

CITY CONTRACT NO.

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PHOENIX
AND MURPHY ELEMENTARY SCHOOL DISTRICT FOR THE DESIGN,
CONSTRUCTION, AND INSTALLATION OF A PEDESTRIAN HYBRID BEACON AT
WEST BUCKEYE RD, EAST OF 33RD AVE.**

This Intergovernmental Agreement ("Agreement") is entered into as of _____, 2024 ("Effective Date"), by and between the CITY OF PHOENIX ("Phoenix"), an Arizona municipal corporation, and the Murphy Elementary School District ("Agency"), an administrative agency. Phoenix and Agency are sometimes referred to collectively as "Parties" and individually as a "Party."

RECITALS

- A. ARIZ. REV. STAT. § 11-952(A) provides that public agencies may enter into intergovernmental agreements for the provision of services or for joint/cooperative actions.
- B. The purpose of this Agreement is to define the responsibilities of the City and the District for the Improvement Project.
- C. The Parties hereto agree to and acknowledge the following conditions: a) the Parties will perform their responsibilities consistent with the Agreement; and b) any changes to the scope of work relative to the Project will only occur upon the mutual written agreement of the Parties, by amendment of this Agreement.
- D. On July 1st, 2022 Phoenix's City Council approved Ordinance 48874-S — as required by ARIZ. REV. STAT. § 11-952(F)—which authorizes the City Manager to enter into this Agreement.
- E. The Parties understand the terms of this Agreement—having negotiated it freely with sufficient time and opportunity to consult with an attorney—and now enter into it voluntarily.

Now, therefore, for good and valuable consideration, Phoenix and Agency agree as follows:

AGREEMENT

I. Responsibilities

- 1. **Definitions:** The defined terms under this Agreement are as follows:

1.1 "Project" means engineering design and construction of the Pedestrian Hybrid Beacon on West Buckeye Rd., east of 33rd Ave.

2. Phoenix's Responsibilities. Phoenix's responsibilities under this Agreement are as follows:

- 2.1 Serve as the lead agency in the design and construction of the Project.
- 2.2 Retain and contract with one or more professional design consultants (the "Consultants") to prepare design plans, specifications and any other such documents required for the bidding and construction of the Project.
- 2.3 Advertise and award one or more construction contracts(s) for the Project per Project plans.
- 2.4 Designate a Project manager to work with the District to keep them notified of the Project status and schedule.
- 2.5 Be responsible for all future maintenance and repair of the pedestrian hybrid beacon and any part of the project located within right of way.
- 2.6 Open an escrow account, at its own expense, and deposit payment invoiced to the District to cover the Project costs.
- 2.7 Invoice the District full costs related to the pedestrian hybrid beacon traffic device construction to be deposited into the escrow account within 30 days of execution of this Agreement.

3. Agency's Responsibilities. Agency's responsibilities under this Agreement are as follows:

- 3.1 Upon execution of this Agreement, hereby designate the City as lead agency for this project.
- 3.2 Designate a Project coordinator to work with the City of Phoenix Project manager.
- 3.3 Pay invoice submitted to the City to cover participation in the project cost agreed to in the amount of full costs related to the pedestrian hybrid beacon device construction within 30 days of execution of this Agreement.
- 3.4 Design and construct a crosswalk within school property, leading from the Pedestrian Hybrid Beacon into the school in the most safe and direct route.

- 3.5 Upon completion of the Project, accept the Project on behalf of the Parties if the Project has been constructed satisfactorily completed in accordance with the Project documents

4. **Notices Between Parties.** The Parties deem that any notice that one Party gives, makes, or sends to any other Party under this Agreement is fully given, made, or sent when that notice is either: (1) personally delivered, which includes delivering by recognized courier service (such as Fed Ex and United Parcel Service); or (2) deposited in the United States by postpaid certified mail, addressed as follows:

To the District: Murphy Elementary School District
 Attn. Nathan Dettmar
 Superintendent
 3140 West Buckeye Road
 Phoenix, AZ 85009
 Phone: (602) 353-5004

To the City: City of Phoenix
 Attn. Brandy Kelso
 Interim Director Street Transportation Department
 200 West Washington Street, 5th Floor
 Phoenix, Arizona 85003-1611
 Phone: (602) 262-6136

By written notice, a Party may change its address to which another Party may give, make, or send a notice.

II. Statutory Requirements

5. **Duration – A.R.S. § 11-952(B)(1).** This Agreement shall remain in force and effect until whichever of the following is first to occur: (i) the Project is complete and final inspection and completion of final punch list items of the hereunder are achieved; or (ii) ten (10) years from the effective date of this Agreement.

