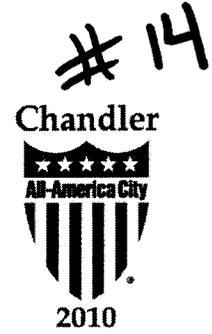




DEC 11 2014



**MEMORANDUM                    Transportation & Development - Memo No. TDA15-051**

**DATE:**            DECEMBER 11, 2014

**TO:**                MAYOR AND COUNCIL

**THRU:**            RICH DLUGAS, CITY MANAGER *RD*  
MARSHA REED, ASSISTANT CITY MANAGER *MR*  
R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *RJ*  
DANIEL W. COOK, TRANSPORTATION MANAGER *DC*

**FROM:**            WARREN WHITE, PRINCIPAL ENGINEER *WW*

**SUBJECT:**        RESOLUTION NO. 4826 AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION FOR COST SHARING FOR IMPROVEMENTS TO GERMANN ROAD FROM ARIZONA AVENUE TO HAMILTON STREET

RECOMMENDATION: Staff recommends City Council adopt Resolution No. 4826 authorizing the City to enter into an Intergovernmental Agreement with the Maricopa County Department of Transportation for cost sharing for improvements to Germann Road from Arizona Avenue to Hamilton Street.

BACKGROUND/DISCUSSION: Germann Road, from just east of Arizona Avenue to just west of Hamilton Street, is currently under the jurisdiction of Maricopa County. As part of the Germann Road improvements from Arizona Avenue to Airport Boulevard, that were completed in 1998, the City agreed to annex all portions of Germann Road that could be legally annexed. Only this short segment from just east of Arizona Avenue to just west of Hamilton Street could not be annexed because it would sever a county island into two county islands, which State Statutes did not allow. A recent change to State Statutes now allows this annexation to occur.

This Intergovernmental Agreement is for a maximum amount of \$350,000 from the Maricopa County Department of Transportation for repairing some small areas of road failure, mill and overlay of the entire segment, and the associated Americans with Disabilities Act (ADA) improvements.

On September 16, 2014, the Maricopa County Transportation Advisory Board (TAB) recommended the Board of Supervisors fund this project from the Fiscal Year 2015 Special Project Fund (SPF) for a maximum amount of \$350,000. The work must be completed by September 1, 2015.

Upon completion of this project, the City will annex all of the Germann Road right-of-way and maintain the roadway.

Memo No. TDA15-051

December 11, 2014

Page 2

FINANCIAL IMPLICATIONS: The County is responsible for the cost of this project up to a maximum amount of \$350,000.

PROPOSED MOTION: Move City Council adopt Resolution No. 4826 authorizing the City to enter into an Intergovernmental Agreement with the Maricopa County Department of Transportation for cost sharing for improvements to Germann Road from Arizona Avenue to Hamilton Street.

Attachments: Resolution No. 4826  
Intergovernmental Agreement  
Exhibit Map

RESOLUTION NO. 4826

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF CHANDLER AND MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION, REGARDING COST SHARING FOR IMPROVEMENTS TO GERMANN ROAD FROM ARIZONA AVENUE TO HAMILTON STREET

WHEREAS, the City of Chandler and Maricopa County, by and through the Maricopa County Department of Transportation, desires to cost share on the needed roadway maintenance to Germann Road from Arizona Avenue to Hamilton Street; and

WHEREAS, after completion of the improvements 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"; and

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

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 Germann Road from Arizona Avenue to Hamilton Street; and

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 \_\_\_\_\_, 2014.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4826 was duly passed and adopted by the City council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_\_ day of \_\_\_\_, 2014, and that a quorum was present thereat.

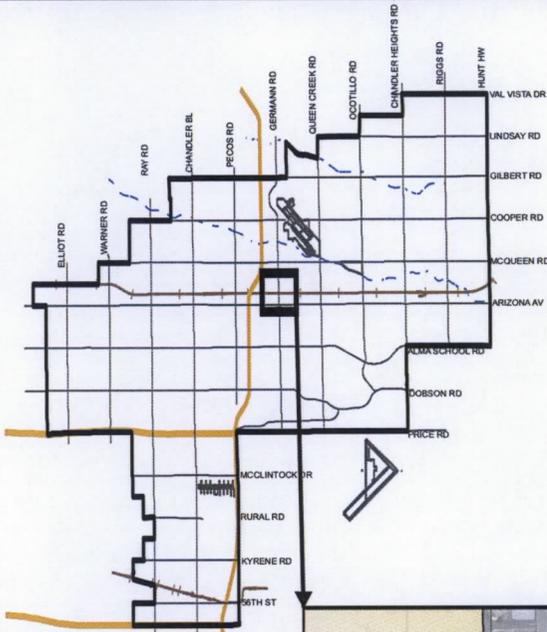
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY GAB



# IGA BETWEEN MARICOPA COUNTY AND THE CITY OF CHANDLER FOR IMPROVEMENTS TO GERMANN RD FROM ARIZONA AV TO HAMILTON ST



**MEMO NO. TDA15-051**

-  ROADWAY MAINTENANCE AREA TO BE ANNEXED BY CHANDLER
-  COUNTY ISLAND



**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN MARICOPA COUNTY AND THE CITY OF CHANDLER**  
**FOR IMPROVEMENTS TO: GERMANN ROAD**  
**FROM ARIZONA AVENUE TO HAMILTON STREET**

(TT#003)

(C-64-15- \_\_\_\_\_ -M-00)

This Intergovernmental Agreement (**Agreement**) is between the County of Maricopa, a political subdivision of the State (the "**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**.

