



**INTERGOVERNMENTAL TRANSPORTATION FUNDING AGREEMENT  
BETWEEN  
THE PINAL REGIONAL TRANSPORTATION AUTHORITY  
AND  
THE CITY OF MARICOPA  
FOR  
DESIGN AND CONSTRUCTION OF  
THE EAST-WEST CORRIDOR ROADWAY PROJECT**

This Agreement (hereinafter "**Agreement**") is entered into pursuant to A.R.S. § 11-952 by and between the Pinal Regional Transportation Authority ("**PRTA**" or "**Authority**"), a special taxing district formed pursuant to Title 48 Chapter 30 of the Arizona Revised Statutes, and the City of Maricopa, a body politic and political subdivision of the State of Arizona ("**City of Maricopa**" or **Lead Agency**").

**RECITALS**

- A. A.R.S. § 48-5301, *et seq.*, ("**PRTA Enabling Legislation**") authorizes the Authority to act as a regional taxing authority for the purpose of funding multi-modal transportation operations and improvements identified in the Pinal Regional Transportation Plan ("**Plan**") that was approved by the voters at a special election held in Pinal County, Arizona, on November 7, 2017 ("**Special Election**"). The Special Election also authorized a sales tax to fund the Plan ("**Voter Approved Sales Tax**"). Under the Plan, the voters approved a Roadway Element comprised of numerous components. This Agreement implements a component of the Roadway Element, the City of Maricopa portion of the Roadway East-West Corridor Roadway Element. Such component is referred to herein as the "**Roadway Project**." Capitalized terms used in this Agreement and not defined herein shall have the meaning ascribed to such terms in the Publicity Pamphlet and Sample Ballot, Special Election, November 7, 2017, Pinal County Regional Transportation Plan Propositions 416 and 417 ("**Voter Pamphlet**").
- B. A.R.S. § 48-5302 provides that the County Board of Supervisors may establish a regional transportation authority, and the County Board of Supervisors has done so pursuant to Resolution #080515-RD15-018, dated August 5, 2015.
- C. The governing board of the Authority ("**PRTA Board**") is composed of Pinal County members of the regional council of governments in accordance with A.R.S. § 48-5303.
- D. Pursuant to A.R.S. § 48-5304 (12), the PRTA Board has sole authority to implement the elements of the Plan.
- E. Pursuant to A.R.S. § 48-5304 (13), the PRTA Board shall coordinate the implementation of the Plan among the local jurisdictions.
- F. A Regional Transportation Fund was authorized by the Arizona Legislature per A.R.S. § 48-5307 to be the repository for the Voter Approved Sales Taxes collected for the purpose of funding the Elements identified in the Plan.

- G. 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 as required by the Plan and to sell bonds in furtherance of that purpose to fund those projects or programs identified in the Plan.
- H. The Lead Agency is authorized by A.R.S. § 9-240 (B) (3) to design, maintain, control and manage public roads within the Lead Agency's jurisdictional boundaries.
- I. The Lead Agency may have a contract with Pinal County, one or more jurisdictions within Pinal County, or with the Arizona Department of Transportation ("**ADOT**") empowering the Lead Agency to perform roadway and other improvements outside the Lead Agency's jurisdictional boundaries or authorities.
- J. The Lead Agency, with funding from the Authority, wishes to undertake the design and construction of improvements authorized by the voters in order to complete the Lead Agency's portion of the Roadway Project.
- K. The Authority intends to fund the Roadway Project under the terms and conditions contained in this Agreement and has entered into this Agreement for that purpose. The amount to be funded by the Authority (the "**PRTA Contribution**") for the Lead Agency's portion of the East-West Corridor Roadway Project is currently set at \$21,762,762 based on the amount authorized by the voters for the East-West Corridor Roadway Project and as allocated to the Maricopa portion of the East-West Corridor Roadway Project by the Roadway Segmentation Plan (see Exhibit A), as approved by the PRTA Board. Such amount may be increased by the PRTA Board if and when additional revenues are available.
- L. Following the Special Election, litigation ensued (the "**Tax Challenge**") challenging the tax that was authorized at the Special Election. The Arizona Supreme Court has yet to render an opinion ("**Supreme Court Opinion**") regarding the Tax Challenge.
- M. It is the policy of the Authority to require that a lead agency be identified and that an intergovernmental agreement be approved and entered into by the Authority and the Lead Agency before requests for funding reimbursement or payments can be processed by the Authority.
- N. The City of Maricopa has been identified as the Lead Agency for the Roadway Project and will be responsible for all aspects of the Roadway Project implementation including, but not limited to, planning, project management, risk management, design, right of way acquisition and construction, advertisement, award, execution and administration of the design and construction contracts for the Roadway Project. The Authority's role is limited to providing financial support to the Lead Agency for the Roadway Project, as described herein.
- O. The Authority and the Lead Agency may contract for services and enter into agreements with one another or with other agencies for joint and cooperative action pursuant to A.R.S. § 11-951, *et seq.*

