INTERGOVERNMENTAL AGREEMENT BETWEEN MARICOPA COUNTY AND THE CITY OF CHANDLER FOR RIGHT-OF-WAY ASSISTANCE FOR: LINDSAY ROAD FROM OCOTILLO ROAD TO HUNT HIGHWAY TR222

(C-64-21- ____ -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**). County and City are collectively referred to in this Agreement as the **Parties** or individually as a **Party**.

STATUTORY AUTHORIZATION

1. A.R.S. § 12-1111(6) authorizes County to exercise the right of eminent domain to obtain property for roads and streets.

2. A.R.S. § 12-1111(6) authorizes City to exercise the right of eminent domain to obtain property for roads and streets; however, A.R.S. § 9-276(A)(20) limits such power to streets and highways within City's corporate limits.

3. A.R.S. § 11-951 et seq. authorizes public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.

BACKGROUND

4. Lindsay Road is in southeastern Maricopa County within the City of Chandler and unincorporated Maricopa County. City has designated Lindsay Road a minor arterial roadway and has proposed to improve Lindsay Road (**Project**) from Ocotillo Road to Hunt Highway (**Project Area**) pursuant to the approved plans for City's Capital Improvement Project No. 6ST693.

5. City plans to construct the Project in Fiscal Years 2023 and 2024 and to annex the Project upon completion of construction.

6. City may require assistance from County's Real Estate Department (**MCRED**) in acquiring right-of-way, easements and/or temporary construction easements from owners within unincorporated Maricopa County for the completion of the Project.

7. Each Party has determined that acquisition of property to allow for the completion of the Project will serve the public good.

8. County acknowledges, understands, and agrees that substantial Project costs will be paid by federal funds.

PURPOSE OF THE AGREEMENT

9. The purpose of this Agreement is to identify and define the responsibilities of each Party for right-of-way acquisitions related to the Project.

TERMS OF THE AGREEMENT

10. **County shall:**

10.1 Assist City in obtaining all required right-of-way within unincorporated Maricopa County required for the Project that City is unable to obtain through dedication.

10.2 Perform the duties outlined in Exhibit A, Section A attached to this Agreement.

10.3 Invoice City, based on supporting documentation, monthly for County employees' time as it relates to the Project. The invoices for any consultants performing services in connection with this Agreement shall be submitted to City.

10.4 Issue all necessary permits to City for the Project, and related work conducted within the County's jurisdictional boundaries, at no cost to City.

10.5 Convey to City all property rights necessary to the Project obtained by County under this Agreement.

10.6 County acknowledges that time is of the essence because substantial Project costs will be paid by federal funds. County will perform its responsibilities in accordance with FHWA/ADOT requirements and comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

11. **City shall:**

11.1 Perform all duties as the lead agency for the Project, including without limitation, responsibility and liability for the design, right-of-way acquisitions, utilities and utility relocation, construction and construction management, inspection, operation, maintenance and all aspects of the Project.

11.2 Perform the duties outlined in Exhibit A, Section B attached to this Agreement.

11.3 Pay within thirty (30) days of submission, all invoices for County employees' time as it relates to the Project. The invoices for any consultants performing services in connection with this Agreement shall be paid directly by City if County so directs.

11.4 Accept all property rights necessary for the Project obtained by County under this Agreement. Initiate the annexation of the Project upon completion of construction. The area to be annexed and described within the annexation is to be submitted to MCRED for review by its Property Engineering for concurrence.

GENERAL TERMS AND CONDITIONS

12. The Parties mutually consent to the annexation of the Project when completed, and shall

fully cooperate to achieve said annexation under A.R.S. § 9-471(o).

