

MEMORANDUM Transportation & Development Dept. - Memo No. TDE15-002

DATE: JANUARY 22, 2015

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
MARSHA REED, ASSISTANT CITY MANAGER
R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *RJZ*
DANIEL W. COOK, CITY ENGINEER *DW*

FROM: WARREN WHITE, PRINCIPAL ENGINEER *WW*

SUBJECT: RESOLUTION NO. 4821 AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CHANDLER AND MARICOPA COUNTY FOR ABANDONMENT AND ANNEXATION OF PORTIONS OF WILLIS ROAD AND MCQUEEN ROAD

RECOMMENDATION: Staff recommends City Council pass and adopt Resolution No. 4821 authorizing the execution of an Intergovernmental Agreement between the City of Chandler and Maricopa County for the abandonment and annexation of portions of Willis Road and McQueen Road.

BACKGROUND/DISCUSSION: Council previously approved the Willis Gated Community (Ordinance No. 4545 and DVR14-0004) located east of the southeast corner of McQueen and Willis roads. In conformance with the zoning approval, a median break is recommended at the intersection of McQueen and Willis roads to allow westbound left turns from Willis Road onto McQueen Road. This intersection is currently under ADOT (Arizona Department of Transportation) control and they have agreed to abandon the portion of rights-of-way needed (Parcel A, as shown on Exhibit A) on condition that the City (and County) waives the Four-Year Advance Notice of Abandonment and Pavement Quality Report, in accordance with Arizona Revised Statutes Section 28-7209.

The Intergovernmental Agreement identifies and defines the County's and City's responsibilities for the abandonment and annexation of Parcel A. The County will accept ADOT's abandonment, so Parcel A becomes part of their jurisdiction. Once Parcel A is under County's Jurisdiction, the City will proceed with the transfer (annexation) of this right-of-way by resolution at a future City Council meeting.

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FINANCIAL IMPLICATIONS: No direct cost for annexation.

PROPOSED MOTION: Staff recommends City Council pass and adopt Resolution No. 4821 authorizing the execution of an Intergovernmental Agreement between the City of Chandler and Maricopa County for the abandonment and annexation of portions of Willis Road and McQueen Road.

