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MEMORANDUM **Transportation & Development - Memo No. TR12-003**

DATE: MAY 24, 2012

TO: MAYOR & COUNCIL

THRU: RICH DLUGAS, CITY MANAGER
PAT MCDERMOTT, ASSISTANT CITY MANAGER
R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR

FROM: DANIEL W. COOK, P.E., TRANSPORTATION MANAGER

SUBJECT: RESOLUTION NO. 4583, AN INTERGOVERMENTAL AGREEMENT WITH THE MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION FOR COST SHARING FOR IMPROVEMENTS TO GILBERT ROAD FROM QUEEN CREEK ROAD TO HUNT HIGHWAY.

RECOMMENDATION: Staff recommends approval of Resolution No. 4583, authorizing the City to enter into an Intergovernmental Agreement with the Maricopa County Department of Transportation for cost sharing for Improvements to Gilbert Road from Queen Creek Road to Hunt Highway.

BACKGROUND/DISCUSSION: The City of Chandler is planning on making improvements to Gilbert Road from Queen Creek Road to Hunt Highway. These improvements will result in a six lane roadway from Queen Creek Road to Ocotillo Road and a four lane roadway from Ocotillo Road to Hunt Highway with curb, gutter, sidewalk, streetlights, landscaping, utility relocations, and an extended Roosevelt Water Conservation District (RWCD) canal crossing. Along this section of Gilbert Road there are existing County island properties representing about 13% of the project frontage. Because these improvements benefit the County island residents, the Maricopa County Department of Transportation (MCDOT) is participating in the funding of this project at 13% of the project cost, less City enhancements. The City enhancements that MCDOT will not participate in funding include landscaping, street lighting, and undergrounding overhead utilities. This agreement will include cost sharing on the segment of Gilbert Road currently under construction, Queen Creek Road to Ocotillo Road. The estimated construction cost is $32.4 million including City enhancements, and $26.67 million not including City enhancements.

The construction cost of the project less the amount of any future grants will be the amount shared between the City and MCDOT. MCDOT's share of the project is $3.468 million.

After completion of all the right-of-way acquisition, the City will process annexation of the Gilbert Road right-of-way, and maintain the roadway.

TRANSPORTATION COMMISSION: During the Transportation Commission meeting held on May 9, 2012, the Commission voted unanimously to forward a recommendation to Council authorizing the City to enter into an Intergovernmental Agreement with the Maricopa County Department of Transportation for cost sharing for Improvements to Gilbert Road from Queen Creek Road to Hunt Highway.

FINANCIAL IMPLICATIONS: The programmed funding for this project is:

$12,690,496	City Bond funding
$16,267,260	City Prop 400 funding
$ 2,430,740	MCDOT Prop 400 funding
$ 1,037,004	MCDOT Funding
$32,425,500	Total Estimated Project Cost

$18,698,000 in Prop 400 funding is programmed in the February 22, 2012 Arterial Life Cycle Program (ALCP) for reimbursement to the City and MCDOT for this project: $52,000 in FY 2012; $1,418,000 in FY 2013; $5,271,000 in FY 2014; $2,267,000 in FY 2016; $6,160,000 in FY 2018; $2,860,000 in FY 2019; and $670,000 in FY 2023. The City will seek advance reimbursement of these funds in the MAG Arterial Life Cycle Program close-out process. The MCDOT funding of $1,037,004 is programmed for reimbursement to the City in FY 2017 or sooner if they have available funding.

At the completion of the construction the actual cost of the project elements will be used to determine the final cost that MCDOT will be responsible for under the terms of this agreement.

PROPOSED MOTION: Move to approve Resolution No. 4583, authorizing the City to enter into an Intergovernmental Agreement with the Maricopa County Department of Transportation for cost sharing for Improvements to Gilbert Road from Queen Creek Road to Hunt Highway, and authorizing the Mayor to sign the Intergovernmental Agreement.

