

## **INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”), by and between the Town of Paradise Valley (“Paradise Valley” or “Town of Paradise Valley”), a municipal corporation duly organized and existing under the laws of the State of Arizona, and the City of Phoenix (“Phoenix” or “City of Phoenix”), a municipal corporation duly organized and existing under the laws of the State of Arizona. The entities are referred to jointly herein as “Parties” and individually as “Party.” This Agreement constitutes the entire understanding and agreement of the Parties.

### **RECITALS**

- A. Arizona Revised Statutes (A.R.S.) § 11-951 through § 11-954, provide that public agencies may enter into intergovernmental agreements for the provisions of services or for joint and cooperative action.
- B. Paradise Valley is authorized by Arizona Revised Statutes (A.R.S.) § 11-952 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.
- C. Phoenix is authorized by the Charter of the City of Phoenix, Chapter II, Section 2, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
- D. The Parties have agreed to collaborate on a project to construct a meandering sidewalk along the north side of Lincoln Drive from 32<sup>nd</sup> Street to 40<sup>th</sup> Street (“Lincoln Drive Sidewalk Project”), said sidewalk being primarily within the municipal borders of Paradise Valley with the occasional meander within the municipal borders of Phoenix as shown in Exhibit A: Municipal Boundary and Preliminary Layout.
- E. The Parties desire for Paradise Valley to act as the lead fiscal and construction agent on the Lincoln Drive Sidewalk Project with responsibilities as set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and the covenants and promises set forth below, Phoenix and Paradise Valley hereby mutually agree as follows:

### **AGREEMENT**

1. **Purpose.** The purpose of this Agreement is to set forth the rights and responsibilities of the parties with respect to the payment and distribution of the funds dedicated for the benefit of the Lincoln Drive Sidewalk Project and the lead agency.
2. **Town of Paradise Valley as Lead Fiscal and Construction Agent.** The Parties to this Agreement hereby designate Paradise Valley as the lead fiscal and construction agent for the Lincoln Drive Sidewalk Project.

3. **Operation and Maintenance by the Town of Paradise Valley.** The Town of Paradise Valley shall maintain all portions of the sidewalk and associated improvements within the Town of Paradise Valley's Right of Way as well as those portions that are on located within the City of Phoenix Right of Way within the City Of Phoenix municipal limits.

4. **Term of Agreement.** The term of this Agreement shall be for ten (10) years, commencing on the Effective Date ("Initial Term"). Upon the expiration of the Initial Term, the Agreement may be extended, upon the mutual agreement of the parties, for additional ten-year periods, if not sooner terminated as provided in this Agreement.

5. **Transactional Conflict of Interest.** The Parties acknowledge that this Agreement is subject to cancellation by any party pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

6. **Indemnification.**

a. Indemnification. 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.

b. Severability. This section shall survive termination, cancellation, or revocation whether in whole or in part, of this Agreement for a period of two (2) year from the date of such termination, cancellation or revocation unless a timely claim is filed under A.R.S. §12-821.01, in which case this paragraph shall remain in effect for each claim and/or lawsuit filed thereafter, but in no event shall this paragraph survive more than five (5) years from the date of termination, cancellation or revocation of this Agreement.

7. **Interpretation of Agreement**

a. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained herein, 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 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 contained herein.

d. Waiver. No waiver, whether written or tacit, of any remedy or provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof or a permanent waiver of the provision concerned, unless otherwise stated in writing by the Party to be bound thereby.

e. Relationship of the Parties. Neither Party shall be deemed to be an employee or agent of the other Party to this Agreement.

f. Severability. In the event that any provisions 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 valid 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.

8. **Authority**. Paradise Valley and Phoenix each represent, warrant and covenant to the other that they have the right and the authority to enter into and make this Agreement.

9. **Termination**.

a. For Cause. Either Party hereto may terminate this Agreement for material breach of the Agreement by another Party. Prior to any termination under this section, 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. 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 purposes 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 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 any such inability with all reasonable dispatch.

10. **Notices.** Any notice, consent or other communication or modification (“Notice”) required or permitted under this Agreement shall be in writing and shall be given by registered or certified mail or in person to the following individuals. The date of receipt of such Notices shall be the date the Notice shall be deemed to have been given.

For Paradise Valley:  
Paradise Valley Town Council  
Mayor Michael Collins  
Town of Paradise Valley  
6401 East Lincoln Drive  
Paradise Valley AZ 85253-4328

For Phoenix:  
Phoenix City Council  
Mayor Greg Stanton  
City of Phoenix  
200 West Washington  
Phoenix, Arizona 85003-1611

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Intergovernmental Agreement on the dates indicated below.

