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MAR 12 2015

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MEMORANDUM **Transportation & Development Department – Memo No. TDA15-061**

DATE: MARCH 12, 2015

TO: MAYOR AND COUNCIL

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

FROM: DANIEL W. COOK, CITY ENGINEER

SUBJECT: RESOLUTION NO. 4844 AUTHORIZING A PROJECT AGREEMENT BETWEEN MARICOPA ASSOCIATION OF GOVERNMENTS AND THE CITY OF CHANDLER FOR REGIONAL REIMBURSEMENT TO THE CITY FOR DESIGN, RIGHT-OF-WAY ACQUISITIONS, AND CONSTRUCTION FOR THE IMPROVEMENTS TO COOPER ROAD, CHANDLER HEIGHTS ROAD TO RIGGS ROAD

RECOMMENDATION: Staff recommends City Council adopt Resolution No. 4844 authorizing a Project Agreement between the City of Chandler and Maricopa Association of Governments for regional reimbursement for design, right-of-way acquisitions, and construction for improvements to Cooper Road, Chandler Heights Road to Riggs Road, in the amount of $3,775,520.98.

BACKGROUND AND DISCUSSION: This Project Agreement is for reimbursement of $3,775,520.98 in fiscal year 2015, 2023, 2024, and 2025 of Proposition 400 funds for improvements to Cooper Road, Chandler Heights Road to Riggs Road.

Improvements include widening portions of Cooper Road from 2 thru lanes to 4 thru lanes that have not already been completed by adjacent development. Additional improvements include raised landscape median; turn lanes; sidewalk; curb & gutter; traffic signal & interconnect; streetlights; storm drainage; irrigation; wet & dry utilities.

These proposed improvements are based on the City's Transportation Master Plan Update (April 2010) for a 20-year design life.

TRANSPORTATION COMMISSION RECOMMENDATION: The Transportation Commission reviewed the project agreement on March 5, 2015, and recommended approval of the Project Agreement.

FINANCIAL IMPLICATIONS: This agreement will provide regional reimbursement for design, right-of-way, and construction to the City of Chandler for Cooper Road, Chandler Heights Road to Riggs Road, in the amount of $3,775,520.98. Reimbursement is programmed in 2015, 2023, 2024, and 2025, and will be adjusted annually for inflation, in accordance with Maricopa Association of Governments policies.

PROPOSED MOTION: Move City Council adopt Resolution No. 4844 authorizing a Project Agreement between the City of Chandler and Maricopa Association of Governments for regional reimbursement for design, right-of-way acquisitions, and construction for improvements to Cooper Road, Chandler Heights Road to Riggs Road, in the amount of $3,775,520.98.

Attachments
Resolution No. 4844
Project Agreement

RESOLUTION NO. 4844

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING A PROJECT AGREEMENT BETWEEN THE MARICOPA ASSOCIATION OF GOVERNMENTS (MAG) AND THE CITY OF CHANDLER FOR REGIONAL REIMBURSEMENT TO THE CITY FOR DESIGN, RIGHT OF WAY AND CONSTRUCTION FOR THE COOPER ROAD: CHANDLER HEIGHTS ROAD TO RIGGS ROAD IMPROVEMENT PROJECT IN THE AMOUNT OF $3,775,520.98.

WHEREAS, the voters of Maricopa County approved a regional half-cent sales tax to fund the Regional Transportation Plan; and

WHEREAS, the Maricopa Association of Governments has been designated as the regional planning agency for the Arterial Life Cycle Program portion of the Regional Transportation Plan; and

WHEREAS, the Cooper Road; Chandler Heights Road to Riggs Road Improvement project is an approved project in the Arterial Life Cycle Program portion of the Regional Transportation Plan; and

WHEREAS, the Policies and Procedures of the Arterial Life Cycle Program require a Project Agreement between the City of Chandler and the Maricopa Association of Governments for each approved project prior to reimbursement; and

WHEREAS, the City of Chandler has used local funds in the Cooper Road; Chandler Heights Road to Riggs Road Improvement project and is programmed to receive reimbursement from the Arterial Life Cycle Program portion of the Regional Transportation Plan; and

WHEREAS, the City of Chandler is programmed to receive $3,775,520.98 in 2011 dollars to be inflated annually by the All Items United States Consumer Price Index, All Urban Consumers;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, that the Mayor be authorized to sign and execute said project agreement on behalf of the City of Chandler.