13. To the extent permitted by law, each Party will indemnify, defend and save the other Party, as well as its departments, agencies, officers, employees, elected officials, and/or agents, harmless from and against all loss, expense, damage or claim of any nature whatsoever, including without limitation all injuries or death of persons or damages to or destruction of property, which is caused by any activity, condition, or event arising out of the performance or nonperformance under this Agreement by the indemnifying Party. Indemnification shall not extend to any loss, expense, damage or claim caused or contributed to by the gross negligence or willful acts of the other Party. The obligation to indemnify shall include all costs, expenses of litigation, and reasonable attorneys fees.

14. This Agreement shall become effective as of the date it becomes fully executed. 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.

15. This Agreement may only be amended upon written Agreement by both Parties.

16. This Agreement is subject to the provisions of A.R.S. § 38-511.

17. The Parties warrant that they are in compliance with A.R.S. § 41-4401 and further acknowledge that:

a) 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 years, whichever is longer.

b) 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.

c) 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.

d) Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.

18. The Parties warrant that neither it nor any contractor or vendor under contract 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.

19. Any non-performance shall be a default under this Agreement (**Default**). The non-defaulting Party may seek appropriate remedy for Default if the event causing the Default continues for a period of thirty (30) days after the defaulting Party receives written notice of such failure without the Default having been cured; provided however 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, no recourse shall be available to the non-defaulting Party. The total aggregate cure period shall not exceed ninety (90) days unless the non-defaulting Party agrees in writing that additional time is reasonably necessary under all of the circumstances to cure such Default. In the event of a Default that is not cured as provided for herein, the non-defaulting Party, at its option, may exercise any remedies now or hereafter available to it at law or in equity, including the right to terminate this Agreement.

20. All notices required under this Agreement shall be given in writing sent to:

Maricopa County Real Estate Department
Attn: Director
2801 W. Durango Street
Phoenix, Arizona 85009

City of Chandler
Attn: Public Works & Utilities Director
P.O. Box 4008, Mail Stop 402
Chandler, Arizona 85244-4008

Chandler City Attorney
P. O. Box 4008, Mail Stop 602
Chandler, Arizona 85244-4008

A Party may by written notice to the other specify a different address for notice.

All notices required or permitted by this Agreement or applicable law may be delivered in person (by hand or courier) or may be sent by regular, certified mail or U.S. Postal Service Express Mail, with postage prepaid, or by commercial delivery service that guarantee next day delivery and shall be deemed sufficiently given if served in a manner specified in this paragraph. Any notice sent by 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 commercial delivery service shall be deemed given 24 hours after delivery of the notice to the Postal Service or courier.

21. Performance under this Agreement is contingent upon any funding, other than in the current fiscal year, being budgeted and appropriated by the governing body of each in the then current fiscal year. Termination by either Party due to non-appropriation of funds shall not constitute a Default under this Agreement.

22. This Agreement and all Exhibits attached to this Agreement constitute the entire agreement between the Parties with respect to the subject matter of this Agreement. This Agreement shall be construed as a whole, in such a manner as to be valid under applicable law and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the Party drafting this Agreement.

23. 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 under this Agreement.

This Agreement shall be governed by the laws of the State of Arizona. Venue for any claim arising out of or in any way related to this Agreement shall be in Maricopa County, Arizona.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

MARICOPA COUNTY

Recommended by:

____

Alex Smith Date
Director of Real Estate

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.

____

Deputy County Attorney Date

CITY OF CHANDLER

Kevin Hartke Date
Mayor

ATTEST:

City Clerk Date

APPROVAL OF CITY ATTORNEY

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

City Attorney Date

EXHIBIT A

RIGHT-OF-WAY (ROW) ASSISTANCE

In an effort to streamline the process for appraising and acquiring land rights for the Project in unincorporated Maricopa County and reduce duplicative effort and cost to City and County taxpayers,

A. County shall:

I. Collaborate and communicate with City's Project team on a regular basis to ensure the MCRED staff or consultant understands the Project's proposed scope, schedule, and budget. A MCRED representative or consultant will attend Project meetings and public meetings as necessary and attend appraisal inspections and offer presentation for the parcels located in unincorporated Maricopa County.

