

**AMENDED AND RESTATED 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-64-22- 213 -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.
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. ST2001.201, Federal Project No. CHN-0(246)D, ADOT Project No. T0243 01C.
5. This Agreement amends, restates and supersedes in its entirety the Agreement entered into between the City and the County recorded in the Office of the Maricopa County Recorder's Office on April 14, 2022, at Document Number 20220332498.
6. This Agreement is the separate intergovernmental agreement referred to in Paragraph 7 of the 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-64-22-322-X-00) recorded in the Office of the Maricopa County Recorder's Office on September 28, 2021, at Document Number 20211043394.
7. The City has authorized the acquisition of the right-of-way necessary for this project by purchase, grant, or eminent domain in Resolution 5543, passed and adopted on February 24, 2022 and County has authorized the acquisition of the right-of-way necessary for this project by purchase, grant, or eminent domain in Road File No. A710 passed and adopted on September 16, 2022.

8. City plans to construct the Project in Fiscal Years 2024, 2025 and 2026 and to annex the Project upon completion of construction.
9. 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.
10. Each Party has determined that acquisition of property to allow for the completion of the Project will serve the public good.
11. Substantial Project costs will be paid by federal funds.

PURPOSE OF THE AGREEMENT

12. The purpose of this Agreement is to identify and define the responsibilities of each Party for right-of-way acquisitions related to the Project.
13. The County, in consultation and at the request of the City, will retain Outside Counsel to represent the County as necessary to acquire properties from owners within unincorporated Maricopa County for the completion of the Project. Each Party agrees that the retained Outside Counsel will jointly represent the City and the County with respect to the acquisition of acquired properties from owners within unincorporated Maricopa County for the completion of the Project.

TERMS OF THE AGREEMENT

14. County shall:

- 14.1 Assist City in obtaining right-of-way within unincorporated Maricopa County, not acquired by agreement, required for the Project that City is unable to obtain.
- 14.2 Perform the duties outlined in Exhibit A, Section A attached to this Agreement.
- 14.3 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.
- 14.4 Issue all necessary permits to City for the Project, and related work conducted within the County's jurisdictional boundaries, at no cost to City.
- 14.5 Convey to City all property rights necessary to the Project obtained by County under this Agreement.
- 14.6 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.

15. City shall:

- 15.1 Perform all duties as the lead agency for the Project, including without limitation, responsibility and liability for the design, all activities necessary to complete the acquisition of right-of-way, contracting with consultants and appraisers, utilities and utility relocation, construction and construction management, inspection, operation, maintenance and all aspects of the Project.
- 15.2 Perform the duties outlined in Exhibit A, Section B attached to this Agreement.
- 15.3 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.
- 15.4 Accept all property rights necessary for the Project obtained by County under this Agreement. Initiate the annexation or transfer of the Project right-of-way 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.
- 15.5 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.

GENERAL TERMS AND CONDITIONS

- 16. The Parties mutually consent to the transfer of the Project right-of-way when completed and shall fully cooperate to achieve said transfer under A.R.S. § 9-471(o).
- 17. 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.
- 18. 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.
- 19. This Agreement may only be amended upon written Agreement by both Parties.
- 20. This Agreement is subject to the provisions of A.R.S. § 38-511.
- 21. 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.
22. 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.
23. 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.
24. 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.

25. 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.
26. 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.
27. The Parties shall 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.
28. 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.
29. Time is of the essence because substantial Project costs will be paid by federal funds.

[Signatures on Following Page]

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
DMG

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 as needed 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 as requested by the City.
- II. Attend City's focused ROW phase meeting with City's Project acquisition and design team as necessary and as requested by the City.
- III. Permit Outside Counsel retained in accordance with this agreement to jointly represent the County and the City in the acquisition of the land rights required for the Project upon City's request (**ROW Assistance**) and execute a Joint Representation Agreement for the acquisition of properties under this IGA. 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. Cooperate with the City and Outside Counsel appointed to represent the County in the acquisition of the property.
 - b. Review the submitted products for statutory and policy compliance.
 - c. County agrees that if the City is unsuccessful in acquiring the required land rights by agreement from an owner, Outside Counsel, under the direction of the City, may proceed to acquire the property by the power of eminent domain with the County as the named plaintiff with the following caveats:
 - i) Outside Counsel shall keep the County and the City apprised of the status of each acquisition for which Outside Counsel has been retained pursuant to this Section III via periodic status updates.
 - ii) Outside Counsel shall communicate directly with the Maricopa County Attorney's Office ("MCAO") and the Chandler City Attorney's office concerning the status of any condemnation action and shall provide the MCAO and the City Attorney or designee an opportunity to review and comment on a draft of the complaint and any amendments to the complaint or other filing.
 - iii) Outside Counsel shall copy the MCAO and 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.
 - iv) The joint defense and common interest privileges 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.

- IV. Provide the ROW Assistance outlined above within the timeframe as determined by City and County to meet the Project schedule.
- V. 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. Consult with the County in the retention of Outside Counsel to represent the County in acquiring any property needed for the Project not acquired by agreement and execute a Joint Representation Agreement for the acquisition of properties under this IGA. The City shall direct, administer, and pay for all costs arising out the acquisition and condemnation of the property. Outside Counsel shall invoice City for services rendered monthly in accordance with City guidelines for outside legal representation and the City will pay such invoices directly to Outside Counsel.
- II. Extend invitations, via e-mail, to Project kick-off and status meetings to the **MCRED** Real Property Supervisor, 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, property rights to be acquired and proposed relocations, if any.
- III. Provide design plan submittals at major milestones as well as identify and refine the spreadsheet referenced in paragraph II(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.
- IV. Reimburse County for MCRED staff time and/or pay County's vendor and/or consultant directly (hired with City's prior approval) for all expenses incurred by County for ROW Assistance for performing the activities set forth in Section A above.