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

ATTEST:

_____ _____

CITY CLERK MAYOR

CERTIFICATION:

I HEREBY CERTIFY that the above and foregoing Resolution No. 4844 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at the regular meeting held on the ____ day of _____, 2015, and that a quorum was present thereat.

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

MARICOPA ASSOCIATION of GOVERNMENTS

ON THE MOVE

MARICOPA ASSOCIATION OF GOVERNMENTS
ARTERIAL LIFE CYCLE PROGRAM

PROJECT AGREEMENT

Cooper Road: Chandler Heights Road to Riggs Road
Project Agreement No. 15-COP-10-03-B
RTP Project # ACI-COP-10-03-B
MAG TIP Project # CHN15-121DZ, CHN15-121DRB
City of Chandler Capital Improvement Plan # 6ST675

This Agreement (Agreement) by and between the Maricopa Association of Governments (MAG) and the City of Chandler, an Arizona Municipal Corporation, will become effective on the day, which it is executed by the MAG Executive Director. MAG and the City of Chandler are referred to in this Agreement each individually as a "Party" and collectively as the "Parties".

RECITALS

A. MAG is the regional planning agency for Maricopa County. MAG is governed by a regional council, which includes the mayor or chief executive of each member agency (Regional Council). Pursuant to state law, MAG has developed, and the necessary parties have approved, a twenty-year comprehensive, performance based, multimodal and coordinated Regional Transportation Plan (RTP) in the County. The arterial street component of the RTP includes major arterial streets and intersection improvements (Arterial Street Improvements) with a revenue allocation.

B. In November 2004, the voters of Maricopa County approved a transaction excise tax for the purpose of implementing the RTP. Federal Highway Administration (FHWA) Surface Transportation Program (STP) and Congestion Mitigation and Air Quality (CMAQ) Funds are also allocated to the MAG region and administered by the Arizona Department of Transportation (ADOT) and are eligible to be used to implement the RTP.

C. MAG is required by state law to adopt a program that provides for life cycle management for the funding and programming of the Arterial Street Improvements (Arterial Life Cycle Program). On February 25, 2015, the Regional Council approved the Arterial Life Cycle Program (ALCP), and on May 28, 2014 the Regional Council approved the ALCP Policies and Procedures. The May 28, 2014 Policies and Procedures, as they may from time to time be amended (henceforth, the "Policies and Procedures"), are incorporated into this Agreement as fully as if set forth in this Agreement. Copies of the Policies and Procedures are available from MAG. Capitalized terms that are not defined in this Agreement, have the meaning set forth in the Policies and Procedures.

D. Funds for ALCP are administered by the Arizona Department of Transportation (ADOT) through its Regional Arterial Road Fund (RARF) sub-account for arterial streets, and through allocations of Federal Highway Administration STP and CMAQ Funds that are allocated to the MAG region and administered by ADOT. Funds will be disbursed by ADOT once federal requirements are satisfied, as applicable, and upon the presentation of an invoice approved or reviewed with concurrence by MAG as provided in this Agreement.

E. The ALCP includes an arterial capacity improvement project on Cooper Road from Chandler Heights Road to Riggs Road (Project). The Project is described in greater detail in the Project Overview (Project Overview) submitted by the City of Chandler, dated February 9, 2015 and on file in the offices of the City of Chandler and MAG. The regional share in this agreement and the Project Overview are subject to change in the annually adjusted ALCP.

