CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION

CC: 10C
Amend No. _____

Date Prepared: April 22, 2008 **Council Meeting Date: May 6, 2008**

TO: Terry L. Ellis, City Manager

FROM: David A. Moody, P.E., Engineering Director

THROUGH: Jamal Rahimi, P.E., City Traffic Engineer JR

PREPARED BY: Ronald A. Amaya, Assistant City Traffic Engineer

SUBJECT: Intergovernmental Agreement between the State of Arizona, acting by and through its Department of Transportation and the City of Peoria, acting by and through its Mayor and City Council, for the purpose of purchasing and installing equipment for the Traffic Management Center.

RECOMMENDATION: That Mayor and Council have discussion and possible action to authorize the execution of an Intergovernmental Agreement (IGA), between the State of Arizona Department of Transportation (ADOT) and the City of Peoria (City), for the purchase and installation of equipment for the Traffic Management Center (TMC), in the amount of $1,414,500. Funding will be available in FY08, with Federal shares in the amount of $990,200, and City funds in the amount of $424,350, to be paid from Transportation Sales Tax, Street System Account Number 7010-7075-543001-CIPTC-EN00171CO. The Council Communication (7C) and IGA was presented and approved by Council on April 1, 2008. Subsequent to this approval, ADOT has requested these changes to the IGA concerning the procurement process utilizing the ADOT Procurement Contract T065900015 stating that they will select an authorized supplier to provide the equipment and services as outlined in the contract and approved plans to complete this project with the aid and consent of the City and the FHWA. Staff is bringing the IGA back to Council for its reconsideration and possible approval.

SUMMARY: The Engineering Department would like to open a new TMC for the City. The establishment of a TMC will allow the City to actively manage the traffic within the City's jurisdiction, share traveler information with other jurisdictions and the public, manage informational signs (Dynamic Message Signs), Closed Circuit Television (CCTV), surveillance feeds, manage the signal system and provide shared information between jurisdictions for traffic management, using the AZTEC Regional Model.

Along with the need for a TMC, the City has agreed to allow the use of their TMC as the alternate Traffic Operation Center (TOC) for ADOT. The location of the proposed TMC is ideal for the alternate TOC, as it is close to the freeway management system, and with a new facility, the required space can be planned for joint use.

Therefore, it is recommended that Mayor and Council authorize the execution of an IGA between ADOT and the City for the purchase and installation of equipment for the TMC, in the amount of $1,414,500.

ATTACHMENT: IGA

CITY CLERK USE ONLY:

- ☐ Consent Agenda
- ☐ Carry Over to Date: _____
- ☐ Approved
- ☐ Unfinished Business (Date heard previous: _____)
- ☐ New Business
- ☐ Public Hearing: No Action Taken

ORD. # _____ RES. #
LCON# 02808A LIC. #
Action Date:

REV. 07/05

JPA File No.: 07-128I
AG Contract No.: P0012008001394
Project No.:CM-PEO-0(202)A
Project: Traffic Management Center/
Purchase Equipment
Section: Monroe Street
TRACS No.: SS 67001C
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF PEORIA

THIS AGREEMENT is entered into this date _____, 2008, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PEORIA, an Arizona municipal corporation acting by and through its MAYOR and CITY COUNCIL (the " City"). The State and the City are collectively referred to as "Parties".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 11-952 *et seq,* and the City Charter Article 1, Section 3(15) to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The Purpose of this joint exercise of powers and cooperative action (i.e. Agreement), by the State and the City is to allow the State to acquire Federal funds for the purchasing and installation of equipment (i.e., the "Project") for the City's new Traffic management Center ("TMC"). The City through the State's Procurement Process utilizing ADOT Procurement contract T065900015 will select an authorized supplier to provide the equipment and services as outlined in the contract and approved plans to complete this project with the aid and consent of the City and the FHWA.

4. Such Project lies within the boundary of the City and has been selected by the City; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.

5. The State's interest in this Project is in the acquisition of Federal funds for the use and benefit of the City, and is authorized as the designated agent for the City in acquiring such Federal funds. Funds expended for the Project, are authorized by reason of Federal law and regulations.

6. The City, in order to obtain Federal funds for the construction of the Project, is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City and the FHWA.

7. The State and the City desire to define their respective responsibilities to allow the State to acquire Federal funds for the purchasing and installation of the new Traffic Management Center (TMC).

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8. The work embraced in this Agreement is for the purchase and installation of TMC equipment, hereinafter referred to as the "Project". The State and the City will be responsible for jointly administering the purchase and installation of this equipment. The estimated cost of the project is as follow:

Total Estimated Project Costs **TRACS No.: SS67001C**	$1,414,550.00
Federal Aid Funds @ 94.3% $1,050,053 (capped)	$ 990,200.00
Estimated City Funds @ 5.7%	$ 59,853.00
Estimated City Funds @ 100%	$ 364,497.00
Estimated Total City Funds	**$ 424,350.00**

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Approve the Project if such project funds are available by FHWA for the Project. Be the designated authorized agent for the City and, through the State's Procurement Process, advertise for, receive and open bids with the aid and consent of the City and the FHWA.

c. Upon execution of this Agreement, coordinate with the City regarding the specifics of the equipment to be ordered by the State to best ensure the requirements of the Project are met. Enter into a contract(s) with a firm(s) to whom the award is made for the purpose of the Project.

d. Instruct the vendor to deliver equipment directly to the City for final acceptance and to bill the City directly. The State will reimburse the City with capped Federal funds up to **$990,200.00** within thirty days (30) after receipt and approval of an invoice for equipment purchased under this Agreement. Therefore, the City agrees to set aside funds in an amount equal to the difference between the total cost of the work provided for in this Agreement and the amount of Federal aid received.

e. Not be obligated to maintain said equipment, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement. .

2. The City shall:

a. Designate the State as authorized agent for the City, if such project is approved by the FHWA and project funds are available.

b. Be responsible for any overage should costs exceeding the maximum Federal funds available for the Project. Agree the cost of the analysis and works covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA.

c. Coordinate with the State during the procurement process of the Project.

d. Purchase and Install the equipment purchased under this Agreement and maintains all improvements provided by this Project for the entire design life of the system and equipment.

e. Be responsible for unforeseen conditions or circumstances increase the cost of said work, such that a change in the extent or scope of the work called for in this Agreement becomes necessary, be obligated to incur and will pay for said increased costs.

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III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid and related matters; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement maybe cancelled at any time prior to the award of the project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project.

3. The cost of construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

4. This Agreement shall be filed with the Arizona Secretary of State and shall not become effective until the date of said filing.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation Joint Project Administration 205 S. 17th Avenue, Mail Drop 637E Phoenix, Arizona 85007 (602) 712-7525 (602) 712-7424 Fax	City of Peoria Attn: City Traffic Engineer 8401 W. Monroe Street Peoria, AZ 85345 (623) 773-7602 (623) 773-7304

11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF PEORIA, an Arizona municipal corporation

By _____
BOB BARRETT
Mayor

ATTEST:

By _____
MARY JO KIEF
Clerk

STATE OF ARIZONA
Department of Transportation

By _____
DALE BUSKIRK
Division Director

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ATTORNEY APPROVAL FORM FOR THE CITY OF PEORIA

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF PEORIA, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this _____ day of _____,2008.

_____

City Attorney

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