

**SUPPLEMENTAL INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TOWN OF MARANA AND
THE TOWN OF ORO VALLEY TO ACCOMMODATE
ORO VALLEY WATER UTILITY WORK AS PART OF THE
DESIGN AND CONSTRUCTION OF ROADWAY
IMPROVEMENTS TO TANGERINE ROAD – DOVE MOUNTAIN
BOULEVARD/TWIN PEAKS ROAD TO LA CAÑADA DRIVE**

This intergovernmental agreement (this “IGA”) is entered into by and between the TOWN OF MARANA (“Marana”), an Arizona municipal corporation, and the TOWN OF ORO VALLEY (“Oro Valley Water Utility”), an Arizona municipal corporation. Marana and Oro Valley are sometimes collectively referred to as the “Parties,” either of which is sometimes individually referred to as a “Party.”

RECITALS

- A. Marana has entered into an intergovernmental agreement with the Regional Transportation Authority of Pima County (the “RTA”), recorded with its authorizing resolutions in the Pima County Recorder’s office on June 6, 2013, at Sequence 20131570430 (the “RTA Tangerine Design/ROW IGA”) to facilitate the preparation of construction design drawings and the acquisition of right-of-way needed for the construction of improvements to Tangerine Road – Twin Peaks Road to La Cañada Drive (the “Project”).
- B. Marana has been identified by the RTA as the Lead Agency for the Project and will be responsible for all aspects of project implementation, including construction.
- C. The Parties anticipate that Marana will soon enter into an intergovernmental agreement with the RTA (the “RTA Tangerine Construction IGA”) to facilitate the construction funding and administration for the Project.
- D. The Parties and Pima County entered into an intergovernmental agreement for the design and construction of the Project, recorded in the Pima County Recorder’s office on August 15, 2013, at Sequence 20132270883 (the “Local Governments Tangerine IGA”), to coordinate and facilitate the design and construction of the Project.
- E. The Local Governments Tangerine IGA was modified by the execution of “Amendment Number 1” dated June 3, 2014 (Pima County Contract No. CT-TR-14000000000000000016 Amendment No. 01), which was not recorded, but simply modified paragraph 9 (Contractor Selection) to allow a contractor for the Project to be selected “using a process that is authorized by Arizona Revised Statutes Title 34.”

- F. In accordance with the selection process set forth in the Local Governments Tangerine IGA as modified by Amendment Number 1, a contractor (the “Project Contractor”) has now been procured to construct the Project.
- G. Oro Valley Water Utility now desires to take advantage of the economies of scale and to avoid potential construction conflicts by adding certain Oro Valley Water Utility modifications to the Project, to be constructed by the Project Contractor, administered by Marana, and paid for by Oro Valley Water Utility.
- H. The Parties are authorized to contract for services and enter into agreements with one another for joint and cooperative action pursuant to A.R.S. § 11-952, et seq.

AGREEMENT

NOW, THEREFORE, based on the foregoing recitals, which are incorporated by reference here, and in consideration of the matters and things set forth in this IGA, the Parties hereby agree as follows:

- 1. Purpose.** This IGA is intended as a supplement to the RTA Tangerine Design/ROW IGA, the RTA Tangerine Construction IGA, and the Local Governments Tangerine IGA as modified by Amendment Number 1 (collectively the “Controlling Tangerine IGAs”) to address only those Oro Valley Water Utility facilities modifications added to the Project pursuant to this IGA.
- 2. Expansion of the Project.** The scope of the Project shall be expanded to include modifications to the Oro Valley Water Utility 24-inch Reclaimed Water Main and 12 inch Potable Mains described in detail in “Exhibit A” attached to and incorporated by this reference in this IGA and referred to in this IGA as the “Oro Valley Utility Work.”
- 3. Oro Valley Water Utility’s responsibilities.** Oro Valley Water Utility shall:
 - 3.1. Provide and pay for the design of the Oro Valley Utility Work, including underground utility location (potholing) and related survey services including As Built plans upon completion of the work.
 - 3.2. Coordinate with Psomas, the design engineering firm for the Project, for incorporation of the Oro Valley Utility Work design/plans into the Tangerine Corridor project plans.
 - 3.3. Provide and pay for all permitting necessary for the Project Contractor to construct the Oro Valley Utility Work.
 - 3.4. Timely review and, if acceptable to Oro Valley Water Utility, authorize Marana to execute a Project Guaranteed Maximum Price with the Project Contractor for the installation and construction of the Oro Valley Utility Work.
 - 3.5. If the Project Guaranteed Maximum Price is unacceptable to Oro Valley Water Utility, the Town of Marana and Oro Valley Water Utility will cooperate and negotiate with the Project Contractor to develop an acceptable and reasonable Project Guaranteed Maximum Price.