Attachments: Resolution 4583
Intergovernmental Agreement

RESOLUTION NO. 4583

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CHANDLER AND MARICOPA COUNTY, ACTING AND THROUGH THE MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION, REGARDING COST SHARING FOR IMPROVEMENT OF GILBERT ROAD FROM QUEEN CREEK ROAD TO HUNT HIGHWAY.

WHEREAS, the City of Chandler and Maricopa County, by and through the Maricopa County Department of Transportation, desires to cost share on the construction improvements to Gilbert Road from Queen Creek Road to Hunt Highway; and

WHEREAS, after completion of the right of way acquisition the City and Maricopa County will cooperate in having this section of roadway annexed into the limits of the City; and

WHEREAS, the cost sharing for this project will be in accordance with the terms of the Intergovernmental Agreement attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, as follows:

1. An Intergovernmental Agreement between the City of Chandler and Maricopa County, acting by and through the Maricopa County Department of Transportation, is approved in substantially the form attached hereto as Exhibit "A" for the purpose of undertaking the cost sharing arrangement with Maricopa County for the construction of improvements to Gilbert Road from Queen Creek Road to Hunt Highway.

2. The Mayor of the City of Chandler is authorized to execute the Intergovernmental Agreement.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2012.

ATTEST:

_____ _____

CITY CLERK MAYOR

APPROVED AS TO FORM:

_____

CITY ATTORNEY GAB

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4583 was duly passed and approved by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2012, and that quorum was present thereat.

_____

CITY CLERK

INTERGOVERNMENTAL AGREEMENT

BETWEEN MARICOPA COUNTY AND THE CITY OF CHANDLER

FOR IMPROVEMENTS TO: GILBERT ROAD

FROM QUEEN CREEK ROAD TO HUNT HIGHWAY

(C-91-12-_____ -M-00)

(MCDOT Project# T____)

This Intergovernmental Agreement (**Agreement**) is between the County of Maricopa, a political subdivision of the State, (**"County"**), and the City of Chandler, a municipal corporation (the **"City"**). The County and City 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.

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. The County's Transportation Advisory Board (the **"TAB"**) is responsible for providing recommendations of projects for scoping, design and construction in future years of the TIP, based on the County's strategic priorities and the information submitted by the other jurisdictions.

4. On March 25, 2010, a request for proposal was sent by the County to all the incorporated cities, towns, and Native American communities **(Jurisdictions)** within the County. The request called for projects to be submitted for consideration of programming in the County's FY2016-2020 Transportation Improvement Program (the **"TIP"**) or for a scoping study to be performed for future project consideration. The County received a total of 26 project requests totaling more than $450M in total project costs.

5. On January 18, 2011, the TAB scored all the projects submitted based on factors such as crash rate, crash severity existing volume, volume to capacity, and other criteria. The scoring activity included both capital and scoping projects. It was determined at that time that the County would negotiate the capital projects with the respective Jurisdictions in terms of approximate cost share and return to the TAB for final inclusion in the TIP.

6. The TAB recommended that Gilbert Road from Queen Creek Road to Hunt Highway (the **"Project")** be included in the TIP.

7. Approximately 13% of the Project is adjacent to unincorporated County jurisdiction.

8. The four mile long Project will be an urban cross-section roadway designed to City standards. The design is at 100%. It will include additional through lanes, turn lanes, bike lanes, storm drainage system, traffic signals, raised landscape median, and City wet utilities. Roadway improvements include the east-west legs at Queen Creek Road, Ocotillo Road, Chandler Heights Road, Riggs Road, and Hunt Highway intersections.

9. Portions of the Project right-of-way acquisitions are complete, however, the City expects additional acquisitions to be underway soon. Construction is expected to begin in FY2012 and will be constructed in one mile segments with the last mile to be constructed in FY2018.

10. The Project is identified in the Regional Transportation Plan Arterial Life Cycle Program (the **"RTP ALCP")** adopted by the Maricopa Association of Governments **(MAG)**.

11. The estimated total Project cost is currently $32.426 Million based on FY2012 dollars. The final Project cost shall be determined after the completion and acceptance of the Project.

