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JAN 27 2011
CITY OF CHANDLER
CITY CLERK



MEMORANDUM Transportation and Development – Council Memo No. TR11-001

DATE: JANUARY 27, 2011

TO: MAYOR AND CITY COUNCIL

THRU: RICH DLUGAS, ACTING CITY MANAGER *RD*
PAT MCDERMOTT, ASSISTANT CITY MANAGER *PM*
R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *RJZ*
DAN COOK, TRANSPORTATION MANAGER *DC*

FROM: H. PAUL YOUNG, SENIOR ENGINEER *HPY*

SUBJECT: RESOLUTION NO. 4482 APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY FOR IMPROVEMENTS TO MCQUEEN ROAD FROM OCOTILLO ROAD TO RIGGS ROAD, IN THE AMOUNT OF \$275,000.

RECOMMENDATION: Staff recommends Council pass and adopt Resolution 4482 approving an intergovernmental agreement with Maricopa County for improvements to McQueen Road from Ocotillo Road to Riggs Road, in the amount of \$275,000.

BACKGROUND/DISCUSSION: Each year the Maricopa County Transportation Advisory Board allocates \$1,500,000 as a Special Projects Fund for local road construction projects. All cities in the county can submit projects for possible funding from the Special Projects Fund.

This year, staff submitted the following project for consideration by the board:

- \$275,000 for County share of acquisition of necessary right-of-way and share of construction costs for McQueen Road from Ocotillo Road to Riggs Road.

The application was approved. In order to utilize this funding an intergovernmental agreement between the City and the County is necessary. At this time, the design is 100% complete and staff is acquiring right-of-way for the project. Construction is scheduled for the 2nd five years of the Capital Improvement Program.

The intergovernmental agreement outlines the provisions for obtaining the funds and also establishes the City and County responsibilities for the acquisition of right-of-way in the County islands and annexing the property into the City when the road construction is completed.

Memo No. TR11-001

January 27, 2011

Page 2

FINANCIAL IMPLICATIONS: This agreement will provide the City with \$275,000 in additional funding for the project.

PROPOSED MOTION: Staff recommends Council pass and adopt Resolution 4482 approving an intergovernmental agreement with Maricopa County for improvements to McQueen Road from Ocotillo Road to Riggs Road, in the amount of \$275,000.

ATTACHMENTS:

Resolution No. 4482

Location Map

Intergovernmental Agreement

RESOLUTION NO. 4482

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY FOR IMPROVEMENTS TO MCQUEEN ROAD FROM OCOTILLO ROAD TO RIGGS ROAD, IN THE AMOUNT OF \$275,000

WHEREAS, the City of Chandler desires to construct improvements to McQueen Road from Ocotillo Road to Riggs Road;

WHEREAS, the City of Chandler applied for Special Project Funds from Maricopa County to assist in the cost of the right-of-way acquisition for this project; and,

WHEREAS, this project was approved for Special Projects Funds by Maricopa County in the amount of \$275,000 for the McQueen Road project;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, that the Mayor is authorized to sign and execute the Intergovernmental Agreement on behalf of the City of Chandler.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this _____ day of _____ 2011.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION:

I HEREBY CERTIFY that the above and foregoing Resolution No. 4482 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at the regular meeting held on the _____ day of _____ 2011, and that a quorum was present thereat.

City Clerk

APPROVED AS TO FORM:

City Attorney GAB

INTERGOVERNMENTAL AGREEMENT
BETWEEN MARICOPA COUNTY AND CHANDLER OF CHANDLER
FOR IMPROVEMENTS TO: MCQUEEN ROAD
FROM RIGGS ROAD TO OCOTILLO ROAD
(TT003)

(C-91-11- _____ -M-00)

This Intergovernmental Agreement (**Agreement**) is between the County of Maricopa, a political subdivision of the State, acting through the Maricopa County Department of Transportation (**County**), and the City of Chandler, a municipal corporation (**Chandler**). The County and Chandler are collectively referred to as the **Parties** or individually as a **Party**.

This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors and may be filed with the Maricopa County Recorder.

STATUTORY AUTHORIZATION

1. A.R.S. §11-251 and §§28-6701 et seq. authorize the County to layout, maintain, control and manage public roads within the County.
2. A.R.S. §§11-951 et seq. authorize public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.

BACKGROUND

3. Chandler is improving McQueen Road from Riggs Road to Queen Creek Road as part of Chandler's Capital Improvement Program. The segment of McQueen Road from Ocotillo Road to Queen Creek Road is currently under construction. The design has been completed for the segment of McQueen Road from Riggs Road to Ocotillo Road (**the "Project"**). The roadway improvements include adding additional through lanes, turn lanes and bike lanes, storm drain system, traffic signals, streetlights, and raised landscape median. The roadway is being widened to improve capacity, safety and air quality. Chandler is requesting cost participation in the acquisition of rights-of-way for County parcels along the Project frontage. Approximately 16% of this Project lies within County jurisdiction.