F. The Project will be designed and constructed in accordance with the standards adopted by the City of Chandler or as otherwise specified in any future Intergovernmental Agreement between the City of Chandler and Maricopa County.

G. The regional reimbursement schedule for the Project is as follows:

Type of Work	Fiscal Year of Work	Regional Reimbursement	Type of Reimbursement Funds	Fiscal Year for Reimbursement
Design	2015	$181,251.98	RARF	2015
Right-of-Way	2020	$571,666.85	RARF	2023
Construction	2021	$3,022,273.57	RARF	2024/2025
Total Programmed for Reimbursement		**$3,775,192.40**		
Unfunded Reimbursement		$3,775,520.98	RARF	Unfunded due to deficit

H. The regional reimbursement is expressed in 2014 dollars, and may be adjusted annually for inflation based on the current Regional Council approved ALCP. Adjusted costs will be incorporated into the ALCP and by reference into this Agreement. Cost adjustments, for inflation and as otherwise specifically provided in the Policies and Procedures, do not require a modification of this Agreement.

I. The Parties are authorized to enter into this agreement by the provisions of Arizona Revised Statutes Section 28-6301 et seq., A.R.S. Section 11-952, and by Section 1.03 of the City of Chandler's Charter.

AGREEMENTS

NOW, THEREFORE, for good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. Purpose. The purpose of this Agreement is to identify and define the responsibilities of the City of Chandler and MAG for the design, acquisition of right of way, construction and financing of the Project, as established in the ALCP.

B. Responsibilities of the Parties.

1. MAG's Responsibilities. MAG agrees to:

a. Administer the ALCP, pursuant to the Policies and Procedures;

b. Provide to the City of Chandler the required format for submitting requests for payment, invoices, progress reports, and backup documentation;

c. Review and approve invoices for projects to be reimbursed with Regional Area Road Funds or review and concur with invoices for projects to be reimbursed with federal funds, subject to the terms of this Agreement;

d. Submit the approved Request for Payment form to ADOT for payment by ADOT to the City of Chandler. The payments from ADOT to the City of Chandler will be based on the reimbursement amounts and schedule as noted in the Recitals, Section G. The basis for payment to City of Chandler shall be reimbursement for costs in conformance with the ALCP and the Policies and Procedures.

2. City of Chandler's Responsibilities. The City of Chandler agrees to:

a. Be responsible for all project costs and submit invoices to MAG for reimbursement. The City of Chandler will: 1) be responsible for the completion of all surveys, design, plans and specifications, including contractor selection documents; 2) conduct contractor selection process(es), award contract(s) for construction pursuant to the applicable laws, and provide necessary construction management and inspections, unless noted otherwise in an IGA; 3) if necessary, purchase or condemn right of way required for the completion of the Project, unless otherwise provided in an IGA; 4) be responsible for all utility relocations, and 5) review and approve invoices from its contractors and subcontractors before submitting an invoice to MAG;

b. Work with the other jurisdictions involved in the Project pursuant to the terms of any future IGA between the City of Chandler and Maricopa County.

c. Abide by the Policies and Procedures throughout the completion of the Project.

d. Be responsible for meeting all applicable federal requirements for the Project;

e. Obtain appropriate indemnifications and insurance from all contractors and subcontractors involved in the Project;

f. Be responsible for all Project costs in excess of the maximum amount of the regional funds allocated for the Project in the amount of $3,775,192.40 (Allocated Regional Funds). The amount of funds to be paid to the City of Chandler pursuant to this Agreement will not exceed the Allocated Regional Funds. The allocated regional funds are expressed in 2014 dollar amounts, which may be adjusted annually for inflation pursuant to the procedure set forth in the Policies and Procedures and the current Regional Council approved ALCP;

g. Provide invoices and progress reports to MAG pursuant to the project schedule provided in the Project Overview; and

h. Otherwise comply with all requirements of this Agreement.

i. City of Chandler's authorized representative to sign, approve and submit invoices to MAG is the City of Chandler's Public Works Director or designee.