- 3.6. Inspect the Oro Valley Utility Work for compliance with all applicable regulations, statutes, and standards.
- 3.7. Pay for the construction of the Oro Valley Utility Work performed by the Project Contractor by paying within 30 days of receipt from Marana each invoice for construction costs associated with the Oro Valley Utility Work.

4. Marana's responsibilities. Marana shall:

- 4.1. Negotiate and, if acceptable and authorized by Oro Valley Water Utility pursuant to paragraph 3.4 above, execute a Project Guaranteed Maximum Price with the Project Contractor for the installation and construction of the Oro Valley Utility Work, requiring the Project Contractor's separate tracking of all costs associated with the Oro Valley Utility Work.
- 4.2. Coordinate construction inspection for the Project with Oro Valley Water Utility to facilitate Oro Valley Water Utility's inspection of the Oro Valley Utility Work in accordance with paragraph 3.6 above.
- 4.3. Invoice Oro Valley Water Utility for costs of the Oro Valley Utility Work as the Project Contractor submits payment applications that include the Oro Valley Utility Work.
- 4.4. Provide As Built files in AutoCAD and PDF form to Oro Valley Water Utility upon completion of the work
- 4.5. Use its best efforts to minimize change orders that increase the cost of the Oro Valley Utility Work.

5. Effective date; term. This IGA shall become effective upon filing a fully executed original with the office of the Pima County Recorder and shall continue in effect until the sixth anniversary of final payment to the Project Contractor.

6. Construction of this IGA.

- 6.1. Entire agreement. This instrument constitutes the entire agreement between the Parties pertaining to the subject matter of this IGA, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged in this IGA.
- 6.2. Exhibits. Any exhibits to this IGA are incorporated in this IGA by this reference.
- 6.3. Amendment. This IGA may be modified, amended, altered or changed only by written agreement signed by both Parties.
- 6.4. Construction and interpretation. All provisions of this IGA shall be construed to be consistent with the intention of the Parties as expressed in the Recitals section of this IGA.
- 6.5. Severability. A declaration by statute or judicial decision that any provision of this IGA is invalid or void shall have no effect on other provisions that can be given effect without the invalid or void provision, and to this extent the provisions of this IGA are severable.

If any provision of this IGA is declared invalid or void, the Parties agree to meet promptly in an attempt to reach an agreement on a substitute provision.

6.6. Conflict of interest. This IGA is subject to the provisions of A.R.S. § 38-511, which provides for cancelation in certain instances involving conflicts of interest.

7. Legal Jurisdiction. Nothing in this IGA shall be construed as either limiting or extending the legal jurisdiction of the Parties.

8. No Joint Venture. It is not intended by this IGA to, and nothing contained in this IGA shall be construed to, create any partnership, joint venture or employment relationship between the Parties or create any employer-employee relationship between one Party and another Party's employees. No Party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of another Party, including (without limitation) another Party's obligation to withhold Social Security and income taxes for itself or any of its employees.

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

10. 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 IGA.

10.1. Anti-Discrimination. The provisions of A.R.S. § 41-1463 and Executive Order Number 99-4 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this IGA.

10.2. Americans with Disabilities Act. This IGA 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.

10.3. Workers' Compensation. An employee of either Party shall be deemed to be an "employee" of both public agencies, while performing pursuant to this IGA, for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each Party shall post a notice pursuant to the provisions of A.R.S. § 23-1022(E) in substantially the following form:

All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation.

11. Waiver. Waiver by either Party of any breach of any term, covenant or condition of this IGA 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 of this IGA.

12. Force Majeure. A party shall not be in default under this IGA if it does not fulfill any of its obligations under this IGA 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 IGA, 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.

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

To Marana:

TOWN OF MARANA
Town Engineer
11555 W. Civic Center Dr.
Marana, Arizona 85653

To Oro Valley:

TOWN OF ORO VALLEY
Water Utility Director
11000 N. La Cañada Dr.
Oro Valley, Arizona 85737

14. Remedies. Any Party may pursue any remedies provided by law for the breach of this IGA. 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 IGA.

15. Counterparts. This IGA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed and attached to a single instrument.

IN WITNESS WHEREOF, the Parties have executed this IGA as of the last signature date below.

TOWN OF MARANA

TOWN OF ORO VALLEY

Ed Honea, Mayor

Dr. Satish I. Hiremath, Mayor

Date: _____

Date: _____

ATTEST:

Town Clerk

ATTEST:

Julie K. Bower, Town Clerk

INTERGOVERNMENTAL AGREEMENT DETERMINATION

The foregoing intergovernmental agreement between the TOWN OF MARANA and the TOWN OF ORO VALLEY has been reviewed pursuant to A.R.S. § 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 the Party to this intergovernmental agreement represented by the undersigned.

TOWN OF MARANA:

TOWN OF ORO VALLEY:

Town Attorney

Tobin Sidles, Legal Services Director

Date: _____

Date: _____