TOWN OF PARADISE VALLEY,  
an Arizona Municipal Corporation

CITY OF PHOENIX,  
an Arizona Municipal Corporation, Ed  
Zuercher, City Manager

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Kevin Burke

Name: Maria Hyatt

Its: Town Manager

Its: Street Transportation Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVAL OF TOWN ATTORNEY

In accordance with the requirements of A.R.S. §11-952(D), the undersigned attorney acknowledges that (i) s/he has reviewed the above Agreement on behalf of the TOWN OF PARADISE VALLEY and (ii) as to the Town of Paradise Valley only, has determined that this Agreement is in proper form and within the powers and authority granted to the Town of Paradise Valley under the laws of the State of Arizona.

\_\_\_\_\_  
Town Attorney

\_\_\_\_\_  
Date

APPROVAL OF CITY ATTORNEY

In accordance with the requirements of A.R.S. §11-952(D), the undersigned attorney acknowledges that (i) s/he has reviewed the above Agreement on behalf of the CITY OF PHOENIX and (ii) as to the City of Phoenix only, has determined that this Agreement is in proper form and within the powers and authority granted to the City of Phoenix under the laws of the State of Arizona.

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

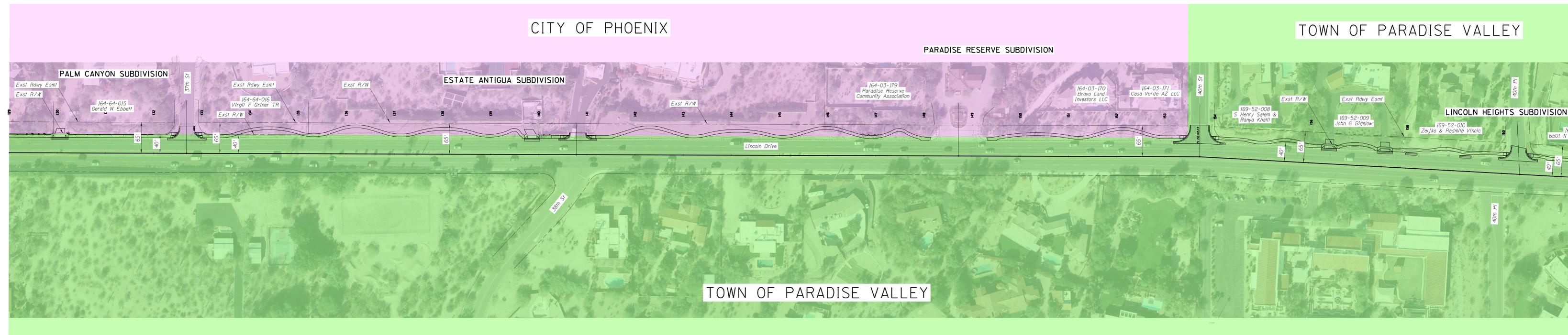
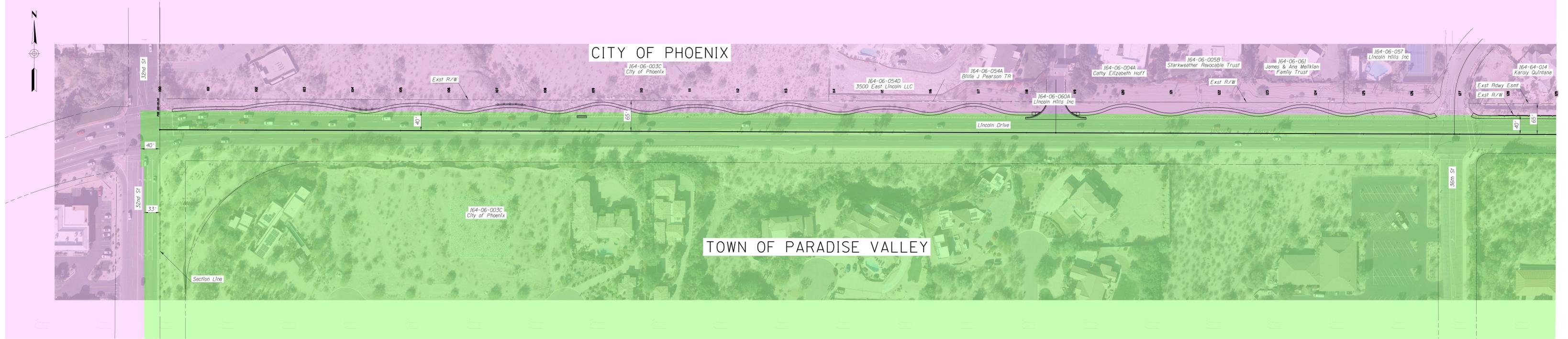
ATTEST:

ATTEST:

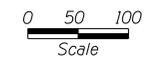
\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Town Clerk

Exhibit A: Municipal Boundary and Preliminary Layout



City of Phoenix  
 Town of Paradise Valley



LINCOLN DRIVE SIDEWALK EXPANSION  
 FEDERAL AID NO. PVY-0(204)1  
 SEGMENTS 1 AND 2  
 6/28/2017