

**Intergovernmental Agreement
between Pima County and the Town of Oro Valley
for the Joint Administration of
Public Works Capital Improvement Projects**

This Agreement ("Agreement") is entered into by and between the Town of Oro Valley ("Town"), and Pima County ("County"), pursuant to Arizona Revised Statutes A.R.S. § 11-952.

Recitals

- A. The County and the Town may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-952.
- B. The County and the Town each maintain qualified public works design, construction, and other project personnel ("Qualified Personnel") who are familiar with the local and regional standard specifications such as 2014 Pima Association of Governments Standard Specifications for Public Improvements, plus all associated updates.
- D. The County wishes to make its Qualified Personnel available to the Town in the event the Town's available personnel are insufficient in number, knowledge, skills, or abilities to address all of the Town's public works needs, and the Town wishes to make its Qualified Personnel available to the County in the event the County's available personnel are insufficient in number, knowledge, skills, or abilities to address all of the County's public works needs.
- E. Each party shall have first priority over the use of its own Qualified Personnel at all times. Furthermore, the Sponsoring Agency shall be responsible for managing and administering all design, construction, and other costs incurred by the Provider Agency to perform or complete public works services for the benefited party.

Agreement

NOW THEREFORE, County and Town, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

1. Definitions.

- a. Capital Project: any public works project scheduled as part of either County's or Town's capital improvement plan.
- b. Capital Project Services: The design (including all technical disciplines—e.g., traffic, structural, etc.), project management, cultural and environmental services, utility coordination, right of way services, flood control services, construction surveillance and contract administration, materials testing, surveying, and quality assurance support services related to the design and construction of Capital Projects.
- c. Director: As to County, the Director of the County's Department of Transportation. As to Town, the Director of the Town's Department of Development and Infrastructure Services.
- d. Project Agreement: An agreement between a Sponsoring Agency and Provider Agency for the provision of Capital Project Services for a particular Capital Project, in substantially the form depicted in attached **Exhibit A**.
- e. Provider Agency: The agency that performs the Capital Project Services being requested.
- f. Sponsoring Agency: The agency that owns and finances the Capital Project and is requesting the Capital Project Services.

2. **Purpose.** The purpose of this Agreement is to set forth the responsibilities of the parties regarding each party's provision of Capital Project Services to the other on an as-needed and as-available basis and to provide for the reimbursement of incurred costs for the Capital Project Services provided.

3. Project Agreements.

- a. By this Agreement, the County delegates to its Director or the Director's designee, and the Town delegates to its Director, or the Director's designee, the authority to negotiate, execute, modify, and terminate any Project Agreement in accordance with the terms and conditions of this Agreement.
- b. Either party's Director may request that the parties enter into a Project Agreement. Upon a request, the parties' Directors will review the request and, if mutually desirable, meet to discuss it.
- c. In the event the Directors disagree on any element of a proposed Project Agreement, the element in dispute may be submitted to the County Administrator and the Town's Manager for resolution.
- d. Any proposed Project Agreement shall be in writing, in substantially the form attached as **Exhibit A**, and shall include, at a minimum:
 - i. The term of the Project Agreement, which may neither exceed five (5) year(s) nor may extend beyond the term of this Agreement.

- ii. A description of the Capital Project Services that the Provider Agency will provide to the Sponsoring Agency under the Project Agreement.
 - iii. The specific responsibilities of the Sponsoring Agency and Provider Agency with respect to the Capital Project.
 - iv. An estimate of the cost of Capital Project Services for the Capital Project that is the subject of the Project Agreement. The estimate is for budgetary scheduling and is not a contractual guarantee, a cost ceiling, or an “upset limit.”
 - v. Billing rates and the method for calculating payment to the other party. The billing rates may be reviewed periodically during the term of the Project Agreement, and parties, through their Directors, may agree in writing to revise the rates to reflect actual costs.
 - vi. A designated representative of the Sponsoring Agency to receive invoices from the Provider Agency and to measure, match, account, count, verify, and approve the quantities and amounts in the invoices for payment.
 - vii. A schedule for paying invoices, which shall provide that payment is due no later than 30 days after receipt of an invoice.
- e. Each party’s Director may execute the Project Agreement on behalf of that party.
- d. Any amendment to a Project Agreement must be in writing and signed by the Director for each party.
- e. Either party’s Director may terminate Project Agreement at any time by providing the other party with written notice of such termination to the other party. After a Project Agreement is terminated, the Sponsoring Agency’s obligation to the Provider Agency shall be limited to payment for services rendered before termination.
- 4. Execution of Capital Projects Subject to Project Agreements.** After a Project Agreement is executed, the Provider Agency shall perform the Capital Project Services specified in the Project Agreement for the Sponsoring Agency. The Provider Agency shall have full power to perform all the duties required to complete the Project Agreement. Decisions on major design and construction questions and the final approval of pay requests shall be referred to the Sponsoring Agency’s designated representative for that Project Agreement. Minor design and construction questions, and the preparation of preliminary pay requests, shall be performed by the Provider Agency performing the Capital Project Services. In emergencies, either party shall have full authority to take whatever actions are necessary to protect the public. Personnel from the Provider Agency shall be paired up with their counterparts in the Sponsoring Agency for coordination purposes. Coordination shall include regular meetings and interaction between corresponding personnel at all levels for each assignment.
- 5. Responsibilities of the parties.**

