

**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN MARICOPA COUNTY**  
**AND THE CITY OF LITCHFIELD PARK**  
**AND THE CITY OF GLENDALE**  
**FOR IMPROVEMENTS TO CAMELBACK DRAINAGE CHANNEL**  
**FROM LITCHFIELD ROAD TO 134TH LANE**

**(C-64-17- \_\_\_\_\_ -M-00)**

This Intergovernmental Agreement (**Agreement**) is between the County of Maricopa, a political subdivision of the State of Arizona (**County**), the City of Litchfield Park, a municipal corporation (**Litchfield Park**), and the City of Glendale (**Glendale**). Litchfield Park and Glendale are referred to collectively as the **Cities**. The County and Cities are referred to collectively as the **Parties** or individually as a **Party**.

**STATUTORY AUTHORIZATION**

1. A.R.S. Section 11-251 and Sections 28-6701 *et. seq.* authorizes the County to lay out, maintain, control and manage public roads within the County.
2. A.R.S. Sections 11-951 *et. seq.* authorizes 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 and Sections 9-276 *et. seq.* authorizes cities to lay out and establish, regulate and improve streets within cities and to enter into this Agreement.

**BACKGROUND**

4. Evergreen Development is constructing Litchfield Marketplace on the northeast corner of Litchfield Road and Camelback Road. Evergreen Development will construct and pay for three culvert/drainage crossings of Camelback Channel and driveways for access into Litchfield Marketplace. Evergreen Development is also responsible for constructing a curb and gutter and any improvements behind

the curb and gutter, including a safety railing and sidewalk, as part of Litchfield Marketplace. These improvements are collectively referred to as the **Project**.

5. Camelback Channel is an existing drainage channel running parallel to Camelback Road along the north side of the road. The County currently maintains Camelback Channel.
6. Camelback Road is within County right-of-way, and the County maintains the roadway. Upon completion of the Project, a total of 130 feet of right-of-way on the north side of the centerline of Camelback Road will exist. The northern 75 feet of right-of-way will be located in Litchfield Park. The southern 55 feet are located in the County.

### **PURPOSE OF THE AGREEMENT**

7. The purpose of this Agreement is to identify and define the responsibilities of the Parties for various elements of the Project which include, but are not limited to, cost sharing, design, permitting, environmental clearances, right-of-way acquisitions, utilities, construction and construction management, and annexation of the roadway.

### **TERMS OF THE AGREEMENT**

#### **8. Responsibilities of the County:**

- 8.1 The County shall continue to maintain Camelback Road in the same manner as before the completion of the Project, except as otherwise prescribed in this Agreement.
- 8.2 The County shall continue to maintain Camelback Channel downstream (east) of 134th Lane in the same manner as before completion of the Project.

#### **9. Responsibilities of Litchfield Park:**

- 9.1 Litchfield Park accepts full maintenance responsibilities for the Camelback Channel between Litchfield Road and 134th Lane.
- 9.2 Upon completion of the Project, Litchfield Park shall be responsible for maintenance of the drainage portion of the Litchfield Marketplace crossings of the channel, specifically the pipe culverts, as well as the roadway/driveway improvements appurtenant to the channel crossings.

9.3 Upon completion of the Project, Litchfield Park shall accept ownership, operation, and maintenance responsibility for all sidewalk and other improvements behind the curb and gutter, including the safety railing, along Camelback Road between Litchfield Road and 137th Avenue.

9.4 Nothing in this Agreement binds Litchfield Park to any responsibility for future widening or improvement of Camelback Road.

**10. Responsibilities of Glendale:**

10.1 Glendale authorizes Litchfield Park to enter upon and maintain that portion of the Camelback Channel located within the jurisdictional boundaries of Glendale.

10.2 Glendale shall issue no cost permits to Litchfield Park to maintain that portion of the Camelback Channel located within the jurisdictional boundaries of Glendale.

10.3 Nothing in this Agreement binds Glendale to any responsibility for maintenance of the Camelback Channel.

**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:

County:

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

Litchfield Park:

City of Litchfield Park  
Attn: City Manager  
214 W. Wigwam Boulevard  
Litchfield Park, Arizona 85340

Glendale:

City of Glendale  
Attn: City Manager  
5850 W. Glendale Avenue  
Glendale, Arizona 85301

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 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.
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 Parties.
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.
34. Unless otherwise lawfully terminated by the Parties, this Agreement expires upon completion and acceptance of the Project and fulfillment of all terms of the Agreement.

***End of Agreement - Signature Pages Follow***

**IN WITNESS WHEREOF**, the Parties have executed this Agreement.

**MARICOPA COUNTY**

***Recommended by:***

Jennifer Toth, P.E. Date  
Transportation Director

***Approved and Accepted by:***

Denny Barney, Chairman                      Date  
Board of Supervisors

**Attest by:**

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Clerk of the Board
Date

**APPROVAL OF DEPUTY COUNTY ATTORNEY**

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 \_\_\_\_\_



**IN WITNESS WHEREOF**, the Parties have executed this Agreement.

# CITY OF LITCHFIELD PARK

***Recommended by:***

Sonny Culbreth  
Interim City Manager

Date

***Approved and Accepted by:***

Thomas Schoaf  
Mayor

**Attest by:**

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

**APPROVAL OF CITY ATTORNEY**

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.

City Attorney \_\_\_\_\_ Date \_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have executed this Agreement.

# CITY OF GLENDALE

***Recommended by:***

Kevin Phelps  
City Manager

Date

***Approved and Accepted by:***

Jerry Weiers  
Mayor

Date

**Attest by:**

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

**APPROVAL OF CITY ATTORNEY**

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.

City Attorney \_\_\_\_\_ Date \_\_\_\_\_