4. The total cost of the Project is currently estimated at \$10.9 million.
5. The Board of Supervisors, by Resolution in May 2002, approved the creation of the Transportation Advisory Board Special Project Fund (**TAB-SPF**) in the amount of \$1,000,000 per fiscal year. The Board of Supervisors increased the TAB-SPF to \$1,500,000 by Amendment Resolution 02-05A in June 2007.
 - 5.1 The TAB-SPF may be utilized by the Maricopa County Department of Transportation (**MCDOT**) to respond to proposed projects as determined appropriate by the Transportation Advisory Board (**TAB**).
 - 5.2 The TAB-SPF is administered by MCDOT, in accordance with the Board of Supervisors resolutions, through MCDOT Policy T 1103.
6. On September 21, 2010 the Transportation Advisory Board (TAB) recommended that the Board of Supervisors fund the Project submitted by Chandler from the FY 2011 Special Project Fund (SPF) in the amount of \$275,000.

PURPOSE OF THE AGREEMENT

7. The purpose of this Agreement is to identify and define the responsibilities of the County and Chandler for the cost sharing, design, construction, construction management, rights-of-way acquisition, utility relocation, and annexation of the roadway.

TERMS OF THE AGREEMENT

8. Responsibilities of the County:

- 8.1 The County shall cooperate with Chandler in the completion of the Project.
- 8.2 The County shall issue permits at no cost to Chandler for work done on the Project within County jurisdiction.
- 8.3 The County will provide the following staff support:

i. Right-of-Way (ROW) Acquisitions

The County will assist with the acquisition of right-of-way in fee and related easements within the County's jurisdiction necessary for the Project, as requested by Chandler, and as needed, authorize the County's Legal Representative to initiate, prosecute and perform all acts in the manner required by law to condemn property and obtain an Order of Immediate Possession in the County that is deemed necessary for the Project.

1. Real Estate support will be provided within a realistic timeframe as determined by the accessibility of available agents and timely delivery of right-of-way requirements and related easements as provided Chandler.
2. The County will invoice Chandler on a mutually agreed upon time basis

for any expenses accrued for the acquisition of right-of-way for this Project.

3. The invoice notification will provide an itemization of expenses being requested for payment.
4. At the time of Chandler's request pursuant to section 9.1(iv), the County shall assume all responsibility for the management of the acquisition, in accordance with the statutes, policies, and procedures that govern the County's ability to acquire the land rights.

8.4 The County shall remit payment from the FY2011 Special Project Fund to Chandler within 30 days of receipt of an invoice from Chandler for \$275,000.

8.5 Upon approval of this Agreement by the County Board of Supervisor, the County shall notify Chandler that the Board has approved the Agreement.

9. Responsibilities of Chandler:

9.1 Chandler shall act as the Lead Agency for the Project consistent with Chandler's standards to include, but not be limited to, the design, construction, construction management, rights-of-way acquisition, and utility relocations, as applicable. In such capacity, activities conducted by Chandler shall include, but are not limited to, the following:

- i. Chandler shall identify the required right-of-way, parcel numbers and property owners.
- ii. Unless Chandler requests the assistance of the County for tasks required pursuant to this Section 9.1(ii), Chandler shall be responsible for contacting property owners, submitting an offer to property owners for the acquisition of the right-of-way, negotiating with property owners for the acquisition of right-of-way and paying property owners for the right-of-way.
- iii. Should Chandler's negotiations result in the successful acquisition of all or a portion of the needed right-of-way, Chandler shall also be responsible for all escrow fees and related costs. Chandler shall conduct all activities required pursuant to Section 9.1(ii) in a timely manner in order for it to comply with the requirements of Section 9.1(iv).
- iv. If Chandler is unsuccessful in acquiring all required right-of-way from affected property owners, Chandler shall, at least five (5) months prior to needing access to the required right-of-way to begin construction, request the County to commence condemnation proceedings to acquire the right-of-way and related easements needed for the Project. Chandler acknowledges that the County needs at least five (5) months prior to construction to begin condemnation proceedings due to statutory requirements, time needed to complete necessary tasks and potential staff constraints. The five (5) month timeline is contingent on adequate staffing for County Public Works Real Estate and by all information provided by Chandler to the County being current and sufficient to proceed on with acquisition/condemnation processing.

