

When recorded return to:

City Clerk
City of Surprise
16000 N. Civic Center Plaza
Surprise, AZ 85374

**INTERGOVERNMENTAL AGREEMENT BETWEEN
CITY OF EL MIRAGE AND CITY OF SURPRISE
MEDIAN CONSTRUCTION IN DYSART ROAD
BETWEEN PEORIA AND CACTUS ROADS**

This intergovernmental Agreement (“Agreement”) is between the City of El Mirage (“El Mirage”) and the City of Surprise (“Surprise”), both Arizona municipal corporations. El Mirage and Surprise may also be referred to as a Party or jointly as Parties in this Agreement.

This Agreement shall become effective as of the date it is filed with the Maricopa County Recorder pursuant to Arizona Revised Statutes § 11-952, as amended.

STATUTORY AUTHORIZATION

1. El Mirage and Surprise are empowered by Arizona Revised Statutes § 11-951, et. seq., to enter into this Agreement for the provision of services or for joint or cooperative action.

BACKGROUND

2. Dysart Road is under the jurisdiction of El Mirage. El Mirage desires the median to be improved in Dysart Road and the requirement falls on the development on the west side of the road which is within the jurisdiction of Surprise.
3. Surprise would like to move forward with the construction of this median in order to set the controls for access points along Dysart Road and to attract more business development in the area.
4. Surprise and El Mirage are currently working together on the design of the median. Construction of the median will not commence until the design plans are reviewed, approved and permitted by both agencies.

TERMS OF AGREEMENT

5. Responsibilities of the City of Surprise
 - 5.1 Construction of median per the permitted design plans and special provisions.
 - 5.2 Construction contractor procurement per A.R.S. Title 34.
 - 5.3 Provide civil construction inspection services.
 - 5.4 Fund the construction of the median.
 - 5.5 Provide a one (1) year warranty starting at the time of substantial construction completion.

6. Responsibilities of El Mirage
 - 6.1 Process no-fee civil and building permits.
 - 6.2 Not assess impact fee charges for landscape irrigation water meter.
 - 6.3 Allow Surprise to utilize its Civil Construction Inspectors for construction oversight.
 - 6.4 Provide oversight of all traffic control.
 - 6.5 Accept the operation and maintenance of the dedicated median improvements following completion of construction.

GENERAL TERMS AND CONDITIONS

7. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify, defend and hold the other Party harmless, including any of the Parties' respective 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 negligent 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 caused or contributed to 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.

8. This Agreement shall be subject to the conflict of interest provisions of A.R.S. Section 38-511.

9. The Parties warrant that they are in compliance with A.R.S. Section 41-4401 and further acknowledge that:
 - 9.1 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 (3) years, whichever is longer.

- 9.2 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.
 - 9.3 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.
 - 9.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
10. 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.
 11. 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.
 12. All Notices required under this agreement to be given in writing shall be sent to:

El Mirage: City of El Mirage
 Attn: Jorge Gastelum, City Engineer
 10000 North El Mirage Rd.
 El Mirage, AZ 85335

Surprise: City of Surprise
 Attn: Karl Zook, City Engineer

16000 N. Civic Center Plaza
Surprise, AZ 875374

All notices required or permitted by this Agreement or applicable law shall be in writing and maybe 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.

13. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.
14. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.
15. 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.
16. Any funding provided for in this Agreement, other than in the current fiscal year, is contingent upon being budgeted and appropriated by the Surprise 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.
17. 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.
18. 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.
19. 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.

20. 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.
21. 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.
22. 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. This Agreement shall be governed by the laws of the State of Arizona.
29. This Agreement shall automatically terminate when each party has completed its duties under this Agreement, but in no case later than March 1, 2020.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

CITY OF EL MIRAGE

CITY OF SURPRISE

Recommended by:

Recommended by:

Jorge Gastelum Date
City Engineer

Karl Zook Date
City Engineer

Approved and Accepted by:

Approved and Accepted by:

Lana Mook, Mayor Date

Sharon R. Wolcott, Mayor Date

Attest by:

Attest by:

Sharon Antes Date
City Clerk

Sherry Aguilar Date
City Clerk

Attorney Determination: By signing below I am attesting that this Agreement is in proper form and is within the powers and authority granted under the laws of this state to the public agency that I represent.

Robert M. Hall Date
City Attorney

Robert Wingo Date
City Attorney