6. **Purpose – A.R.S. § 11-952(B)(2).** Phoenix and Agency enter into this agreement to jointly finance the scope of work provided above. This work will serve to design and install the project.

7. **Manner of Financing/Budgeting – A.R.S. § 11-952(B)(3).**

7.1 The Parties will finance this undertaking as provided in § I above.

7.2 Phoenix's fiscal year begins July 1 and ends June 30 for each calendar year. Under ARIZ. REV. STAT. § 42-17108, Phoenix can make payment for services rendered—or costs committed—only during a fiscal year and for a period of 60 days immediately following the close of that fiscal year. Agency must submit billings for services performed or costs incurred prior to the close of a fiscal year in ample time to

facilitate payment during this 60-day period.

7.3 Agency's manner of establishing and maintaining a budget for this undertaking is as follows:

8. Termination – A.R.S. § 11-952(B)(4). This Agreement will terminate upon the earliest occurrence of any of the following:

8.1 the Agreement reaches the end of its term;

8.2 Phoenix completes—and Agency accepts—all services set forth in the Scope of Work ("**Services**"), attached and incorporated by reference as **Exhibit 1**;

8.3 Phoenix or Agency terminates agreement upon furnishing the other with a written notice at least 30 days before the effective termination date, with each Party to bear its own costs and expenses to date of termination.

III. Standard Terms and Conditions

9. Recitals and Captions: The Parties acknowledge that recitals set forth above are true and correct and are incorporated into this Agreement by reference. The captions in this Agreement are merely for reference, and not to construe or limit the text.

10. Governing Law and Jurisdiction. The laws of the State of Arizona will govern this Agreement. Any citations to a statute in this Agreement refers to the version of that statute in effect when the Parties execute this Agreement. ARIZ. REV. STAT. §§ 12-133 and 12-1518 may require arbitration of a dispute. Otherwise, the dispute is subject to the jurisdiction of the Maricopa County Superior Court.

11. Compliance with Laws. Phoenix and Agency will comply with all applicable federal, state, and local laws, ordinances, codes, rules, regulations, and executive orders, including those governing equal employment opportunity, immigration, nondiscrimination, and the Americans with Disabilities Act.

12. Mutual Benefits. In making the promises contained in this Agreement, the Parties agree that certain benefits and advantages will accrue for each Party by performance of this Agreement, so they enter this Agreement in reliance on the mutual benefits afforded each Party.

13. No Adverse Inference. This Agreement shall not be construed more strongly against one Party or the other. The Parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one Party than the other shall be used in interpreting this Agreement.

14. Successors and Assigns. The Parties bind themselves and their successors, assigns, and legal representatives to this Agreement's covenants. A Party

may not assign or otherwise transfer its interest in this Agreement without the other Parties' written consent.

15. No Agency Created. Nothing in this Agreement: (1) creates any partnership, joint venture, or agency relationship between the Parties; or (2) gives any right or cause of action for the benefit of any person, firm, organization, or corporation that is not a Party here.

16. No Third-Party Beneficiaries or Agency. Nothing in this Agreement gives any rights or benefits to anyone but the Parties. All duties and responsibilities undertaken under this Agreement are for the exclusive benefit of Phoenix and Agency—and not any other party. This Agreement does not create a contractual relationship with any third party or otherwise establish any third-party beneficiaries. No third party may enforce the terms and conditions of this Agreement.

17. Contract Cancellation. The Parties acknowledge that this Agreement is subject to cancellation by the either Party pursuant to the provisions of ARIZ. REV. STAT. § 38-511.

18. No Payment of Consideration for Agreement. Phoenix and Agency warrant that they have not paid or given—and will not pay or give—any third person any money or other consideration for obtaining this Agreement.

19. Entire Agreement. This Agreement expresses the full agreement and understanding of the Parties, superseding all prior written or oral communications.

20. Modification. No supplement, modification, or amendment of this Agreement's terms are effective unless in writing and signed by the Parties.

21. Severability. If any provision or application of this Agreement is invalid or illegal, then the Agreement's remainder endures unaffected and enforceable to the fullest extent permitted by law—so long as the severability does not defeat this Agreement's fundamental purposes.

22. Counterparts. The Parties may sign this Agreement in counterparts, and each counterpart will be effective and enforceable as though it were the original agreement.