1. At the time of Chandler's request pursuant to Section 9.1(iv), Chandler shall provide to the County recordable legal descriptions, maps, and exhibits required by the County to complete right-of-way acquisitions.
 2. At the time of Chandler's request pursuant to section 9.1(iv), Chandler shall cease and desist all contact with the property owners, and shall convey to the County all responsibility for the management of the necessary right-of-way acquisitions or condemnation for the Project.
 3. Chandler shall refer any and all escalation of questions and concerns with the acquisition of the Project to the management of the County's Public Works Real Estate Division.
 - v. Chandler shall be solely responsible for utility coordination and relocation activities.
 - vi. Chandler shall obtain and manage the design and construction of the improvements for the Project.
 - vii. Except as noted in item 9.6, Chandler shall be ultimately responsible for all costs and fees associated with the Project, including but not limited to design, right-of-way acquisition, utility relocation, construction and any associated attorney's fees and costs.
- 9.2 Chandler shall pay directly or reimburse the County for all reimbursable expenses incurred by the County, including, but not limited to:
- i. Right-of-way (ROW) Acquisition
 1. Title Examinations and Reports
 2. Property Appraisals
 3. Cost of acquisition of property or easements, including escrow and closing costs.
 4. Cost of condemnation proceedings if needed.
 5. All related attorney's fees and costs provided by the County.
- 9.3 Chandler shall pay the County for any expenses incurred after receiving an itemized invoice related to the acts performed pursuant to all items identified in section 9.2 above. Payment shall be remitted within thirty (30) days of the receipt of the itemized invoice.
- 9.4 Upon completion of the Project, Chandler shall annex into Chandler's corporate limits all of those portions of Sections 22, 23, 26 and 27 of T2S, R5E, Maricopa County, Arizona lying within the right-of-way of McQueen Road, except for any portions currently annexed by Chandler.
- 9.5 Pursuant to A.R.S. §9-471, Chandler shall deliver a copy of the adopted annexation ordinance to the Clerk of the County Board of Supervisors and to the County c/o Public Works Real Estate Division, 2801 West Durango Street, Phoenix, Arizona 85009, within sixty days after adoption of the annexation ordinance.

- 9.6 Chandler shall invoice the County for \$275,000 from the FY2011 Special Project Fund upon approval of this Agreement by the Board of Supervisors.
- 9.7 Chandler shall deliver a copy of the Project bid award, when issued, to the County c/o Intergovernmental Relations Branch, 2901 West Durango Street, Phoenix, Arizona 85009.
- 9.8 Chandler shall provide to the County a final accounting of all funds upon completion of the Project.
- 9.9 Chandler shall return any remaining funds to the County upon completion of the Project.

GENERAL TERMS AND CONDITIONS

10. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify and save the other Parties harmless, including any of the Parties' 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 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 occasioned 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.
11. This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors and may be recorded with the Maricopa County Recorder, and remain in full force and effect until all stipulations previously indicated have been satisfied except that it may be amended upon written Agreement by all Parties. Any Party may terminate this Agreement upon furnishing the other Parties with a written notice at least thirty (30) days prior to the effective termination date.
12. This Agreement shall be subject to the provisions of A.R.S. §38-511.
13. The Parties warrant that they are in compliance with A.R.S. § 41-4401 and further acknowledge that:
 - 13.1 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. § 23-214(A), and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer:

- 13.2 That 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;
 - 13.3 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;
 - 13.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
14. The Parties warrant that they do not have scrutinized business operations in Sudan or Iran, as prohibited by ARS sections 35-391.06 and 35-393.06, and further acknowledge that any contractor or subcontractor who is contracted by a party to perform work on the Project shall warrant that they do not have scrutinized business operations in Sudan or Iran.
 15. Each Party in 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 are not suspended or debarred by any federal agency which has provided funding that will be used in the Project described in this Agreement.
 16. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.
 17. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.
 18. This Agreement shall not be modified or extended except by written instrument adopted under the requirements for adopting a new agreement.
 19. 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.
 20. Any funding provided for in this Agreement, other than in the current fiscal year, is contingent upon being budgeted and appropriated by the Maricopa County Board of Supervisors and the Chandler City Council in such fiscal year.
 21. This Agreement has been arrived at by negotiation and shall not be construed against any Party or against the Party who prepared the last draft.
 22. Unless otherwise lawfully terminated by the Parties, this Agreement shall expire upon the completion and acceptance of the Project and the fulfillment of all terms of the Agreement.