NOW, THEREFORE, the City of Maricopa and the PRTA, pursuant to the recitals set forth 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 funding, design, and construction of the Roadway Project and to address the legal and administrative matters among the parties.

**2. Roadway Project.** The Roadway Project consists of the acquisition of right of way, design and construction of new roadway capacity improvements within specific corridors. This will include the East-West Corridor beginning at State Route 347 located within the jurisdiction of the Lead Agency and extending east through Casa Grande to Interstate 10, the Maricopa portion of which is more fully depicted in the attached Exhibit A ("**Roadway Segmentation Plan**"). The Lead Agency may propose that the Roadway Project be developed in phases, with each such phase referred to

herein as a “**Roadway Segment.**”

**3. Effective Date; Term.** This Agreement shall become enforceable following its execution by both parties but shall be effective as of April 1, 2018. No party is committed to expend or distribute funds unless and until a Supreme Court Opinion is issued affirming the validity of the Voter Approved Sales Tax (“**Supreme Court Approval Date**”) and Voter Approved Sales Tax proceeds are received by the PRTA. The Term shall continue in effect until all improvements constructed pursuant to this Agreement for the Roadway Project are completed, all eligible reimbursement payments to the Lead Agency are concluded, and all warranties applicable to the Roadway Project have expired.

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

- a. Prior to the commencement of each fiscal year the Lead Agency must submit a plan for future Roadway Segments to be initiated in the next five fiscal years in connection with the PRTA Transportation Improvement (“**TIP**”) development.
- b. Attached as Exhibit A is a description of each Roadway Segment that constitutes the Roadway Project. This is the “Roadway Segmentation Plan” for the East-West Corridor. The Lead Agency’s responsibilities under this Section 4 apply to each Roadway Segment.
- c. Prior to commencing a Roadway Segment, the Lead Agency must submit a report (the “**Roadway Segment Funding Plan**”) that includes:
  - i. Detailed Roadway Segment scope and schedule.
  - ii. Roadway Segment budget and cost breakdown of items eligible for reimbursement from the PRTA, including any breakdown of other regional, local, federal or state funding. The Roadway Segment budget shall be used to confirm that the PRTA Contribution together with the Lead Agency’s Contribution will fund the Roadway Segment. Construction for the Roadway Segment may not commence without funding commitments from either the Lead Agency or third parties in an amount equal to the difference between the total budget for the Roadway Segment and the amount of the PRTA Contribution allocated to the Roadway Segment. Such difference shall be referred to herein as the “**Lead Agency’s Contribution.**” This Agreement only obligates the Lead Agency to commit available funds from Lead Agency independent sources of revenue for the Lead Agency Contribution. If additional funds are needed, this Agreement only obligates the Lead Agency to attempt to secure funding for the balance of the Lead Agency’s Contribution over and above amounts paid from Lead Agency funds.
  - iii. List any proposed billing of staff time directly attributable to Roadway Segment.
  - iv. Estimated construction start date and duration of construction for the Roadway Segment.
  - v. For services or right of way contracted for or acquired prior the Supreme Court Approval Date, the Roadway Segment Funding Plan shall include such expenses.
- d. Prior to any construction bid solicitation, the Lead Agency shall provide a complete set of Roadway Segment documents to the PRTA, including all plans and specifications, the engineer’s cost estimate, and a listing of all funding sources. The Roadway Segment may not be advertised for procurement prior to written confirmation from the PRTA that the Roadway Segment is compliant with PRTA requirements, and that funding is available for the Roadway Segment.
- e. The Lead Agency shall acquire right of way for each Roadway Segment.
- f. The Lead Agency shall be responsible for the design, construction and/or installation of each Roadway Segment 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, but are not limited to, the American Association of State Highway and Transportation Officials and Federal Highway Administration standards for highway engineering and construction, and any applicable