**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.
3. A.R.S. §§9-240 and §§9-276 et seq. authorize the City to lay out, establish, regulate, and improve streets within the City.

**BACKGROUND**

4. The City will be improving Germann Road for 0.34 mile immediately east of Arizona Avenue to Hamilton Street. This segment of Germann Road is currently under the jurisdiction of Maricopa County. The improvements will include rehabilitating the asphalt pavement and upgrading curb ramps, sidewalks and driveways to meet the current Americans with Disabilities Act (ADA) standards. The improvements will also include repair of two (2) existing trench failures that are included in the road segment (the "**Project**").
5. The Project is anticipated to be designed and constructed in FY 2015. The Project shall be designed to City design standards. The City is the lead agency for the Project. The cost of the Project is currently estimated at \$350,000.

6. 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.
  - 6.1 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**).
  - 6.2 The TAB-SPF is administered by MCDOT, in accordance with the Board of Supervisors resolutions, through MCDOT Policy T 1103.
7. On September 16, 2014, the Transportation Advisory Board (TAB) recommended that the Board of Supervisors fund the Project submitted by the City from the FY 2015 Special Project Fund (SPF) for a maximum amount of \$350,000, excluding the cost of any enhancements requested by the City over and above the scope of the Project as presented in the City's application to the TAB. The County contribution will not, under any circumstances, exceed \$350,000.

#### **PURPOSE OF THE AGREEMENT**

8. The purpose of this Agreement is to identify and define the responsibilities of the County and the City for the Project, including cost sharing, design, construction, and construction management.

#### **TERMS OF THE AGREEMENT**

##### **9. Responsibilities of the County:**

- 9.1 The County shall assign a representative to serve on the Project team.
- 9.2 The County shall review all design and construction documents provided by the City and provide comments back to the City in a timely manner.
- 9.3 The County shall issue permits at no cost to the City for work done on the Project within County jurisdiction, as applicable.
- 9.4 The County shall be responsible for the cost of the Project up to a maximum amount of \$350,000, excluding the cost of any enhancements requested by the City over and above the scope of the Project as presented in the City's application to the TAB. The County contribution will not, under any circumstances, exceed \$350,000.
- 9.5 The County shall remit payment to the City within thirty (30) days of receipt of an invoice from the City.
- 9.6 Upon approval of this Agreement by the County Board of Supervisors, the County shall notify the City that the Board has approved the Agreement.

9.7 The County shall provide the City with a fully executed copy of the Agreement.

**10. Responsibilities of City:**

- 10.1 The City shall act as the Lead Agency for the Project consistent with City standards to include, but not be limited to, the design, construction, and construction management, as applicable.
- 10.2 The City shall obtain all necessary and required permits and approvals from the County for work being done in the County's jurisdiction.
- 10.3 The City shall provide the design and construction documents for the Project to the County for review at the appropriate stages of development.
- 10.4 The City shall inspect and approve construction of the Project. The County will not be responsible for inspection and construction approval.
- 10.5 The City shall be responsible for traffic control during construction, and shall notify the County in advance of approving any lane closures and/or roadway restrictions within County right-of-way. If traffic control extends to other roadways beyond the Project area, the City shall apply to the County for a separate traffic control permit.
- 10.6 The City shall be responsible for permitting any subsequent activities, including, but not limited to, any utility relocations occurring within the Project area.
- 10.7 The City shall annex all of the Germann Road right-of-way within the Project area limits within ninety (90) days upon completion of the Project. The City shall assume responsibility and liability for the design, construction, inspection, operation, maintenance, and repair for the Project roadway, traffic control devices and any street lights while the Project area remains under County jurisdiction, until annexation has been completed.
- 10.8 The City shall invoice the County for the award amount, not to exceed \$350,000, upon completion of the Project.
- 10.9 The City 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.
- 10.10 Upon completion of the Project construction, the City shall provide to the County a final accounting of all funds, not including any costs associated with any enhancements requested by the City over and above the scope of the Project as presented in the City's application to the TAB.

- 10.11 The City shall be responsible for the cost of any enhancements requested by the City over and above the scope of the Project as presented in the City's application to the TAB. The City shall be responsible, in any case, for all Project costs in excess of \$350,000.
- 10.12 The City shall report to the County key Project milestones, at least four (4) weeks in advance, to allow for coordinated public awareness plans, groundbreaking ceremonies, ribbon cuttings, and/or media releases, as appropriate.
- 10.13 If the City is unable to complete the annexation of the Project by September 1, 2015, the City shall return the awarded Special Project Fund amount of \$350,000 to the County.

