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APR 14 2016



**Chandler • Arizona**  
*Where Values Make The Difference*

**MEMORANDUM                      Transportation & Development – Memo No. CP16-193**

**DATE:**            APRIL 14, 2016

**TO:**                MAYOR AND COUNCIL

**THRU:**            MARSHA REED, ACTING CITY MANAGER *MR*  
NACHIE MARQUEZ, ASSISTANT CITY MANAGER  
R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *RJZ*  
DANIEL W. COOK, CITY ENGINEER *DW FOR*  
ROBERT FORTIER, CAPITAL PROJECTS MANAGER *RF FOR*

**FROM:**            H. PAUL YOUNG, SENIOR ENGINEER *HP FOR*

**SUBJECT:**        RESOLUTION NO. 4942, AN INTERGOVERNMENTAL AGREEMENT  
WITH THE MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION  
FOR RIGHT-OF-WAY ASSISTANCE FOR IMPROVEMENTS TO  
OCOTILLO ROAD FROM COOPER ROAD TO GILBERT ROAD.

RECOMMENDATION: Staff recommends City Council pass and adopt Resolution No. 4942, authorizing the City to enter into an Intergovernmental Agreement with the Maricopa County Department of Transportation for right-of-way assistance for improvements to Ocotillo Road from Cooper Road to Gilbert Road.

BACKGROUND/DISCUSSION: The City is planning to construct roadway widening improvements to Ocotillo Road from Cooper Road to Gilbert Road during FY 2016/17. These improvements will include a four lane roadway on Ocotillo Road with curb, gutter, & sidewalk; streetlights; raised landscape median; storm drain; and wet & dry utility improvements. Right-of-way acquisition from both City and County properties is necessary for the project. Since County properties represent about 6% of the project frontage, right-of-way acquisition assistance may be required from Maricopa County.

As part of the agreement, City responsibilities include the following.

- City acts as lead agency for design, right-of-way acquisition, utility relocation, and construction.
- City shall be responsible for any costs associated with County right-of way acquisition assistance.
- After completion of all right-of-way acquisition, the City will process annexation of the Ocotillo Road right-of-way, and maintain the roadway.

County responsibilities include the following.

- County will issue no fee encroachment permits to the City for the project.
- As necessary, the County will assist the City in right-of-way acquisition of property within County jurisdiction.

City staff is continuing to work with County staff for future cost sharing for design, right-of-way, and construction. Any future cost sharing opportunities will be brought forward to City Council in a future agreement.

FINANCIAL IMPLICATIONS:

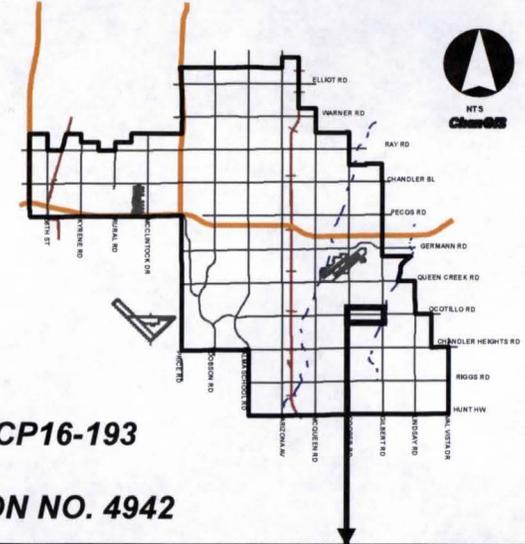
Costs: None  
Savings: None  
Long Term Costs: None  
Fund Source: None

PROPOSED MOTION: Staff recommends City Council pass and adopt Resolution No. 4942 authorizing the City to enter into an Intergovernmental Agreement with the Maricopa County Department of Transportation for right-of-way assistance for improvements to Ocotillo Road from Cooper Road to Gilbert Road.