C. Records and Audit Rights. The City of Chandler's work and accounting records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by MAG to substantiate charges and claims related to this Agreement shall be open to inspection and subject to audit and/or reproduction by authorized representatives of MAG, the Arizona Department of Transportation and the Auditor General of the State of Arizona ("Auditors"), as applicable to the extent necessary to adequately permit evaluation and verification of the performance and cost of the work, and to conduct and prepare all audits and reports required by law. Auditors shall be afforded access, at reasonable times and places, to all of the City of Chandler's records and personnel, pursuant to the provisions of this Section, throughout the term of this Agreement, and for a period of five (5) years after last or final payment.

D. Term and Termination. The Agreement is valid through the payment of the final invoice for completion of construction, subject to earlier termination as specifically provided herein.

1. Termination by MAG. MAG reserves the right to terminate this Agreement in the event that MAG determines, in its reasonable discretion, that local or regional funds are not available to meet the City of Chandler's financial responsibilities in regard to the Project or in the event of an act of God or act of war or terror that makes continuation of work pursuant to this Agreement no longer in the public interest. MAG will give 60 days advance notice of such termination, unless such notice is impracticable, in which case MAG will provide such notice as is practicable under the circumstances. In the event of such termination, MAG will recommend to ADOT that it reimburse the City of Chandler as provided in this Agreement, for work satisfactorily performed to the date of termination.

   MAG also reserves the right to terminate this Agreement in the following circumstances: 1) no Material Project Reimbursement Request ("MPRR") has been submitted to MAG for a period of at least eighteen (18) months from the date of the last Project Reimbursement Request (PRR), or the effective date of this Agreement, whichever is later; 2) no Substantial Project Reimbursement Request ("SPRR") has been submitted to MAG for a period of thirty (30) months from the date of the last PRR, or the effective date of this Agreement, whichever is later; or 3) in the event of a Substantial Project Change.

2. Termination by the City of Chandler. The City of Chandler reserves the right to terminate this Agreement in the event that the City of Chandler determines, in its reasonable discretion, that local funds are not available to meet the City of Chandler's financial responsibilities in regard to the Project or in the event of an act of God or act of war or terror that makes continuation of work pursuant to this Agreement no longer in the public interest. The City of Chandler will give 60 days advance notice of such termination, unless such notice is impracticable under these circumstances, in which case the City of Chandler will provide such notice, as is practicable.

3. Termination by Mutual Consent. The Parties may terminate this Agreement by mutual consent in the event that they determine that such termination is in furtherance of the goals of the Arterial Life Cycle Program and is in the best interests of the Parties.

4. In the event of termination pursuant to this Section "D," the City of Chandler agrees that it will leave the Project in condition that is safe for use by public.

E. Availability of Funds. Each Party's obligations under this Agreement are conditioned upon the availability of funds, appropriated or allocated, for the payment of such obligation. No liability shall accrue to MAG in the event MAG declines to review and/or approve invoices for payment on the basis that funds are not available for payment of such invoices and MAG terminates the Agreement in accordance with section D.1.

F. Indemnification. Each Party to this Agreement (Indemnitor) agrees to defend, indemnify and hold harmless the other Party, and such Party's officers, officials, employees, agents, and directors (collectively the Indemnitee) from and against any and all claims, demands, losses, liabilities, causes of action and costs (including expert witness fees, attorneys fees and costs of defense and appellate appeal) (collectively Claims), which may be imposed upon, incurred by or asserted against the Indemnitee, attributable (directly or indirectly) to, or arising in any manner by reason of, the negligence, error, or omission of any agent, officer, servant, or employee of the Indemnitor, or anyone for whom Indemnitor may be legally liable, in the performance of this Agreement.

G. Conflict of Interest. This Agreement is subject to termination for conflict of interest, pursuant to the provisions of A.R.S. § 38-511.

