



MEMORANDUM Transportation & Development - Memo No. TR13-003

DATE: SEPTEMBER 13, 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. 4640, AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF CHANDLER AND THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE TRANSFER OF JURISDICTION AND OPERATIONS AND MAINTENANCE RESPONSIBILITIES TO THE CITY FOR ARIZONA AVENUE (STATE ROUTE 87) FROM OCOTILLO ROAD TO APPROXIMATELY 1,325 FEET SOUTH OF RIGGS ROAD.

RECOMMENDATION: Staff recommends approval of Resolution No. 4640, authorizing the City to enter into an Intergovernmental Agreement (IGA) between the City of Chandler and the Arizona Department of Transportation (ADOT) for the transfer of jurisdiction and operations and maintenance responsibilities to the City for Arizona Avenue (State Route 87) from Ocotillo Road to approximately 1,325 feet south of Riggs Road.

BACKGROUND/DISCUSSION: Arizona Avenue south of Ocotillo Road is currently under the jurisdiction of ADOT as State Route 87. Arizona Avenue north of Ocotillo Road to Frye Road was transferred from ADOT to the City in 1993; and Arizona Avenue from Frye Road to the north city limits at the Western Canal was transferred to the City in 1999. This transfer of jurisdiction and operations and maintenance of Arizona Avenue from Ocotillo Road to approximately 1,325 feet south of Riggs Road will complete the transfer of Arizona Avenue within the Chandler city limits, with the exception of a small portion at the Santan Freeway.

With the City having jurisdiction of this section of Arizona Avenue we will be able to design and operate the roadway to City standards, rather than ADOT standards which are typically more

restrictive than the City standards. These differences include driveway openings and permitting for adjacent development that access Arizona Avenue, median breaks, landscaping, aesthetic improvements, signage, signal coordination, bike lanes, and traffic control and enforcement. The City will now be responsible for pavement maintenance, landscape maintenance along the roadway, and signal and sign maintenance.

In return for the City accepting jurisdiction of this section of Arizona Avenue, ADOT will transfer to the City \$4,500,000 of federal funds. These federal funds can only be used on a federally eligible road project and need to be obligated by June 15, 2013. To meet this obligation date, staff has identified that this funding can be used on either the Gilbert Road or the McQueen Road projects. This funding can be used to supplant other funding on either of these projects. In addition, in 2011 ADOT milled and overlaid this section of Arizona Avenue providing a new pavement with at least a 25 year remaining life.

FINANCIAL: As part of the IGA, ADOT will transfer to the City \$4,500,000 in federal funds for the City's use on a federally eligible road project in Chandler.

PROPOSED MOTION: Move to approve Resolution No. 4640, authorizing the City to enter into an Intergovernmental Agreement (IGA) between the City Of Chandler and the Arizona Department of Transportation for the transfer of jurisdiction and operations and maintenance responsibilities to the City for Arizona Avenue (State Route 87) from Ocotillo Road to approximately 1,325 feet south of Riggs Road, and authorizing the Mayor to sign the IGA.

Attachments: Resolution No. 4640
Intergovernmental Agreement

RESOLUTION NO. 4640

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CHANDLER AND THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE TRANSFER OF JURISDICTION AND OPERATIONS AND MAINTENANCE RESPONSIBILITIES TO THE CITY FOR ARIZONA AVENUE (STATE ROUTE 87) FROM OCOTILLO ROAD TO APPROXIMATELY 1,325 FEET SOUTH OF RIGGS ROAD.

WHEREAS, the City of Chandler and the Arizona Department of Transportation (ADOT) desire to turn-back to the City the portion of Arizona Avenue (also known as State Route 87) from Ocotillo Road south to a location approximately 1,325 feet south of Riggs Road; and

WHEREAS, ADOT will transfer to the City \$4,500,000 in federal fiscal year 2013 funds for the City's use on a federally eligible road project in Chandler as part of the agreement; and

WHEREAS, the ownership of Arizona Avenue from Ocotillo Road to approximately 1,325 feet south of Riggs Road will be transferred from ADOT to the City; and

WHEREAS, the City will assume all responsibility for any future improvements to, and the operations and maintenance of this portion of Arizona Avenue.

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 ADOT is approved in substantially the form attached hereto as Exhibit "A" of the purpose of implementing the turn-back of Arizona Avenue from Ocotillo Road to approximately 1,325 feet south of Riggs Road and transferring from ADOT to the City \$4,500,000 in federal fiscal year 2013 funds for the City's use on a road construction project in Chandler.
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. 4640 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

ADOT File No.: IGA/JPA 12-016 I
AG Contract No.: P001 2012 002464
Project: SR 87 Turnback, City Construct
Section: Described below
Federal Project No.: N/A
ADOT Project No.: H8521 01X
TIP/STIP No.: N/A
Budget Source Item No.: 18513 / C

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF CHANDLER

THIS AGREEMENT is entered into this date _____, 2012, pursuant to the Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State" or "ADOT") and the CITY OF CHANDLER, an Arizona municipal corporation (the "City"). The State and the City are collectively referred to as "Parties."