II. Provide ROW acquisition phase best practice guidance, training, and sample forms upon request.

III. Attend City's focused ROW phase meeting with City's Project acquisition and design team prior to initiating the appraisal process.

IV. MCRED staff or outside consultant will assist with the acquisition of the land rights required for the Project upon City's request (**ROW Assistance)**. When a property to be acquired extends into both municipal and county jurisdiction, County and 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. County will:

a. Assume all responsibility for the management of the acquisition and proceed in accordance with the statutes, policies, and procedures that govern County's ability to acquire the land rights.
b. Within 90 days of the approved IGA, provide City with an estimated budget (for county/consultant services) and acquisition schedule including specific milestones.
c. Within 60 days of the approved IGA, initiate the open and declare process.
d. Request an updated title commitment with County as the proposed insured.
e. Review the submitted products for statutory and policy compliance.
f. Determine, in County's sole discretion, if the submitted appraisal and/or appraisal review of the areas to be acquired can be used as the basis for County's offer and/or an eminent domain filing. If a new appraisal and/or appraisal review is required, County will order the appraisal.
g. Present an offer to the property owner based on County's or City's appraisal.
h. Negotiate in good faith to try and address/resolve the property owner's concerns and obtain agreement to the purchase within 90 days of the offer. After 90 days MCRED shall communicate the issues with City and discuss possible resolutions.
i. If County is unsuccessful in acquiring the required land rights by agreement from an owner, the MCRED Real Property Manager will review the file and if approved, proceed to eminent domain action. MCRED staff will forward the file to the MCAO for condemnation action.
j. County will keep City Project team apprised of the status of each acquisition via periodic status updates.

k. MCAO will communicate directly with the Chandler City Attorney's office concerning the status of any condemnation action and shall provide the City Attorney or designee an opportunity to review and comment on a draft of the complaint and any amendments to the complaint. MCAO shall copy the City Attorney or designee on significant pleadings filed in the case, including the Complaint, Answer, status reports, scheduling orders, motions, responses and similar briefs, as well as copies of any significant rulings from the Court. The joint defense privilege shall apply to all communications between MCAO and the City Attorney's office concerning any condemnation action filed or contemplated to be filed under this IGA.

l. County shall, within no less than ten (10) days prior to concluding any administrative settlement to purchase property rights required for the Project, seek and duly consider the City Engineer's written comments regarding such proposed settlement; provided, however, that County shall retain final decision-making authority with regard to same.

V. Provide the ROW Assistance outlined above within the timeframe as determined by City and County to meet the Project schedule.

VI. Determine whether the method of compensation by City for the costs that are set forth in Paragraph A (VI.) of this Exhibit A shall be direct payment by City to County 's vendor or shall be a reimbursement to County.

VII. Invoice City on a monthly basis for any ROW Assistance expenses, including MCRED staff time, which are not subject to direct payment. County shall provide an invoice that includes an itemization of expenses being requested for payment.

B. City shall:

I. Extend invitations, via e-mail, to Project kick-off and status meetings to the Maricopa County Real Estate Department (**MCRED**) Real Property Manager, and/or designee, throughout project scoping and design to better understand and coordinate the following:

a. Project need, objectives, and goals.

b. Project funding sources, scope, schedule, and budget.

c. Maximum scope, and proposed timing, of ROW assistance that may be required from County which includes a spreadsheet of the land rights that are anticipated to be acquired from each larger parcel to build the proposed Project (new ROW; permanent easements, including, but not limited to, utility, slope, and drainage; and temporary easements). The spreadsheet shall, at a minimum, include Assessor Parcel Numbers (**APNs**), full names of ownership entities, larger parcel square footage, zoning, information on whether the property is vacant or improved, and the proposed improvements within the acquisition area and impacts of the ROW acquisition on the remainder.

d. In cooperation with County, determine whether County will pursue the acquisition of ROW within unincorporated Maricopa County concurrently with City's acquisitions or after City has attempted to acquire the ROW within unincorporated Maricopa County.