H. Ownership of Improvements upon Termination. Upon the expiration or other termination of this Agreement, ownership of the Project and the improvements constructed under this Agreement shall be vested in the City of Chandler.

I. General Provisions.

1. INCORPORATION OF RECITALS. The Recitals are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

2. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended, except by a written document, signed by authorized representatives of each Party.

3. OFFICIAL COPIES. Upon date of execution by the MAG Executive Director, the City of Chandler shall receive a signed copy of the agreement within 14 days of execution.

4. ARIZONA LAW. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

5. MODIFICATIONS. Except as otherwise specifically provided in this Agreement, any amendment, modification or variation from the terms of this Agreement shall be in writing and shall be effective only after written approval of all Parties.

6. ATTORNEY'S FEES. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, or on account of any breach or default of this Agreement, the prevailing Party shall be entitled to received from the other Party reasonable

attorneys' fees and reasonable costs and expenses, as determined by the arbitrator or court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable, whether or not such action is prosecuted to judgment.

7. NOTICES. All notices or demands required to be given, pursuant to the terms of this Agreement, shall be given to the other Party in writing, delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

If to the City of Chandler:	RJ Zeder Transportation & Development Director City of Chandler Transportation &Development Department Mail Stop 403 P.O. Box 4008 Chandler, AZ 85244-4008 Tel: (480) 782-3400 Fax: (480) 782-3415
If to MAG:	Executive Director Maricopa Association of Governments 302 No. First Avenue Suite 300 Phoenix, Arizona 85003 Tel: (602) 254-6300 Fax: (602) 254-6490

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United State Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission. E-mail is not an acceptable means for meeting the requirements of this section unless otherwise agreed in writing.

8. FORCE MAJEURE. Neither Party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures or power failures.

9. ADVERTISING. No advertising or publicity concerning MAG using any contractor's or subcontractor's services shall be undertaken without prior written approval of such advertising or publicity by MAG's Executive Director.

10. COUNTERPARTS. This Agreement may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Agreement shall be deemed to possess the full force and effect of the original.

11. CAPTIONS. The captions used in this Agreement are solely for the convenience of the Parties, do not constitute a part of this Agreement and are not to be used to construe or interpret this Agreement.

12. SEVERABILITY. If any term or provision of this Agreement shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Agreement shall remain in full force and effect, and such term or provision shall be deemed to be deleted.

13. AUTHORITY. Each Party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each Party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

14. E-VERIFY.

    a. Warrant of Compliance. Pursuant to the provisions of A.R.S. §41-4401, each Party warrants to the other that it is in compliance with all Federal Immigration laws and regulations that relate to its employees and with the E-Verify Program under A.R.S. §23-214(A).

    b. Breach of Warranty. A breach of this warranty by a Party or any of its subcontractors will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement or any subcontract.

    c. Right to Inspect. Each Party retains the legal right to inspect the papers of any employee who works on this Agreement or any subcontractor to ensure compliance with the warranty given above.

    d. Random Verification. Either Party may conduct a random verification of the employment records of the other to ensure compliance with this warranty.

    e. Federal Employment Verification Provisions – No Material Breach. A Party will not be considered in material breach of this Agreement if it establishes that it has complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

    f. Inclusion of Article in Other Contracts: The provisions of this Article must be included in any contract either Party enters into with any and all of its contractors or subcontractors who provide services pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their duly authorized officers. (The order for obtaining the signatures is as follows: the appropriate representative of the City of Chandler, the MAG General Counsel, and the MAG Executive Director).

MAG:

Maricopa Association of Governments, an Arizona non-profit Corporation

_____
Date

By: _____
Dennis Smith
Executive Director

City of Chandler:

Jurisdiction of Chandler, an Arizona Municipal Corporation

_____
Date

By: _____
Jay Tibshraeny
Its: Mayor

ATTEST:

_____
Marla Paddock
Chandler City Clerk

Reviewed as to form:

By: _____
MAG General Counsel

Reviewed as to form:

By: _____
Attorney for City of Chandler