Attachments: Location/Site Map  
Resolution No. 4942  
Intergovernmental Agreement



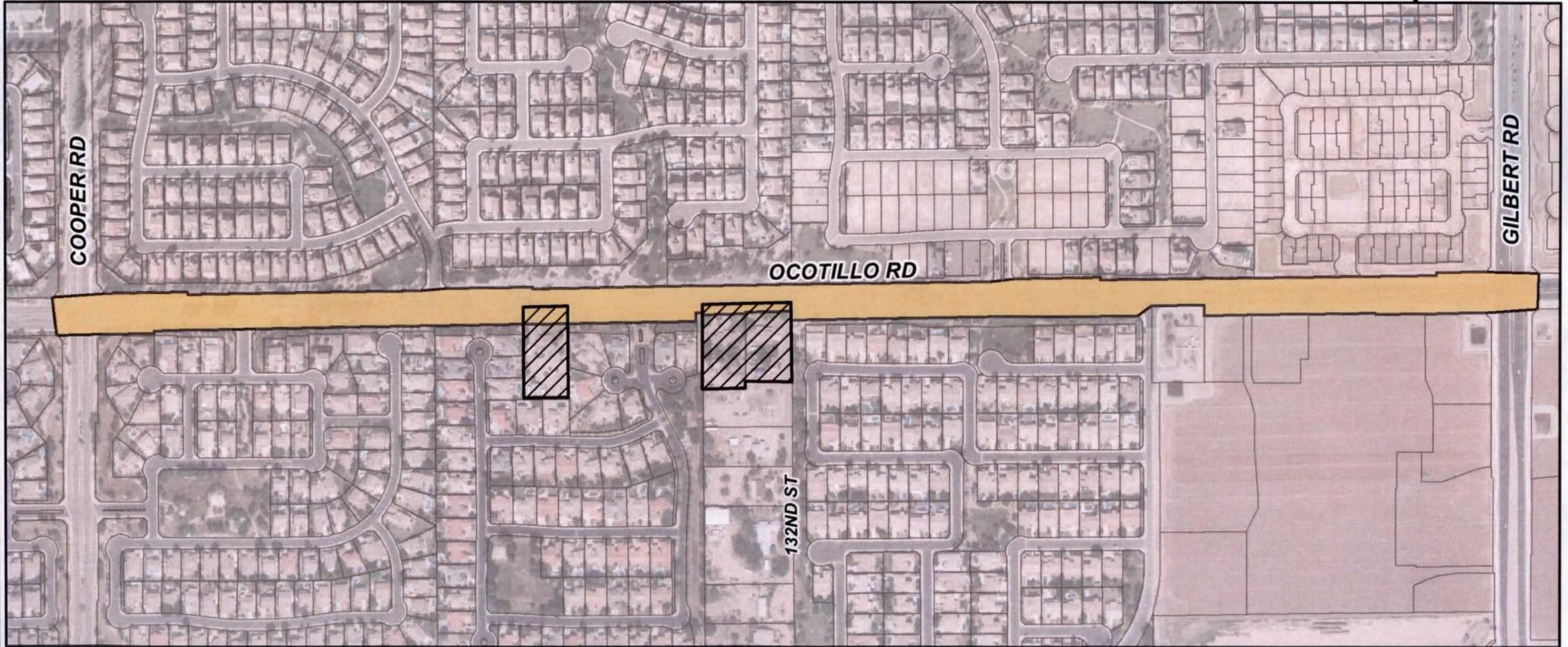
**INTERGOVERNMENTAL AGREEMENT (IGA)  
WITH MARICOPA COUNTY DEPARTMENT OF  
TRANSPORTATION FOR ROW ASSISTANCE FOR  
OCOTILLO RD FROM COOPER RD TO GILBERT RD**



-  IMPACTED PARCELS IN COUNTY
-  PROJECT LOCATION

**MEMO NO. CP16-193**

**RESOLUTION NO. 4942**



**RESOLUTION NO. 4942**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CHANDLER AND MARICOPA COUNTY, ACTING AND THROUGH THE MARICOPA COUNTY OF TRANSPORTATION, REGARDING RIGHT-OF-WAY ASSISTANCE FOR IMPROVEMENTS TO OCOTILLO ROAD FROM COOPER ROAD TO GILBERT ROAD.

WHEREAS, Maricopa County, by and through the Maricopa County Department of Transportation, desires to assist in right-of-way acquisition with the City of Chandler for improvements to Ocotillo Road from Cooper Road to Gilbert Road; and

WHEREAS, after completion of the right-of-way acquisition the City and Maricopa County will cooperate in having these sections of roadway annexed into the limits of the City.