23. Authority. Each Party represents and warrants that: (a) the person signing this Agreement on the Party's behalf is duly authorized and empowered to enter into and execute the Agreement; and (b) all persons or entities affiliated with the Party are bound by the terms of this Agreement.

24. Default. In the event of default under this Agreement, the nondefaulting Party will have all rights and remedies available to it at law or in equity. The exercise by any Party of one or more such rights or remedies will not preclude that Party from exercising—at a different time—any other rights or remedies for the same default or any other default by the defaulting Party.

25. Nonliability of Officials and Employees. In the event of any default or breach by Phoenix or Agency, no official or employee of Phoenix or Agency will be personally liable for any payments or other obligations due under this Agreement.

26. No Waiver. A Party may not construe the failure or delay of another Party to enforce—or require performance of—any of this Agreement's provisions to be a waiver of that provision. Such failure or delay will not affect the validity of any part of this Agreement or the rights of the Parties to enforce every provision.

27. Additional Documents/Actions. The Parties agree to execute and deliver all documents and take all actions reasonably necessary to implement and enforce this Agreement.

IV. Special Terms and Conditions

28. Indemnity. Each Party (as “Indemnitor”) agrees to indemnify, defend, and hold harmless the other Party (as “Indemnitee”) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as “Claims”) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

29. Insurance. The Parties acknowledge that Agency participates in a program of self-insurance under ARIZ. REV. STAT. § 41-621, as administered by the State of Arizona, Department of Administration, Risk Management Division. The general and professional liability coverage provided by this self-insurance program is sufficient for the purposes of this Agreement.

30. Legal Worker Requirements. Agency acknowledges that ARIZ. REV. STAT. § 41-4401 prohibits it from entering a contract for services with anyone who fails—or whose subcontractors fail—to comply with e-verify requirements under ARIZ. REV. STAT. § 23-214(A). Agency warrants its own compliance—and the compliance of each contractor it uses—with ARIZ. REV. STAT. § 23-214(A) and all federal immigration laws and regulations that relate to employed personnel. Breach of this warranty is a material breach of the Agreement, subject to penalties including termination of the Agreement. Phoenix retains the legal right to inspect the papers of any Agency or contractor employee who works under the Agreement to ensure that Agency is complying with this warranty.

31. Audit. Phoenix reserves the right to audit Agency's books, accounts, reports, files, and other records concerning Agency's performance under this Agreement. All records relating to this Agreement will be subject at all reasonable times to inspection and audit by Phoenix for **five years** following this Agreement's termination. For that duration, Agency will keep all records pertaining to this Agreement on a

generally accepted accounting basis and produce them at an office designated by Phoenix upon request.

32. Legal Worker Requirements. Phoenix acknowledges that ARIZ. REV. STAT. § 41-4401 prohibits it from entering a contract for services with anyone who fails—or whose subcontractors fail—to comply with e-verify requirements under ARIZ. REV. STAT. § 23-214(A). Phoenix warrants its own compliance—and the compliance of each contractor it uses—with ARIZ. REV. STAT. § 23-214(A) and all federal immigration laws and regulations that relate to employed personnel. Breach of this warranty is a material breach of the Agreement, subject to penalties including termination of the Agreement. Agency retains the legal right to inspect the papers of any Phoenix or contractor employee who works under the Agreement to ensure that Phoenix is complying with this warranty.

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In witness whereof, Phoenix and Agency, having carefully read and reviewed the foregoing paragraphs, have executed this Agreement to be effective on the date first written above.

**AN ARIZONA MUNICIPAL CORPORATION
CITY OF PHOENIX**

Recommended by
Jeffrey Barton, City Manager



09/16/2024

Brandy A. Kelso, P.E.
Interim Street Transportation Director

ATTEST:




Denise Archibald

Oct 15, 2024

Date



APPROVED AS TO FORM:


David Benton (Oct 8, 2024 10:39 PDT)



Chief Counsel

MURPHY ELEMENTARY SCHOOL DISTRICT

By: Nathan Dettmar, Superintendent

SCHOOL DISTRICT ATTORNEY

By: Anthony Contente-Cuomo

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of A.R.S. § 11-952(D), each of the undersigned attorneys acknowledge: (1) that they have reviewed the above Agreement on behalf of their respective clients; and (2) that, as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.


David Benton (Oct 8, 2024 10:39 PDT)

Attorney for City of Phoenix

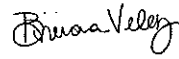
Attorney for Murphy Elementary School
District

Signature:



Email: Jorge.Riveros@phoenix.gov

Signature:



Email: briiana.velez@phoenix.gov