Attachments: Location/Site Map
Resolution No. 4821



**IGA BETWEEN MARICOPA COUNTY AND
THE CITY OF CHANDLER FOR
ABANDONMENT AND ANNEXATION OF
WILLIS ROAD AND MCQUEEN ROAD**

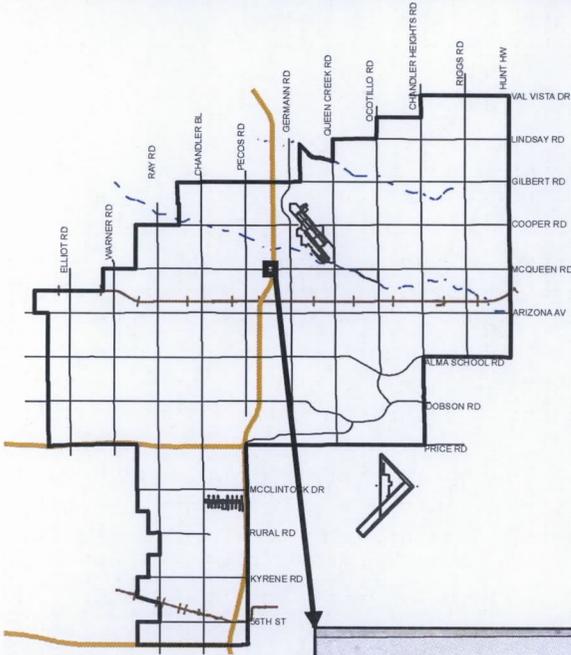
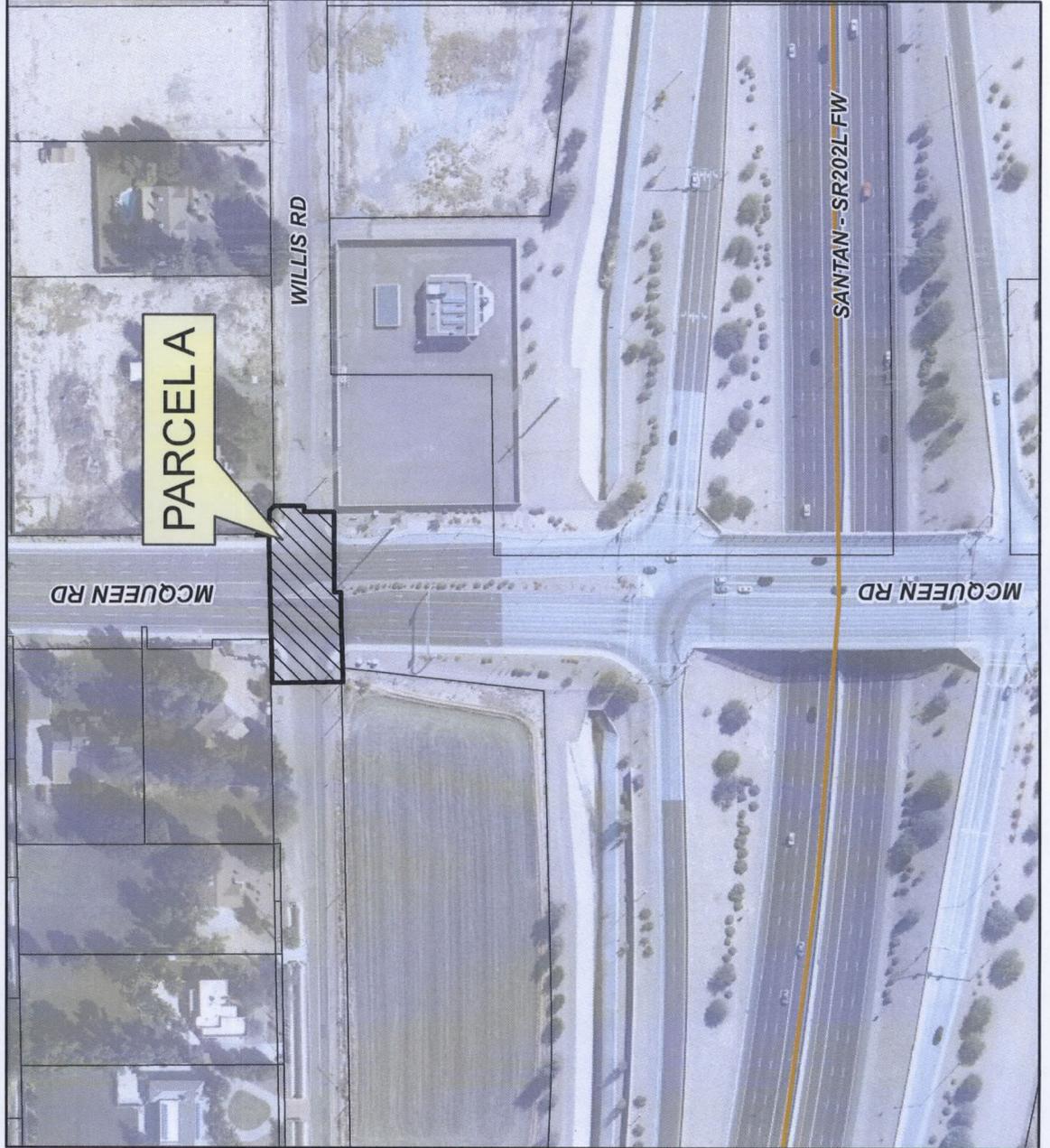


EXHIBIT A

**MEMO NO. TDE15-002
RESOLUTION NO. 4821**



RESOLUTION NO. 4821

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CHANDLER AND MARICOPA COUNTY FOR ABANDONMENT AND ANNEXATION OF PORTIONS OF WILLIS ROAD AND MCQUEEN ROAD.

WHEREAS, McQueen Road from State Route 202L (Santan Freeway) to Willis Road is located in southeastern Maricopa County and is partly under the jurisdiction of the Maricopa County (“County”), the City of Chandler (“City”), the State of Arizona, Arizona Department of Transportation (“ADOT”); and

WHEREAS, the Chandler City Council previously approved the Willis Gated Community (Ordinance No. 4545 and DVR14-0004) located east of the southeast corner of the intersection of McQueen and Willis roads, and, as a result, a median break is needed at the intersection to allow westbound left turns from Willis Road; and

WHEREAS, the portion of the intersection of Willis Road and McQueen Road shown on attached Exhibit A (“Parcel A”), being under the jurisdiction of ADOT, needs to be abandoned by ADOT, upon which event Parcel A will transfer to County until such time as City can complete annexation of Parcel A pursuant to A.R.S. Section 9-471(N); and

WHEREAS, City and County wish to enter into an intergovernmental agreement to identify and define the responsibilities of each for the abandonment and subsequent annexation of Parcel A;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, that the Mayor of the City, is authorized to execute that Intergovernmental Agreement between City and County intended to identify and define the responsibilities of the parties with respect to the abandonment and annexation of Parcel A, which agreement shall be substantially in the form attached as Exhibit B and as approved by the Chandler City Attorney.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2015.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY GAB

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4821 was duly passed and approved by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2015, and that a quorum was present thereat.

CITY CLERK

EXHIBIT B

**INTERGOVERNMENTAL AGREEMENT
BETWEEN MARICOPA COUNTY AND THE CITY OF CHANDLER
FOR ABANDONMENT and ANNEXATION
OF WILLIS ROAD AND MCQUEEN ROAD**

(C-64-15- _____ -M-00)

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

STATUTORY AUTHORIZATION

1. A.R.S. Section 11-251 and Sections 28-6701 *et. seq.* authorize the County to lay out, maintain, control and manage public roads within the County.
2. A.R.S. Sections 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 and establish, regulate and improve streets within the City and to enter into this Agreement.