The Sponsoring Agency shall be responsible for:

- a. Decision making authority over the Capital Project.
- b. Procurement, contract processing and payment procedures for each Capital Project.
- c. Approving and processing all change orders, progress payments, and final acceptance of the Capital Project Services completed.
- d. Upon review and approval of invoices, paying the Provider Agency in a timely manner.
- e. Evaluating, at its discretion, the Capital Project Services or auditing any books or records of the Provider Agency relative to the Capital Project Services being provided and to verify that the Capital Project Services are completed in accordance with the plans, specifications, statutes, rules, and regulations of the Sponsoring Agency.

The Provider Agency shall be responsible for:

- a. Identifying and developing recommendations with respect to the Capital Project Services, and sharing those recommendations with the Sponsoring Agency.
- b. Establishing a list of overhead charges/rates for Capital Project Services as required in Section 3.
- c. Providing sufficient Qualified Personnel to perform the Capital Project Services with the necessary care, skill, and diligence, and in accordance with the plans, specifications, statutes, rules, and regulations of the Sponsoring Agency.
- d. Preparing invoices (in the form approved by the Sponsoring Agency) for submission to the Sponsoring Agency. The Provider Agency shall approve, sign, and forward billing documents to the Sponsoring Agency's designated representative for approval and payment.

6. Change Orders/Amendments.

- a. Change Orders/Amendments to any design or construction contract shall be approved in writing by the Sponsoring Agency prior to implementation unless the changes are deemed to be of an emergency nature, or due to unforeseen conditions or other circumstances, or could cause extra cost to the Sponsoring Agency if not done immediately. In the event of such conditions, the Provider Agency may execute the necessary changes with verbal approval of the Sponsoring Agency's designated representative and provide a written notification of the changes to the Sponsoring Agency within three (3) working days of the discovery, if a change order/amendment is deemed to be necessary.
- b. All amendments to this Agreement shall be in writing signed by both parties prior to the implementation of the amended terms.

7. Financing.

- a. The Sponsoring Agency shall pay the cost of all Capital Project Services rendered by the Provider Agency under all Project Agreements.

b. The County's reimbursement to the Town, shall not exceed a total of \$5,000,000.00 under all Project Agreements during the term of this Agreement. This total amount of \$5,000,000.00 may be adjusted by mutual agreement between the County and the Town during the 5 year term of this Agreement or for term extension(s) as indicated in Section 9.

c. The Town's reimbursement to the County shall not exceed \$5,000,000.00 under all Project Agreements during the term of this Agreement. This total amount of \$5,000,000.00 may be adjusted by mutual agreement between the Town and the County during the 5 year term of this Agreement or for term extension(s) as indicated in Section 9.

d. Each party shall establish a job cost account to identify and track all costs of Capital Project Services associated with each Project Agreement.

e. In the case of dispute on reimbursement of invoices/billings for Capital Project Services rendered, the dispute shall be escalated to the County and Town Directors for resolution on request of either party's designated representative. In the event the Directors disagree on any element of the invoices/billings, or fail to take action within 10 days of the request, the element in dispute shall be submitted to the County Administrator and the Town Manager for resolution on request of either Director. If the dispute is submitted to the County Administrator and Town Manager but they are unable to resolve the dispute, or fail to take action within 10 days of a request, the parties may pursue any remedies provided by law.

8. Other Uses for this Intergovernmental Agreement. The parties may exchange services in conjunction with the "Certification Acceptance" program, as defined by Arizona Department of Transportation (ADOT) / Federal Highway Administration (FHWA), under the same reimbursement provisions of this Agreement. This Agreement may also be used for other similar professional services that are mutually agreed upon by both parties and by the express approval of both the County Director and the Town Director.