12. Items included in the Project costs that exceed the County standards are considered Project Enhancements **(Enhancements)** and will be the sole financial responsibility of the City. Enhancements include, but are not limited to, landscape and landscape irrigation, screen walls, upgraded street lighting, upgraded bridge barriers, bus pads and shelters, monument signs and kiosks, shade structures, stamped asphalt or concrete pavers, hardscape furniture, and underground utilities. The estimated cost for the Enhancements of the Project is $5.751 Million.

13. As part of the RTP ALCP, Project reimbursements are expected for this Project in the amount of $18.698 Million based on the approved FY2012 ALCP dated September 21, 2011.

14. A portion of the RTP ALCP Project reimbursements (**Reimbursements**) will be credited to the County's total cost share responsibility, proportional to the percentage of the County's cost share participation, and the County's cost share will be reduced proportionally. The City will retain all the reimbursements upon receipt from MAG.

15. The County's total Project cost share responsibility is not more than $1.037 Million, which includes the reduction based on Enhancements and credit for Reimbursements.

16. The County's cost share will be paid in FY2017. The County will also assist the City in the acquisition of right-of-way within the unincorporated County areas.

PURPOSE OF THE AGREEMENT

17. The purpose of this Agreement is to identify and define the responsibilities of the County and the City for the cost sharing, design, construction, construction management, right-of-way acquisitions, utility relocation, and annexation of the Project.

TERMS OF THE AGREEMENT

18. **Responsibilities of the County:**

18.1 The County shall issue no-cost permits to the City, for any necessary Project work performed within County jurisdiction in accordance with the Project's final plans, specifications, and estimates (PS&E).

18.2 The County shall provide a cursory review of Project plans and change order requests, and shall provide comments to the City within 10 working days.

18.3 The County shall not review Project plans for compliance with the City's design standards and shall not be liable for design deficiencies.

18.4 The County shall assist with the acquisition of right-of-way in fee and related easements within the Project area for condemnation action in unincorporated County jurisdiction, as requested by the City, and as needed, shall 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 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 being provided by the Project's design.
2. At the time of the City's request pursuant to section 19.5(v), 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.
3. The County shall determine if condemnation action is appropriate at the time or if negotiations should continue.
4. The County shall invoice the City on a mutually agreed upon time basis for any expenses accrued for the acquisition of right-of-way for this Project.
5. The invoice notification will provide an itemization of expenses being requested for payment.
6. The County shall complete all acquisitions or condemnations of right-of-way to federal FHWA right-of-way standards.

18.5 The County shall be responsible for thirteen percent (13.0%) of the final total Project cost for the construction of the project, minus the sum of any federal or state grants, minus the ALCP reimbursement amount for the entire Project, and minus the cost of Enhancements. The total County cost responsibility shall not exceed $1.037 Million or be less than $0 in accordance with the following formula: 0.13 * (final total Project cost - federal/state grant - ALCP reimbursement - final cost of enhancements). The final total Project cost and the final cost of the enhancements shall be determined at the time of the Project close-out.

18.6 The County shall remit payment to the City, in an amount not to exceed $1.037 Million, within 30 days of the receipt of an invoice received on or after July 1, 2016 (FY2017). The County's cost share contribution may be reduced if additional Enhancements are determined at the completion of the Project. The County shall retain sole discretion to notify the City of any advanced availability of funds and may remit payment to the City prior to fiscal year 2017.

18.7 The County shall consent and approve the annexation by the City of all public roadway located within the unincorporated area of the County that is improved as part of the Project, including, but not limited to, such additional property needed for the Project as is acquired by the County for public roadway, whether by purchase, condemnation or dedication.

19. **Responsibilities of the City:**

19.1 The City shall obtain a no-cost permit for all Project related work within County right-of-way. The City or its designated agent shall obtain separate traffic control permits, and shall comply with all of the County traffic control permit requirements, for any Project related traffic control within County right-of-way.

