to cooperate in the design of improvements to the La Cholla Blvd: Overton Road to Tangerine Road (“the Project”).

- J. The Project is one of the transportation projects included in the Plan or is eligible for funding as part of a categorical program included in the Plan.
- K. The Authority intends to fund the Project under the terms and conditions contained in this Agreement and has entered into this Agreement for that purpose.
- L. It is the policy of the Authority to require that a lead agency be identified and an intergovernmental agreement (IGA) be approved and entered into by the Authority and the lead agency before requests for funding reimbursement or payment can be processed by the Authority.
- M. Town of Oro Valley has been identified as the Lead Agency for the Project and will be responsible for all aspects of project implementation including, but not limited to, planning, project management, risk management, design, for the Project.
- N. The RTA's Administrative Code will control all payments and other procedures unless otherwise specified herein.
- O. The Authority and the Lead Agency may contract for services and enter into agreements with one another for joint and cooperative action pursuant to A.R.S. § 11-951, et seq.

NOW, THEREFORE, the Town of Oro Valley and Authority, pursuant to the above and in consideration of the matters and things set forth herein, do mutually agree as follows:

**AGREEMENT**

- 1. Purpose.** The purpose of this Agreement is to set forth the responsibilities of the parties for the design, of the Project and to address the legal and administrative matters among the parties.
- 2. Project.** The Project consists of Improvements to La Cholla Blvd from Overton Road to Tangerine Road (RTA #4) as more fully depicted in the attached Exhibit A, including the following:
  - a) Detailed project scope.
  - b) Project budget and cost breakdown of items eligible for reimbursement by the Authority including any proposed billing of staff time directly attributable to Project.
  - c) Total amount of RTA funding allowed for the Project plus a breakdown of any other regional, local, federal or state funding available.
  - d) Estimated construction start date.
  - e) Identification of the Lead Agency's duly authorized representative for signing and submitting payment requests.
  - f) Projected timeline.
- 3. Effective Date; Term.** This Agreement shall become effective upon filing a fully executed original with the office of the Pima County Recorder and shall continue in effect until all improvements constructed pursuant to this Agreement are completed, all eligible reimbursement payments to the Lead Agency are concluded, and all warranties applicable to the Project have expired.

#### **4. Responsibilities of the Lead Agency.**

- a) The Lead Agency shall be responsible for the design, of the Project in accordance with this Agreement and all applicable public roadway, traffic signal, and street lighting design and construction standards. Design Standards are federal, state, county or municipal standards for engineering, traffic, safety or public works facilities design. Examples of Design Standards include the American Association of State Highway and Transportation Officials and Federal Highway Administration standards for highway engineering and construction, the Pima County/City of Tucson Standard Specifications for Public Improvements, the Pima County Roadway Design Manual, the Pima County Department of Transportation /City of Tucson Department of Transportation Pavement Marking Design Manual, and Pima County and municipal design guidelines for roadway lane widths and level of drainage protection.
- b) If consultants or contractors are employed to perform any portion of the Project, the Lead Agency shall be responsible for the contracts for design of the Project and shall select the consultants and contractors to be used on the Project. The Lead Agency shall immediately provide to the Authority copies of any and all contract documents and related materials upon request by the Authority. The Lead Agency shall retain the usual rights of the owner of a public contract including the authority to approve changes and make payments. However, any changes to the Project which would result in the final project cost deviating, by ten or more percent, from the Authority's budget amount for the Project, must be approved by the Authority in advance of those changes being made, regardless of the fact that the Authority will not be paying for them.
- c) The final cost of the Project shall be that amount necessary to complete the Project including any unanticipated work incorporated into the Project by change orders and amendments executed by the Lead Agency. The Lead Agency shall be responsible for all Project costs in excess of the RTA funds contributed to the Project.
- d) The Lead Agency will be responsible for assuming all risks associated with the Project except those that are assigned to another agency or jurisdiction that has agreed to that assumption.
- e) The Lead Agency shall require its contractors performing any portion of the Project to name the Authority as additional insured and additional indemnitee with respect to insurance policies for general liability, automobile liability and defects in design in all of the Lead Agency's contracts for the Project. The Lead Agency shall also require its contractors to name the Authority as an additional beneficiary in any performance and payment related assurances posted for the Project.
- f) Monthly, the Lead Agency shall be responsible for preparing and submitting to the Authority reimbursement requests (invoices). Said requests shall be signed by a duly authorized representative of the Lead Agency and shall include sufficient background information documenting payments made to contractors, vendors or any other eligible costs identified in this Agreement or the RTA's Administrative Code. The Lead Agency must retain and certify all vendor receipts, invoices and any related Project records as needed and ensure that they are available for review for a minimum of five (5) years after final payment is made unless otherwise specified herein.