local, Pinal County design standards, or ADOT's Roadway Design Guidelines.

- g. If consultants or contractors are employed to perform in connection with any Roadway Segment, the Lead Agency shall be responsible for the contracts for design and construction of the Roadway Segment and shall select the consultants and contractors to be used on the Roadway Segment. All design and construction contracts shall be procured as required by A.R.S. § 34-101 *et seq.* 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.
- h. During the course of each Roadway Segment, the Lead Agency must submit request for reimbursement ("**Reimbursement Requests**"). For purposes of this Agreement, in addition to paying a Lead Agency for funds expended by the Lead Agency, Reimbursement Requests shall also include advancing funds to the Lead Agency to enable the Lead Agency to pay approved invoices submitted to the Lead Agency by third parties for Roadway Segment Costs. Reimbursement Requests shall include:
  - i. Certification that the work and materials that are the subject of the Reimbursement Request are included in the Plan.
  - ii. Certification of procurement.
  - iii. Certification of compliance with A.R.S. Section 38-501 *et seq.*
  - iv. Certification of work completed and record of all payments.
  - v. The Reimbursement Request 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 permitted under this Agreement.
  - vi. The Lead Agency must retain and certify all vendor receipts, invoices and any related Roadway Segment 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
- i. The final cost of each Roadway Segment shall be that amount necessary to complete the Roadway Segment, including any unanticipated work incorporated into the Roadway Segment by change orders and amendments executed by the Lead Agency. The Lead Agency shall be responsible for all Roadway Segment costs in excess of the PRTA Contribution allocated to the Roadway Segment.
- j. The Lead Agency shall be responsible for all traffic management and public safety, including public notification, during construction of the Roadway Segment.
- k. Inasmuch as the PRTA's role is limited to Roadway Segment funding, the Lead Agency agrees, to the fullest extent permitted by Arizona law, to indemnify, defend, and hold harmless the PRTA and its Board, officers, officials, employees and agents from, for, and against, any and all claims, demands, damages, liabilities or penalties, brought by or on behalf of any persons or entities, arising out of the Lead Agency's activities in performance of its obligations under this Agreement or use of PRTA's resources, as described herein, regardless of how such claims are worded or styled, and regardless of the specific cause of action or type of claim asserted. If a claim or claims by third parties become subject to this indemnity provision, the parties to this Agreement shall expeditiously meet to discuss a common and mutual defense, including possible proportionate liability and payment of possible litigation expenses and damages. The obligations under this subsection shall survive termination of this Agreement.
- l. The Lead Agency shall require its contractors performing any portion of each Roadway Segment to name the Authority and its Board, officers, officials, employees and agents as additional insured and additional indemnitees with respect to insurance policies for general liability, automobile liability and defects in design in all of the Lead Agency's contracts for each Roadway Segment. 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 each Roadway Segment.



- m. All proceeds from right of way remnants from properties acquired with PRTA funds for the Roadway Segment shall be used to reimburse the Lead Agency for construction costs for the Roadway Segment.

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

- a. Upon receipt of a request for reimbursement (“**Reimbursement Request**”), the PRTA shall review the Reimbursement Request and submit relevant comments to the Lead Agency within ten (10) days following submission of the Reimbursement Request. If the Reimbursement Request is determined to be complete and accurate, the PRTA will process the Reimbursement Request for payment. If the Reimbursement Request requires correction, or if the PRTA requires additional information, the PRTA shall notify the Lead Agency to provide additional information or initiate needed revisions.
- b. The PRTA shall make payment within twenty-one (21) days following submission of a complete/approved Reimbursement Request.
- c. Each Roadway Segment Reimbursement Request for design costs shall be capped at an amount equal to ten percent (10%) of the PRTA Contribution allocated to the Roadway Segment.
- d. Right-of-way expenses shall be reimbursed at up to \$150,000 per linear mile.
- e. If the Roadway Segment Funding Plan requires either the PRTA or the Lead Agency to issue bonds, the PRTA and the Lead Agency will enter into a separate Financing Agreement for such bonding.