BACKGROUND

4. McQueen Road from State Route 202L (Santan Freeway) to Willis Road is located in southeastern Maricopa County and is partly under the jurisdiction of the County, the City, and the State of Arizona.
5. The City Council previously approved the Willis Gated Community (Ordinance No. 4545 and DVR14-0004) located east of the southeast corner of McQueen and Willis Roads. In conformance with the zoning approval, a median break is needed at this intersection to allow westbound left turns from Willis Road. Design plans are currently underway for the development to construct a median break at the intersection of McQueen Road and Willis Road (the "Project").
6. The portion of Willis Road and McQueen Road as shown on Exhibit A ("Parcel A") is under the jurisdiction of the State of Arizona, Arizona Department of Transportation (ADOT).
7. The City has requested ADOT to abandon the interest held by the State of Arizona in and to Parcel A, pursuant to A.R.S. Sections 28-304 and 28-7209, so that the City can annex Parcel A pursuant to A.R.S. Section 9-471(N).
8. Upon abandonment by ADOT, Parcel A would transfer to the County until the annexation by the City is completed.

PURPOSE OF THE AGREEMENT

9. The purpose of this Agreement is to identify and define the responsibilities of the Parties for the abandonment and annexation of Parcel A.

TERMS OF THE AGREEMENT

10. Responsibilities of the County:

- 10.1 No later than five business days after this Agreement is approved by the Maricopa County Board of Supervisors and all County signatures are applied to the Agreement, the County shall:

13.1.1 Request ADOT to abandon Parcel A pursuant to A.R.S. Section 28-7209.

13.1.2 Provide ADOT with an executed waiver of the Advance Four Year Notice of Abandonment in a form approved by ADOT.

- 10.2 The County shall notify the City once the abandonment of Parcel A by ADOT to the County has been completed.

- 10.3 The County shall process the annexation of Parcel A, pursuant to A.R.S. Section 9-471(N), in the normal course of business upon receipt of a written request for the annexation from the City following abandonment of Parcel A by ADOT.

- 10.4 The County shall have no responsibility, financial or otherwise, for any aspect of the Project, except for the issuance of permits, as may be applicable.

11. Responsibilities of the City:

- 11.1 The City shall act as the lead agency for all aspects of the Project.

- 11.2 No later than fifteen (15) days after abandonment of Parcel A by ADOT to the County, pursuant to A.R.S. Section 9-471(N), the City shall make a formal request to the County for the annexation of Parcel A and all other portions of Willis Road and McQueen Road within the limits of the Project area.

- 11.3 The City shall be responsible for reviewing and approving all plans for the Project and coordinating with the County regarding issuance of permits.

- 11.4 The City shall coordinate with the entity or entities receiving a construction permit for the Project from the County regarding compliance with all laws, rules, regulations and permits applicable to the Project.

- 11.5 In addition to the requirements under Paragraph 12 of this Agreement, the City shall, to the extent permitted by law, indemnify, defend and save the County harmless, including any of the County's departments, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage or claim of any nature whatsoever related to the County seeking abandonment of Parcel A, waiving the Advance Four Year Notice of Abandonment, and/or assuming jurisdiction over Parcel A, including, without limitation, all liability, losses and damages of any nature, including costs, expenses of litigation and reasonable attorney's fees, 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 County seeking abandonment of Parcel A, waiving the Advance Four Year Notice of Abandonment, design, review and approval by the County of any portion of the Project, and/or assuming jurisdiction over Parcel A, except to the extent such injury or damage shall have been caused or contributed to by the negligence, willful or malicious conduct of the County, including any County department, agencies, officers, employees, elected officials or agents. In the event of any conflict between the terms of this paragraph 11.5 and paragraph 12,

this paragraph 11.5 shall control.

GENERAL TERMS AND CONDITIONS

12. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify, defend and save the other Party 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.
13. 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.
14. This Agreement shall be subject to the provisions of A.R.S. Section 38-511.
15. The Parties warrant that they are in compliance with A.R.S. Section 41-4401 and further acknowledge that:
 - 15.1 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.
 - 15.2 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.
 - 15.3 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.
 - 15.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
16. 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.
17. 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.

18. All notices required under this agreement to be given in writing shall be sent to:

Maricopa County Department of Transportation
Attn: Intergovernmental Relations
2901 West Durango Street
Phoenix, Arizona 85009

City of Chandler
Attn: Transportation and Development
215 East Buffalo Street
Chandler, Arizona 85225

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.

19. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.
20. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.
21. 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.
22. 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.
23. 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.
24. 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.

25. 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.
26. 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.
27. 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.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. 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.
34. This Agreement shall be governed by the laws of the State of Arizona.
35. 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 Follows