9. Term and Termination.

a. Term. The initial term of this Agreement shall begin on the date this Agreement is recorded with the Pima County Recorder, and shall be effective for a period of five (5) years from the date of such recordation. Upon completion of the initial five (5) year term, this Agreement may be renewed for an additional five (5) year term by written amendment approved and signed by the parties.

b. Termination. This Agreement may be terminated under the following circumstances:

i. For Convenience. At any time either party to this Agreement may terminate this Agreement by providing to the other party written notice of such termination at least sixty (60) calendar days prior to the termination date. Such termination shall not relieve either party from those liabilities or costs incurred prior to the termination date.

ii. For Cause. A 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 (45) calendar 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.

iii. **Conflict of Interest.** This Agreement may be terminated for a conflict of interest as set forth in A.R.S. § 38-511, the relevant portions of which are hereby incorporated by reference.

10. Limitation of Liability. The Sponsoring Agency shall have full responsibility for all claims, costs, or damages arising out of the Sponsoring Agency's project, however the Sponsoring Agency reserves the right to proceed against the Provider Agency in the event the Sponsoring Agency determines that the Provider Agency shares some liability for any claim, cost or damage arising from the project.

11. Insurance. Each party will be responsible to carry adequate insurance to cover their respective liability arising as a result of their performance under this agreement. When requested, a party shall provide the other party with proof of its worker's compensation, automobile, accident, property damage, and liability coverage or program of self-insurance.

12. Workers Compensation. An employee of either party shall be deemed to be an employee of both public agencies while performing pursuant to this Agreement 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. § 23-906 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.

13. Inspection and Audit. The Sponsoring Agency may perform an inspection of the Capital Project or an audit of the Provider Agency's books and records at any time in order to verify that monies spent on the Capital Project were done so in accordance with this Agreement. All drawings, records, documentation and correspondence will become the property of the Sponsoring Agency at the completion of the Capital Project except for copies maintained by the Provider Agency for their records.

14. 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.

b. *Amendment.* This agreement shall not be modified, amended, altered or changed except by written agreement signed by the 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.

15. Legal Jurisdiction.

Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of the County or the Town. Employees of each party will be required to work in the jurisdiction of the other party, but as such, shall act as the agent for the Sponsoring Agency.

16. No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Intergovernmental Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between County and any Town employees, or between Town and any County employees. No party shall be liable for any debts, accounts, obligations or 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.

17. No Third Party Beneficiaries. Nothing in 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 any party to this Agreement, by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

18. 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.* The provisions of A.R.S. § 41-1463 and Executive Order 2009-09 issued by the Governor of the State of Arizona, which amended Executive Order 75-5 and superseded Executive Order 99-4, are incorporated by this reference as a part of this Intergovernmental Agreement as if set forth in full herein.

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.

- c. *Legal Arizona Workers Act Compliance.* Each party warrants to the other that it will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to the warranting party's employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together, the "State and Federal Immigration Laws"). Each party further agrees to ensure that each contractor who performs work associated with any Capital Project subject to this Agreement (i) complies with the State and Federal Immigration Laws, and (ii) ensures that any subcontractor who performs work for the contractor complies with the State and Federal Immigration Laws.

Each party shall further require that each contractor who performs work on a Capital Project subject to this Agreement advises each subcontractor of the party's rights, and the subcontractor's obligations, with respect to this subsection, by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to subcontractor's employees, and with the requirements of A.R.S. § 23-214(A). Subcontractor further agrees that [County or Town] may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any breach of the warranty of compliance with the State and Federal Immigration Laws by either party, by that party's contractor on a Capital Project subject to this Agreement, or by a subcontractor of that party's contractor on a Capital Project subject to this Agreement shall be deemed to be a material breach of this Agreement subjecting the breaching party to penalties up to and including suspension or termination of this Agreement. A party in breach of the warranty of compliance with State and Federal Immigration Laws shall further be liable to the other party for any additional costs attributable directly or indirectly to remedial action under this subsection.

Either party may, at any time, inspect the books and records of the other party in order to verify the other party's compliance with the State and Federal Immigration Laws.

- 19. Waiver.** Waiver by any 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.
- 20. 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.

21. 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 Town of Oro Valley:
Paul Keesler, Director
Development and Infrastructure Services
11000 N. La Canada Drive
Oro Valley, AZ 85737

Pima County:
Priscilla Cornelio, Director
Pima County Dept. of Transportation
201 N. Stone, 4th Floor
Tucson, AZ 85701

Either party may, by written notice to the other, designate a different person or address for the receipt of notices under this Agreement.

Any written notice under this Agreement shall be deemed delivered and received on the date of delivery, if delivered by hand, or three business days after the date of mailing, if sent by mail.

22. 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 Town of Oro Valley and Pima County 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 those parties to the Agreement.

TOWN OF ORO VALLEY

Tobin Sidles, Legal Service Director

Date

PIMA COUNTY:

Andrew Flagg, Deputy County Attorney

Date