II. Provide design plan submittals at major milestones as well as identify and refine the spreadsheet referenced in paragraph I(c) above for all Project acquisition parcels and proposed relocations (if any) that are in unincorporated Maricopa County. At a minimum, design plan submittals will be required at 30%, 60%, 95%, and 100%, or per City's in-house or contracted design schedule milestones.

III. Facilitate a focused ROW phase meeting between appropriate representatives from City's Project team and the MCRED Real Property Manager, and/or designee, prior to initiating the appraisal process. The goal of this meeting is to identify best practices for the coordination between City and County's acquisition teams to include discussing:

a. The Project acquisition schedule.
b. Prioritization of the appraisal assignment and acquisitions based on information obtained in the title reports, the complexity of the appraisal, acquisition, and/or the need for relocation.
c. Collaborate on the drafting of the appraisal scope of work, discuss if contracting with multiple appraisers should be considered, and discuss whether review appraisers will also be required.
d. Discuss appropriate appraisal products and required elements of the appraisal which include adding County as an intended user, offering the owner and acquisition/relocation agents (City and County) a reasonable opportunity to attend the appraisal inspection, a determination of the larger parcel for the purposes of the appraisal, a well-supported highest and best use analysis, conducting before and after analyses for partial acquisitions, and accounting for the acquisition and/or movement of all improvements within the acquisition area and providing applicable cost-to-cure estimates based on bids. See 49 Code of Federal Regulations (**CFR**) Part 24.103 and 24.104 for additional guidance.

IV. Be responsible for:

a. Ordering and paying for appraisal services.
b. Making every effort to contact the property owner impacted by the Project to obtain current/correct mailing addresses and names of the points of contact or representatives for the offers.
c. Preparing and presenting a purchase offer to the identified property owner(s) for the acquisition of the required land rights. The purchase offer shall, at a minimum, include the items required by Arizona state law and 49 CFR 24.102 as applicable and every effort shall be made to present the offer in person to those property owners that reside or maintain a place of business within 50 miles of the Project.
d. Negotiating in good faith with the relevant property owners to reach an agreement for the purchase in accordance with 49 CFR Part 24.102, Arizona state law, and City Code.
e. Providing relocation assistance to occupants that need to be relocated out of the acquired ROW and/or for movement of personal property out of the acquired ROW in accordance with 49 CFR 24.201 through 24.503.
f. Compensating the property owner for the land rights acquired, any severance damages, cost-to-cure, all cost incidentals to the transfer of title to the agency (i.e. escrow fees and related costs) and paying approved reasonable and necessary relocation benefits based on an approved determination.
g. Maintaining typed communication logs of the ongoing negotiations, relocation activities, and concerns raised by the owners, and any responses/resolutions offered by City.
h. City will provide any information requested by County and/or County's consultant on the proposed construction or related Project issues to assist in the acquisition

of the land rights and/or relocations.

i. City further acknowledges that work on County projects has priority for County staff.

V. Reimburse County for MCRED staff time and/or pay County's vendor and/or consultant directly (at County's discretion) for all expenses incurred by County for ROW Assistance, including, but not limited to:

   a. Title Reports (i.e., commitments for title insurance, litigation guarantees, updates).
   b. Appraisals & Appraisal Reviews.
   c. Compensation paid for the acquisition of any and all land rights to include any non-stipulated amount (i.e., a court ordered amount); however, stipulated costs of acquisition in excess of 30% of County's most current appraised fair market value shall require authorization by the Chandler City Council.
   d. Escrow and closing costs.
   e. All Maricopa County Real Estate Division (MCRED), Attorney's Office (MCAO) and expert fees, costs and expenses related to condemnation proceedings.
      i. County shall provide City with a rate sheet of hourly rates and or monthly rates for the MCRED Real Property Manager, or designee, and the Attorney (MCAO) within 90 days of the approved IGA.