19.2 The City shall provide Project plans to the County for the County's cursory review and comment.

19.3 The City shall act as the lead agency for all phases of the Project.

19.4 The City shall assume all responsibility for the design, utilities and utility relocation, construction and construction management, inspection, operation and maintenance of the Project.

19.5 The City shall acquire the necessary right-of-way and easements, as needed, for the Project by purchase, dedication, and donations. In such capacity, activities conducted by the City shall include, but are not limited to, the following:

i. The City shall identify all necessary right-of-way for the Project and prepare all legal descriptions and exhibits require for right-of-way acquisitions, which shall include the Assessor parcel numbers and property owner information.

ii. The City 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. Once negotiations have commenced for the right-of-way acquisition, the City shall provide the County with a monthly update of the acquisition status of all parcels on this project, and a monthly e-mail briefing on the status of any parcels that are

within the County jurisdiction.

iv. Should the City's negotiations result in the successful acquisition of all or a portion of the needed right-of-way, the City shall be responsible for all escrow fees and related costs. The City shall conduct all activities required pursuant to this Section 19.5(iv) in a timely manner in order to comply with the requirements of Section 19.5(v).

v. If the City is unsuccessful in acquiring all required right-of-way from property owners in unincorporated County, the City shall, at least five (5) months prior to the City needing access to the required right-of-way to begin construction, request the County commence condemnation proceedings to acquire the right-of-way and related easements as needed for the Project. The City acknowledges that 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 the City to the County being current and sufficient to proceed on with acquisition/condemnation processing. Said request is subject to review by the County to determine if condemnation action is appropriate at the time or if negotiations should continue.

1. At the time of City's request pursuant to Section 19.5(v), the City shall provide to the County recordable legal descriptions, maps, and exhibits required by the County to complete ROW acquisitions.
2. The City shall provide the County with all necessary title examinations and litigation guarantee reports necessary to conduct eminent domain actions.
3. At the time of the City's request pursuant to section 19.5(v), the City shall cease and desist all contact with the property owners of all required right-of-way in unincorporated County, and shall convey to the County all responsibility for the management of the necessary right-of-way acquisitions or condemnation for the Project. The City acknowledges that the County has the discretion to refer the request back to the City for continued negotiations prior to filing any condemnation action.
4. The City 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.

19.6 The City shall pay directly or reimburse the County within thirty (30) days of the receipt of an invoice, 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.

19.7 The City shall submit an invoice to the County on or after July 1, 2016 (FY2017), in an amount not to exceed $1.037 Million, for the County's cost share contribution. This City may submit an invoice prior to fiscal year 2017 if the City is notified by the County that advanced funds are available.

19.8 Upon the initiation of the construction of the Project, the City shall assume any and all liability which may arise from the design, construction, operation and maintenance of the roadway and the right-of-way.

19.9 Upon the acquisition of all Project right-of-way and receipt of fee title ownership, the City shall begin annexations of the Project area.

19.10 This agreement will remain in effect until all annexations of the Project by the City, as identified in paragraph 19.9, have been completed.

GENERAL TERMS AND CONDITIONS

20. 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.

21. This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors 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.

22. This Agreement shall be subject to the provisions of A.R.S. §38-511.

23. The Parties warrant that they are in compliance with A.R.S. § 41-4401 and further acknowledge that:

    23.1 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):

    23.2 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;

    23.3 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;

    23.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.

24. 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.

25. 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 is suspended or debarred by any federal agency which has provided funding that will be used in the Project described in this Agreement.

26. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.

27. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.

28. This Agreement shall not be modified or extended except by written instrument adopted under the requirements for adopting a new agreement.

29. 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.

30. 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.

31. 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.

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 City Manager
Approved and Accepted by:	***Approved and Accepted by:***
Max Wilson, Chairman Date Board of Supervisors	Jay Tibshraeny Date Mayor
Attest by:	***Attest by:***
Fran McCarroll Date Clerk of the Board	Marla Paddock Date City Clerk

APPROVAL OF COUNTY ATTORNEY 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.

Deputy County Attorney Date	City Attorney GAB Date