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The purpose of this Agreement is for the State to transfer ownership jurisdiction and maintenance responsibilities to the City, of State Route 87 (SR 87) from beginning from approximately 1325' south of the centerline of Riggs Road to Ocotillo Road. In exchange for the City's acceptance, the State will participate in an amount up to and not to exceed **\$4,500,000.00**, including 15% construction engineering and administration cost (CE) for the City's use on federal-aid eligible projects (the "Project" or "Projects") within the City's jurisdiction, shown on Exhibit A, attached hereto and made a part hereof. The City will be responsible for any costs exceeding the \$4,500,000.00 authorized for federal-aid eligible Projects,

4. The City has the authority to design, advertise, award and administer construction of local Projects in accordance the Federal Highway Administration (FHWA) certification requirement through ADOT's Local Governmental Certification Acceptance Program. The Projects shown on Exhibit A lie within the boundary of the City have been selected by the City, and the surveys of the Projects sites have been completed. The plans, estimates and specifications for the Projects will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for their approval.

5. The Parties shall perform their responsibilities consistent with this Agreement and any change or modification to the Projects will only occur with the mutual written consent of both Parties and approval of the Chandler City Council.

6. The federal funds will be used for the right of way and/or construction of the Projects listed in Exhibit A, including 15% construction engineering and administration cost (CE).

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The Parties acknowledge and/or agree:

a. Any and all costs incurred by the City for any Project work described herein prior to the date of approval for authorization by FHWA are not eligible for federal reimbursement.

b. The State's only interest in the referenced Projects is in obtaining FHWA approval for authorization of federal-aid funding and reimbursing the City up to \$4,500,000.00, including 15% construction engineering and administration cost (CE).

c. All funds, up to **\$4,500,000.00**, shall be authorized no later than June 30, 2013. All documentation should be provided to the State for processing **no later than June 15, 2013**.

d. The final actual cost for any Project or Projects may exceed the initial estimate(s) shown in Exhibit A, and in such case, the City acknowledges it is responsible for, and agrees to pay, any and all eventual actual costs exceeding the initial estimate, are ineligible for federal funding, or which exceed the available federal funding.

e. The cost of the Projects covered by this Agreement is to be borne by FHWA and the City each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

2. The City will:

a. Upon execution of this Agreement, waive the requirements (four-year notice) of Arizona Revised Statutes § 28-7209.

b. Upon approval by Resolution of Abandonment of the State's Transportation Board, accept ownership, jurisdiction and maintenance responsibilities for the portion of SR 87 that fall within the City's annexed limits from approximately ¼ mile south of the centerline of Riggs Road north to Ocotillo Road, in perpetuity. In the areas where the County rights of way encompasses the entire width of SR 87, the City will operate and maintain the roadway in accordance with the Roadway Master Maintenance Agreement, IGA/JPA 08-111; additionally, when a land area on either the east or west side of SR 87 annex into the City, the City will further annex that portion of SR 87 and will accept ownership, jurisdiction and maintenance responsibilities of said SR 87. In those areas of SR 87 abandoned to Maricopa County by ADOT, the City will annex that area from Maricopa County within a reasonable timeframe. Should the City wish to assume ownership, jurisdiction and maintenance responsibility for any portion of SR 87 still within ADOT's system that has not been abandoned to the County, they shall put a request in writing to ADOT and provide proof of annexation.

c. Certify that all necessary rights-of-way for the Project or Projects have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction, in accordance with The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended; 49 CFR 24.102 Basic Acquisition Policies; 49 CFR 24.4 Assurances, Monitoring and Corrective Action, parts (a) & (b) and ADOT ROW Manual: 8.02 Responsibilities, 8.03 Prime Functions, 9.07 Monitoring Process and 9.08 Certification of Compliance.

d. Be entirely responsible for all Project costs incurred in performing and accomplishing the work as set forth under this Agreement, not covered by federal funding, Should costs be deemed

ineligible or exceed the maximum federal funds available, it is understood and agreed that the City is responsible for these costs.

e. Provide to the State for the State's review, all design plans, specifications and other such documents and services required for the construction bidding and construction of the Project, including scoping/design plans and documents required by FHWA to qualify projects for and to receive federal funds. Incorporate State design review comments as appropriate.

f. Advertise for bids and award one or more construction contract(s) for the Projects. Administer contract(s) for the Projects and make all payments to the contractor(s). Be responsible for all contractor claims for additional compensation caused by or attributable to the State.

g. During construction of each Project and no more than monthly, submit to the State a request for payment through **Local Government Section Project Manager** (Contact info see III. 12 below) and include all back-up documentation (contractor's invoices) for each Project. The Projects will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.

h. Be obligated to incur any Project expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work requested by the City. Such changes require the prior approval of the State and FHWA.

i. All costs attributable to any engineering change orders for the Project requested by the City shall be the sole responsibility of the City.

j. Be responsible for any contractor claims for additional compensation caused by Project delays attributable to the City.

k. Upon completion of each Project, perform the final inspection and notify the State in writing that each Project has been constructed in accordance with the Project documents and has been satisfactorily completed.

l. Upon completion of the Projects, submit to the State the final request for payment up to and not to exceed **\$4,500,000.00**, including 15% construction engineering and administration cost (CE) through **Local Government Section Project Manager** and include all back-up documentation (contractor's invoices) for each Project.