End of Agreement - Signature Page Follows

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

MARICOPA COUNTY

CITY OF CHANDLER

Recommended by:

Recommended by:

John B. Hauskins, P.E. Date
Transportation Director

Rich Dlugas Date
Acting City Manager

Approved and Accepted by:

Approved and Accepted by:

Fulton Brock, Chairman Date
Board of Supervisors

Jay Tibshraeny Date
City Mayor

Attest by:

Attest by:

Fran McCarroll Date
Clerk of the Board

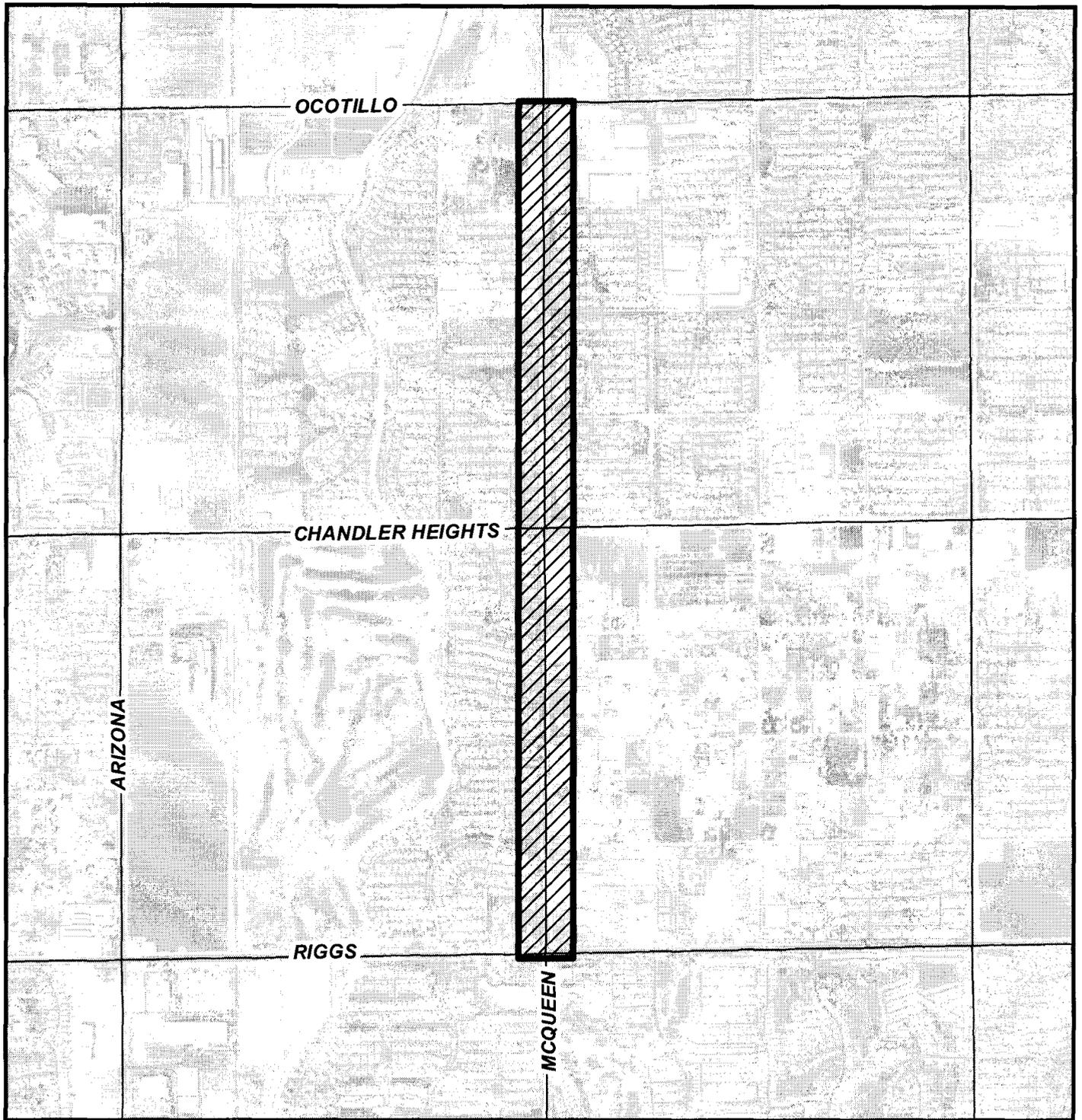
Marla Paddock Date
City Clerk

APPROVAL OF ATTORNEY FOR BOS AND CITY ATTORNEY

I hereby state that I have reviewed the proposed Intergovernmental Agreement and declare the Agreement to be in proper form and within the powers and authority granted to the Parties by their respective governing bodies under the laws of the State of Arizona.

Attorney for BOS Date

City Attorney *GB* Date



**McQUEEN RD
FROM OCOTILLO RD TO RIGGS RD
STREET WIDENING IMPROVEMENTS
PROJECT NO. ST0810-201**

MEMO NO. TR11-001

 **PROJECT AREA**