## **6. Termination.**

- a. Either party may terminate this Agreement for material breach of the Agreement by the other party. Prior to any termination under this Section 6, 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) 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.
- b. This Agreement shall otherwise terminate as and when the conditions of Section 3 are satisfied.

**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 and the Recitals 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. Statutory Required Provision. This Agreement is subject to cancellation pursuant 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 each the Roadway Segment.

**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, sexual orientation, familial status, political affiliation, disability or national origin in the course of carrying out the duties pursuant to this IGA. 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 IGA 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, as well as the Genetic Information Nondiscrimination Act of 2008.
- c. 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.

**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:

Ms. Andrea Robles

Pinal Regional Transportation Authority

2540 W. Apache Trail #108

Apache Junction, AZ 85120

City of Maricopa:

**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.

**18. Counterparts.** 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 one and the same instrument. The signature pages from one or more counterparts may be removed from such counterpart and attached to a single instrument.

In Witness Whereof, the City of Maricopa has caused this Agreement to be executed by its Manager and the Authority has caused this Agreement to be executed by the Chairman of its Board.

Pinal Regional Transportation Authority

\_\_\_\_\_  
Mayor Craig McFarland  
Chairman, PRTA Board

\_\_\_\_\_  
Date

Maricopa

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Date

Maricopa

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

Attorney Certification

The foregoing Agreement by and between the Pinal Regional Transportation Authority and Maricopa 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.

Pinal Regional Transportation Authority

\_\_\_\_\_  
William J. Sims, PRTA Attorney

\_\_\_\_\_  
Date

Maricopa

\_\_\_\_\_  
Denis Fitzgibbons, City Attorney

\_\_\_\_\_  
Date

## Exhibit A

### East-West Corridor Segmentation Plan

This Roadway Segmentation Plan has been developed for the East-West Corridor to identify:

- Anticipated segmentation of the roadway project for construction purposes
- Lead Agency for each segment
- PRTA contribution for each segment

For the East-West Corridor, the segmentation and estimated construction costs were derived from the Design Concept Report (DCR). Attachment A depicts the anticipated construction segments as referenced in the DCR.

Table 1 below summarizes each segment length, Lead Agency, DCR cost estimate, PRTA contribution, and anticipated local contribution based on the DCR cost estimate.

Segment	Miles	Lead Agency	DCR Cost Estimate	PRTA Contribution	Local Contribution
1	3.3	Pinal County	\$19,894,000	\$7,652,239	\$12,241,761
2	1.7	Maricopa	\$7,394,000	\$2,844,107	\$4,549,893
3	1.2	Maricopa	\$6,308,000	\$2,426,376	\$3,881,624
4	0.9	Maricopa	\$4,609,000	\$1,772,855	\$2,836,145
5	2.3	Maricopa	\$38,267,000	\$14,719,425	\$23,547,575
6	2.0	Casa Grande	\$12,554,000	\$4,828,904	\$7,725,096
7	1.0	Casa Grande	\$6,513,000	\$2,505,229	\$4,007,771
8	0.5	Casa Grande	\$13,101,000	\$5,039,308	\$8,061,692
9	0.7	Casa Grande	\$5,120,000	\$1,969,411	\$3,150,589
10	3.3	Casa Grande	\$17,230,000	\$6,627,530	\$10,602,470
11	2.0	Casa Grande	\$9,596,000	\$3,691,107	\$5,904,893
12	2.1	Casa Grande	\$34,118,000	\$13,123,509	\$20,994,491
<b>TOTAL</b>	<b>21.0</b>		<b>\$174,704,000</b>	<b>\$67,200,000</b>	<b>\$107,504,000</b>