2. The State will:

a. Upon execution of this Agreement and approval by Resolution of Abandonment of the State's Transportation Board, abandon and transfer ownership jurisdiction and maintenance responsibilities for the portion of SR 87 that fall within the City's annexed limits from approximately ¼ mile south of the centerline of Riggs Road north to Ocotillo Road, in perpetuity. In the areas where the County rights of way encompasses the entire width of SR 87, the City will operate and maintain the roadway in accordance with the **Roadway Master Maintenance Agreement, IGA/JPA 08-111**.

b. Be the City's designated agent for obtaining approval by FHWA for authorization and federal-aid funding of the Projects, and reimburse the City up to **\$4,500,000.00**, including 15% construction engineering and administration cost (CE) with federal funds, less the required applicable pro-rata match.

c. Review and approve documents required by FHWA to qualify certain Projects for and to receive federal funds, providing comments to the City as appropriate. Such documents may consist of, but are not specifically limited to, environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans,

maps, and specifications; geologic materials testing and analysis; right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement.

d. Submit all documentation required to the FHWA for each Project, with the recommendation that funding be approved for right of way and/or construction. Upon authorization, notify the City for each Project that they may proceed to advertise for construction. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.

e. Upon receipt of an invoice from the City and approval of federal-aid funding, reimburse the City up to and not to exceed **\$4,500,000.00**, including 15% construction engineering and administration cost (CE).

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

2. The terms, conditions and provisions of this Agreement shall remain in full force and effect upon completion of abandonment of SR 87 as described herein, completion of said Projects and all related reimbursements, except any provisions for maintenance of the Projects shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of any Project construction contract, upon thirty (30) days written notice to the other Party.. If the federal funding related to the Project or Projects are terminated or reduced by the federal government, or if Congress rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for any past, current or future expenses under this Agreement.

3. The State assumes no financial obligation or liability under this Agreement for any resulting construction Project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims for the Projects. It is understood and agreed that the State's participation for the Projects is confined solely to securing federal aid on behalf of the City and the fulfillment of any other responsibilities of the State as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless, defend and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non-performance of any provisions of this Agreement by the City, any of its departments, agencies, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

4. The cost of the Projects under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (FHWA). *"Applicable indirect costs" means costs incurred by ADOT and approved by FHWA under ADOT's indirect cost allocation proposal, pursuant to 2 CFR 225 and OMB Circular A-87.*

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

7. The Parties warrant compliance with the "Buy America" requirements as set forth in Section 106.15 of the ADOT Standard Specifications for Road and Bridge Construction.

8. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, U.S.C. Volume 42, Sections 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and is incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability for the Projects shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph. However, the transfer of SR 87 will revert back to the State.

10. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.

11 Pursuant to Arizona Revised Statutes § 35-391.06 and § 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in Arizona Revised Statutes § 35-391 and/or § 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

12. The City and State warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the City will provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.

13. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by Arizona Revised Statutes Sections §12-1518, as applicable.

14. All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

City of Chandler
Attn: City Manager
Mail Stop 605
Chandler, Arizona 85244-4008
(480) 782-2210
(480) 782-2209 Fax

Arizona Department of Transportation
Local Government Section
1615 W Jackson St, Mail Drop EM02
Phoenix, Arizona 85007
(602) 712-7607
(602) 712-3132 Fax

City of Chandler
Attn: Transportation & Development Director
Mail Stop 403
Chandler, Arizona 85224-4008
480-782-3400
480-782-3415

15. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

16. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

CITY OF CHANDLER

STATE OF ARIZONA

Department of Transportation

By _____
JAY TIBSHRAENY
Mayor

By _____
BRENT A. CAIN, P.E.
Deputy State Engineer
Valley Transportation

ATTEST:

By _____
MARLA PADDOCK
City Clerk

IGA/JPA 12-016 I

ATTORNEY APPROVAL FORM FOR THE CITY OF CHANDLER

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF CHANDLER, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this _____ day of _____, 2012.

City Attorney *GAB*

IGA/JPA 12-016 I

EXHIBIT A

ADOT PROJECT NUMBER	Project Description	Total Estimated Amount	*Estimated Federal Amount (94.3%)	Estimated City Funds (5.7% Match)
GILBERT ROAD (Chandler Heights to Hunt Hwy)	Right of way and/or Construction	\$7,942,000	\$4,500,000	\$3,442,000
OR				
MCQUEEN ROAD (Ocotillo to Chandler Heights)	Right of way and/or Construction	\$5,089,000	\$4,500,000	\$589,000

* Payments made to the City will be based on 94.3% of federal-aid eligible expenditures by the City and will not exceed \$4,500,000, including 15% construction engineering and administration cost (CE)