- g) The Lead Agency shall be responsible for submitting a status report describing its progress and adherence to the Project scope, schedule and budget. Progress reports shall be submitted to the RTA monthly.
- h) The Lead Agency shall adhere to the RTA Administrative Code, including the requirements for a Project Charter (where applicable), a Project Closeout Meeting (Roadway Element Projects) and reimbursement limits.
- i) The Lead Agency shall indemnify, defend, and hold RTA and any other funding providers harmless from any and all claims, demands, suits, actions, proceedings, loss cost, and damages of every kind and description, including any reasonable attorneys' fees and/or litigation expenses, which may be brought or made against RTA and any other funding providers, and any of their officers, directors and employees, or any person, regardless of who makes the claim, to the extent they result from the negligent or wrongful acts of the Lead Agency or its contractors, or any of their employees, agents, representatives, or sub-contractors, in connection with or incidental to the performance of this IGA. The indemnity provided in this section shall survive termination of this IGA.

#### **5. Responsibilities of Authority.**

- a) Upon receipt of reimbursement requests, the Authority shall convey to the Lead Agency RTA funds in the amount specified in Exhibits on a reimbursement basis unless otherwise specified herein. All payments and reimbursements shall follow the policies outlined in the RTA's Administrative Code.
- b) Reimbursements will generally be based on the Project schedules established by the Lead Agency and contained in Exhibits.
- c) The RTA staff will review all payment requests to confirm that the request is for reimbursement of costs incurred by the Lead Agency for the Project. If the Authority determines that additional information is needed, the Lead agency will be notified of the request for additional information within five business days of the receipt of the invoice by RTA.
- d) Upon approval of the request by RTA, the invoice will be processed for payment within ten working days of the invoice submittal.
- e) RTA shall provide all necessary cooperation and assistance to its fiscal agent to process all payment requests from the Lead Agency.

**6. Termination.** Either party may terminate this Agreement for material breach of the Agreement by the other party. Prior to any termination under this paragraph, the party allegedly in default shall be given written notice by the other party of the nature of the alleged default. The party said to be in default shall have forty-five days to cure the default. If the default is not cured within that time, the other party may terminate this Agreement. Any such termination shall not relieve either party from liabilities or costs already incurred under this Agreement.

**7. Non-assignment.** Neither party to this Agreement shall assign its rights under this Agreement to any other party without written permission from the other party to this Agreement.

**8. Construction of Agreement.**

- a) Entire agreement. This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. Any exhibits to this Agreement are incorporated herein by this reference.
- b) Amendment. This Agreement may be modified, amended, altered or changed only by written agreement signed by both parties.
- c) Construction and interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the Recitals hereof.
- d) Captions and headings. The headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.
- e) Severability. In the event that any provision of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application, which can be given effect without the invalid or void provision or application, and to this extent the provisions of the Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.
- f) This Agreement is subject to the provisions of A.R.S. § 38-511.

**9. Ownership of Improvements.** Ownership and title to all materials, equipment and appurtenances installed pursuant to this Agreement shall automatically vest in the Lead Agency upon completion of the Project.

**10. Legal Jurisdiction.** Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of the Lead Agency or the Authority.

**11. No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between the Lead Agency and any Authority employees, or between Authority and any Lead Agency employees. Neither party shall be liable for any debts, accounts, obligations nor other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

**12. No Third Party Beneficiaries.** Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

**13. Compliance with Laws.** The parties shall comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this Agreement.

- a) **Anti-Discrimination.** Neither party shall discriminate against any employee or client of either party or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out the duties pursuant to this Agreement. Both parties shall comply with applicable provisions of Executive Order 75-5, as amended by Executive Order 2009-09 of the Governor of Arizona, which are incorporated into this Agreement by reference as if set forth in full herein, including the provisions of A.R.S. ' 41-1463.
- b) **Americans with Disabilities Act.** This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

**14. Waiver.** Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

**15. Force Majeure.** A party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this Agreement, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

**16. Notification.** All notices or demands upon any party to this Agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

The Authority:  
Farhad Moghimi, Executive Director  
1 E. Broadway, Ste. 401  
Tucson, AZ 85701

Town of Oro Valley:  
Paul Keesler, DIS Director/Town Engineer  
11000 N La Cañada Drive  
Oro Valley, AZ 85737

**17. Remedies.** Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement.



**ATTORNEY CERTIFICATION**

The foregoing Agreement by and between the Regional Transportation Authority of Pima County and Town of Oro Valley has been reviewed pursuant to A.R.S. Section 11-952 by the undersigned who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Agreement.

**Regional Transportation Authority of Pima County:**

\_\_\_\_\_  
Thomas Benavidez, Attorney for the Authority

\_\_\_\_\_  
Date

**Town of Oro Valley:**

\_\_\_\_\_  
Tobin Sidles, Legal Services Director

\_\_\_\_\_  
Date