

**INTERGOVERNMENTAL AGREEMENT BETWEEN MARICOPA COUNTY
AND THE CITY OF CHANDLER FOR THE CONSTRUCTION OF IMPROVEMENTS
FOR: LINDSAY ROAD FROM VIA DE PALMAS TO RIGGS ROAD**

TT0699

(C-64-22- ____ -X-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, an Arizona municipal corporation (**City**). The County and City are collectively referred to as the **Parties** or individually as a **Party**.

STATUTORY AUTHORIZATION

1. The County is authorized, pursuant to Arizona Revised Statutes (**A.R.S.**) § 11-251 and §§ 28-6701 *et. seq.*, to lay out, maintain, control and manage public roads within the County.
2. Public agencies are authorized, pursuant to A.R.S. §§ 11-951 *et. seq.*, to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.
3. The City is authorized, pursuant to A.R.S. § 9-240 and §§ 9-276 *et. seq.*, to lay out and establish, regulate and improve streets within the City and to enter into this Agreement.

BACKGROUND

4. Lindsay Road is located in southeastern Maricopa County and under the jurisdiction of the County and the City. The City has designated Lindsay Road as a minor arterial roadway (Project No. 6ST693).
5. The City has proposed to improve Lindsay Road from Ocotillo Road to Hunt Highway (**Project Area**) to four through lanes, bike lanes, turn lanes, raised landscaped median, sidewalk, curb and gutter, traffic signals, street lights, improved drainage facilities, wet utilities, and dry utilities. (**Project**).
6. The Project abuts a number of parcels located in the County along Lindsay Road from Via De Palmas to Riggs Road. The County maintains Lindsay Road from Cloud Road to approximately 700 feet south of Capricorn Place.
7. The Parties will enter into a separate intergovernmental agreement whereby the County agrees to provide the City with right-of-way assistance for this Project.

8. The Project will be built to the City's design standards and annexed by the City upon completion. The County acknowledges that the City is a recipient of federal Surface Transportation Program (STP) funds designated in the Maricopa Association of Governments' Arterial Life Cycle Program. Therefore, the City will be required to satisfy certain conditions and deadlines on or before April 2023. The City plans to construct the Project improvements in fiscal years 2023 and 2024.
9. The Parties have agreed that the County will provide a financial contribution of \$1,301,229 for the construction for this Project. This payment will be deferred until July 1, 2027.

PURPOSE OF THE AGREEMENT

10. The purpose of this Agreement is to identify and define the responsibilities of the County and the City for design, environmental clearance, right-of-way acquisition, construction management, and construction related to this Project.

TERMS OF THE AGREEMENT

11. Responsibilities of County:

- 11.1 The County shall not review or be responsible for plans or be liable for design deficiencies, traffic control, construction or inspection approvals for compliance with the City's design standards.
- 11.2 The County shall provide no-cost permits for design, construction, and traffic control, as applicable, to the City for any Project-related work that lies within unincorporated County boundaries.
- 11.3 The County shall contribute no more than \$1,301,229 of the estimated cost of the Project Costs, not including any City requested Enhancements.
- 11.4 Not before July 1, 2027, but upon completion of construction, recorded annexation, and receipt of an invoice from the City, the County shall remit payment to City within thirty (30) working days for the County's Project Cost contribution of \$1,301,229. The County shall retain sole discretion to notify the City of any advanced availability of funds and may remit payment to the City prior to fiscal year 2027.
- 11.5 The County shall pay invoices submitted by the City within thirty (30) days of receipt.

12. Responsibilities of the City:

- 12.1. The City shall act as the lead agency for the design and construction of the Project and shall assume responsibility and liability for the design, right-of-way acquisitions, utilities and utility relocation, construction and construction management, inspection, operation, maintenance, and other aspects of the Project.

- 12.2. The City shall design and construct the Project to City standards in compliance with the approved plans and specifications. The City shall be responsible for review and approval of all plans and be responsible for construction and inspection approvals.
- 12.3. The City shall apply for no-cost permits, as applicable, for any Project related work that lies within unincorporated County boundaries.
- 12.4. The City shall be responsible for all Project Costs, beyond the County's contribution of \$1,301,229.
- 12.5. The City shall be financially responsible for dedicated time by their staff as it relates to this Project. The cost shall not be credited toward the City's Project Cost share obligation.
- 12.6. Not before July 1, 2027, upon completion of construction and annexation of the Project Area, the City shall invoice the County for the County's cost contribution.

GENERAL TERMS AND CONDITIONS

- 13. 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.
- 14. This Agreement shall become effective as of the date it is approved by the governing bodies of the Parties 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.
- 15. This Agreement shall be subject to the provisions of A.R.S. § 38-511.
- 16. The Parties warrant that they are in compliance with A.R.S. § 41-4401 and further acknowledge that:
 - 16.1. 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. § 23-214(A), and shall keep a record of the verification for the duration of the employee's employment or at least three (3) years, whichever is longer.

- 16.2. Any breach of the warranty shall be deemed a material breach of this agreement of which breaching party may be liable for penalties including termination of the agreement.
- 16.3. 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.
- 16.4. Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
17. Any contractor or subcontractor who engages in for-profit activity and has 10 or more employees, if the value of the contract is a minimum of \$1,000,000, certify it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
18. 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.
19. 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.
20. All notices required under this agreement to be given in writing shall be sent to:

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

City of Chandler
Attn: Public Works & Utilities Director
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.

21. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in 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 governing bodies of the Parties 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 related to the Project between the Parties to this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties related to the Project, 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.
25. Each Party has reviewed this Agreement and has had the opportunity to have it reviewed by legal counsel.
26. 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.

27. 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.
28. 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.
29. 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.
30. Section or 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 will 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 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.

End of Agreement - Signature Page Follows

IN WITNESS WHEREOF, the Parties have executed this Agreement.

MARICOPA COUNTY

Recommended by:

DocuSigned by:
 8/5/2021
89F0452A0880459...

Jennifer Toth, P.E. Date
Transportation Director

Approved and Accepted by:

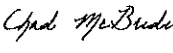
Chairman Date
Board of Supervisors

Attest by:

Clerk of the Board Date

APPROVAL OF DEPUTY COUNTY ATTORNEY

The foregoing Agreement has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Deputy County Attorney, who has determined that it is in proper form and within the powers and authority granted to the Board of Supervisors under the laws of the State of Arizona.

DocuSigned by:
 8/5/2021
090792D0F16F48E...

Deputy County Attorney Date