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

Section 1. A 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 right – of-way assistance and annexation arrangement with Maricopa County for improvements to Ocotillo Road from Cooper Road to Gilbert Road.

Section 2. That the Mayor of the City of Chandler, Arizona, is authorized to execute the Intergovernmental Agreement.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST:

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

\_\_\_\_\_  
MAYOR

**CERTIFICATION**

I HEREBY CERTIFY that the above and foregoing Resolution No. 4942 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, and that a quorum was present thereat.

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

APPROVE AS TO FORM

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

**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN MARICOPA COUNTY AND INTERGOVERNMENTAL**  
**AGREEMENT BETWEEN MARICOPA COUNTY AND THE CITY OF CHANDLER**  
**FOR RIGHT-OF-WAY ASSISTANCE FOR OCOTILLO ROAD**  
**FROM COOPER ROAD TO GILBERT ROAD**

**(C-64-16- \_\_\_ - 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. Section 9-240 authorizes the City to lay out and improve new streets, avenues and alleys.

**BACKGROUND**

4. Queen Creek Road and Cooper Road (Project) are located in southeastern Maricopa County and is partly under the jurisdiction of the County and partly under the jurisdiction of the City.
5. The City is currently developing design plans to improve the Project under the City's CIP Project No. ST1602.
6. When completed, the Project will improve Ocotillo Road from Cooper Road to Gilbert Road. The proposed improvements include the following:
  - 6.1 Widening Ocotillo Road to four thru lanes with raised landscape median, curb, gutter, and sidewalk;
  - 6.2 Storm water drainage;
  - 6.3 Traffic signal; traffic signal interconnect; and streetlights;
  - 6.4 Private utility coordination and relocation;
  - 6.5 New and/or restored landscaping and irrigation;
  - 6.6 New and/or rehabilitated public water; sanitary sewer; reclaimed water;
  - 6.7 Right-of-way and easement acquisition

7. The Projects are Major Arterials and designed to the City standards.

#### **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, construction management, rights-of-way acquisition, utility relocation, and annexation of the Project and Project Area.

9. **Responsibilities of the County:**

- 9.1 The County shall issue no fee permits to the City for the Project and related work conducted within the County's jurisdictional boundaries.
- 9.2 The County shall assist with the acquisition of right-of-way in fee and related easements within the County's jurisdiction necessary for the Project, as requested by the City, and shall, as needed, authorize the County's Legal Representative (which may be the County Attorney's Office or outside counsel, depending upon availability of resources within the County Attorney's Office) to initiate, prosecute and perform all acts in the manner required by law to condemn property and obtain an Order of Immediate Possession in the County that is deemed necessary for the Project ("Real Estate Support"). When a property to be acquired extends into both municipal and county jurisdiction, the County and the City shall confer and attempt to develop a plan whereby all the needed property can be acquired in a single action, rather than have two litigations proceed at the same time against an owner.
- 9.3 The County shall provide Real Estate Support within a realistic timeframe as determined by the accessibility of available agents and timely delivery of right-of-way requirements and related easements being provided by the City design.
- 9.4 The County shall determine whether the method of compensation by the City for the costs that is prescribed in Paragraphs 10.6.1 through 10.6.5 shall be direct payment by the City to the County's vendor or shall be a reimbursement to the County.
- 9.5 The County shall invoice the City on a monthly basis for any expenses that are not subject to direct payment.
- 9.6 The County shall provide invoice notification that includes an itemization of expenses being requested for payment.
- 9.7 At the time of the City's request pursuant to Paragraph 10.2.3, the County shall assume all responsibility for the management of the acquisition, in accordance with the statutes, policies, and procedures that govern the County's ability to acquire the land rights.