### **GENERAL TERMS AND CONDITIONS**

11. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify, defend 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 negligent 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 caused or contributed to 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.
12. 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 Party with a written notice at least thirty (30) days prior to the effective termination date.
13. This Agreement shall be subject to the provisions of A.R.S. Section 38-511.
14. The Parties warrant that they are in compliance with A.R.S. Section 41-4401 and further acknowledge that:

- 14.1 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. Section 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.
  - 14.2 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.
  - 14.3 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.
  - 14.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
15. Each Party to 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.
  16. Each of the following shall constitute a material breach of this Agreement and an event of default ("Default") hereunder: A Party's failure to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by that Party ("Defaulting Party"), where such failure shall continue for a period of thirty (30) days after the Defaulting Party receives written notice of such failure from the non-defaulting party provided, however, that such failure shall not be a Default if the Defaulting Party has commenced to cure the Default within such thirty (30) day period and thereafter is diligently pursuing such cure to completion, but the total aggregate cure period shall not exceed ninety (90) days unless the Parties agree in writing that additional time is reasonably necessary under such circumstances to cure such default. In the event a Defaulting Party fails to perform any of its material obligations under this Agreement and is in Default pursuant to this Section, the non-defaulting party, at its option, may terminate this Agreement. Further, upon the occurrence of any Default and at any time thereafter, the non-defaulting party may, but shall not be required to, exercise any remedies now or hereafter available to it at law or in equity.
  17. All notices required under this agreement to be given in writing shall be sent to:

Maricopa County Department of Transportation  
Attn: Intergovernmental Liaison  
2901 W. Durango Street  
Phoenix, Arizona 85009

City of Chandler  
Attn: Dan Cook  
Mail Stop 402  
P.O. Box 4008  
Chandler, Arizona 85244-4008

All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this paragraph. Either Party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given 72 hours after the notice is addressed as required in this paragraph and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the notice to the Postal Service or courier.

18. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.
19. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.
20. 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.
21. 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. This Agreement may be terminated by any Party at the end of any fiscal year due to non-appropriation of funds.
22. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assignees. Neither Party shall assign its interest in this Agreement without the prior written consent of the other Party.
23. This Agreement and all Exhibits attached to this Agreement set forth all of the covenants, promises, agreements, conditions and understandings between the Parties to this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties other than as set forth in this Agreement, and those agreements which are executed contemporaneously with this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party drafting this Agreement. This Agreement cannot be modified or changed except by a written instrument executed by all of the Parties hereto. Each party has reviewed this Agreement and has had the opportunity to have it reviewed by legal counsel.

24. The waiver by any Party of any right granted to it under this Agreement is not a waiver of any other right granted under this Agreement, nor may any waiver be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
25. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalid or prohibited under the law, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.
26. Except as otherwise provided in this Agreement, all covenants, agreements, representations and warranties set forth in this Agreement or in any certificate or instrument executed or delivered pursuant to this Agreement shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.
27. Nothing contained in this Agreement shall create any partnership, joint venture or other agreement between the Parties hereto. Except as expressly provided in this Agreement, no term or provision of this Agreement is intended or shall be for the benefit of any person or entity not a party to this Agreement, and no such other person or entity shall have any right or cause of action under this Agreement.
28. Time is of the essence concerning this Agreement. Unless otherwise specified in this Agreement, the term "day" as used in this Agreement means calendar day. If the date for performance of any obligation under this Agreement or the last day of any time period provided in this Agreement falls on a Saturday, Sunday or legal holiday, then the date for performance or time period shall expire at the close of business on the first day thereafter which is not a Saturday, Sunday or legal holiday.
29. Sections and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
30. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument. Faxed, copied and scanned signatures are acceptable as original signatures.
31. The Parties agree to execute and/or deliver to each other such other instruments and documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by such party pursuant to this Agreement.
32. The Parties hereby agree that the venue for any claim arising out of or in any way related to this Agreement shall be Maricopa County, Arizona.
33. This Agreement shall be governed by the laws of the State of Arizona.
34. Unless otherwise lawfully terminated by the Parties, this Agreement expires upon completion and acceptance of the Project and fulfillment of all terms of the Agreement.

***End of Agreement - Signature Page to Follow***

IN WITNESS WHEREOF, the Parties have executed this Agreement.

**MARICOPA COUNTY**

**CITY OF CHANDLER**

***Recommended by:***

\_\_\_\_\_  
Jennifer Toth, P.E. Date  
Transportation Director

\_\_\_\_\_  
Rich Dlugas Date  
City Manager

***Approved and Accepted by:***

***Approved and Accepted by:***

\_\_\_\_\_  
Denny Barney, Chairman Date  
Board of Supervisors

\_\_\_\_\_  
Jay Tibshraeny Date  
Mayor

***Attest by:***

***Attest by:***

\_\_\_\_\_  
Fran McCarroll Date  
Clerk of the Board

\_\_\_\_\_  
Maria Paddock Date  
City Clerk

**APPROVAL OF DEPUTY 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