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

**10. Responsibilities of the City:**

- 10.1 The City shall act as the lead agency for the Project.
- 10.2 The City shall conduct right-of-way related activities that include, but are not limited to, the following:
- 10.2.1 The City shall identify required right-of-way, parcel numbers and property owners.
- 10.2.2 The City shall be responsible for contacting property owners, submitting an offer to property owners for the acquisition of the right-of-way, negotiating with property owners for the acquisition of right-of-way and paying property owners for the right-of-way. If the City's negotiations result in the successful acquisition of all or a portion of the needed right-of-way, the City shall also be responsible for all escrow fees and related costs. The City shall conduct all activities required pursuant to Section 10.2.2 in a timely manner in order for it to comply with the requirements of Section 10.2.4.
- 10.2.3 If the City is unsuccessful in acquiring all required right-of-way from property owners, the City shall, at least seven (7) months prior to the City needing access to the required right-of-way to begin construction, request the County commence condemnation proceedings to acquire the right-of-way and related easements needed for the Project. The City acknowledges that the County needs at least seven (7) months prior to construction to begin condemnation proceedings due to statutory requirements, time needed to complete necessary tasks and potential staff constraints. The seven (7) month timeline is contingent on adequate staffing for County Facilities Management Department's Real Estate Division, Maricopa County Attorney's Office and by all information provided by the City to the County being current and sufficient to proceed on with acquisition/condemnation processing.
- 10.2.4 At the time of the City's request pursuant to Paragraph 10.2.3, the City shall provide to the County recordable legal descriptions, maps, and exhibits required by the County to complete right-of-way acquisitions.
- 10.2.5 At the time of the City's request pursuant to Paragraph 10.2.3, the City shall cease and desist all contact with the property owners, and shall convey to the County all responsibility for the management of the necessary right-of-way acquisitions or condemnation for the Project.

- 10.2.6 The City shall refer any and all escalation of questions and concerns with the acquisition of the Project to the management of the County Facilities Management Department's Real Estate Division.
- 10.2.7 The City shall provide any information requested by the County as to its proposed construction or related issues in order to assist in the County's acquisition of the property.
- 10.3 The City shall conduct utility coordination and relocation activities.
- 10.4 The City shall manage the design and construction of the Project.
- 10.5 The City shall be solely responsible for all costs and fees associated with the Project, including but not limited to attorney's fees and costs.
- 10.6 The City shall pay directly to the County's vendor or reimburse the County as determined pursuant to Paragraph 9.4 of the this Agreement for all expenses incurred by the County for Real Estate Support, including, but not limited to:
- 10.6.1 Title Examinations and Reports
  - 10.6.2 Property Appraisals
  - 10.6.3 Cost of acquisition of property or easements, including escrow and closing costs
  - 10.6.4 Cost of condemnation proceedings if needed
  - 10.6.5 All related attorney's fees and costs provided by Maricopa County
- 10.7 Notwithstanding the provisions of section 10.6, above, reimbursement to the County for the stipulated cost of acquisition of property or easements in excess of 30% of the County's most current appraised fair market value shall require authorization by the Chandler City Council.
- 10.8 Notwithstanding the provisions of section 10.7 above, the City, at the County discretion and pursuant to Paragraph 9.4, shall pay directly to the County's vendor or reimburse the County directly for the full cost of acquisition as determined by any non-stipulated judgment entered in a condemnation case filed by Maricopa County pursuant to the terms of this Agreement.
- 10.9 The City shall pay County for any expenses incurred after receiving an itemized invoice related to the acts performed pursuant to this Agreement.
- 10.10 The City shall remit all authorized payments as identified in this Agreement within thirty (30) days of the receipt of an invoice.
- 10.11 Upon issuance of the construction contract notice to proceed, the City shall assume responsibility and liability for construction, operation, maintenance and other aspects of the Project until annexation is complete.

- 10.12 Upon completion of the Project, the City shall assume all rights of ownership and responsibility for operation and maintenance of the Project Area and shall complete the annexation of the Project and Project Area within ninety (90) days or such time as can legally be annexed.

### **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 Relations  
2901 W. Durango Street  
Phoenix, Arizona 85009

City of Chandler  
Attn: City Engineer  
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 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.

***End of Agreement - Signature Page Follows***

IN WITNESS WHEREOF, the Parties have executed this Agreement.

**MARICOPA COUNTY**

***Recommended by:***

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

***Approved and Accepted by:***

\_\_\_\_\_  
Clint Hickman, Chairman                      Date  
Board of Supervisors

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

***Attest by:***

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

\_\_\_\_\_  
City Clerk                      Date

**APPROVAL OF ATTORNEYS**

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                       Date