

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION**

CC: 7R
Amend No. _____

Date Prepared: June 17, 2008

Council Meeting Date: July 1, 2008

TO: Carl Swenson, City Manager
FROM: Dan Nissen, P.E., Acting Engineering Director
PREPARED BY: Chris Kmetz, P.E., Senior Civil Engineer
SUBJECT: Adoption of the Resolution approving the Intergovernmental Agreement between the State of Arizona and the City of Peoria for construction of certain improvements to The Arizona Department of Transportation's (ADOT's) new segment of freeway, State Route 303 Loop (SR 303L); Happy Valley Parkway to Lake Pleasant Parkway, know as Westwing Access/Vistancia Extension. (Engineering Project No. P-0808, TRN ADOT ECS File No. JPA 08-087, Project No. 303-A-NFA 303 MA 025, TRACS No. H7156 01D/01C, ADOT Budget Source Item No.: 44908)

RECOMMENDATION:

That Mayor and Council adopt the resolution approving the Intergovernmental Agreement (IGA) with the State of Arizona in the amount of \$544,958.00 for the design and construction of certain improvements to State Route 303 Loop (SR 303L) from Happy Valley Parkway (Milepost 25.17) to Lake Pleasant Parkway (Milepost 31.47), known as Westwing Access/Vistancia Extension, and authorize the Mayor to execute the Intergovernmental Agreement between the State of Arizona and City of Peoria.

Payment will be from the Westwing Access Road Project, Outside Sources Fund, Street System Account 4810-4810-543001-EN00285

SUMMARY:

The SR 303L is part of the Regional Transportation Plan Freeway Program (RTPFP) adopted by the Maricopa Association of Governments (MAG) in November 2003. The RTPFP funds the construction of a six-lane freeway facility, with three lanes in each direction of travel, referred to as a 3+0 lane arrangement. The SR 303L is planned to ultimately have five lanes; four general purpose lanes and one high occupancy vehicle (HOV) lane in each direction, referred to as a 4+1 lane arrangement, when additional

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business

ORD. # _____ RES. # 08-109
LCON# 15708 LIC. # _____
Action Date: _____

Council Communication
ADOT Construction JPA – Loop 303; Happy Valley Pkwy to Lake Pleasant Pkwy
Westwing Access/Vistancia Extension
(TRACS No. H7156 01D/01C)
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funding is available. The construction of the 3+0 facility will be implemented in two phases. Two lanes in each direction, referred to as the 2+0, will be constructed in the first phase, and the second phase will construct the third lane in each direction to achieve the 3+0 arrangement.

This 7-mile long project will involve significant amounts of earth moving, bridge construction and on-site and off-site drainage improvements.

The State has programmed in fiscal year (FY) 2009 the design and construction of new roadway known as State Route 303L (SR303L), from Happy Valley Parkway to Lake Pleasant Parkway. Because the State's construction is eliminating access to the Arizona Public Service (APS) Westwing Substation, it is necessary for the State to replace the access.

Although the Westwing Access/Vistancia Extension is currently located within Maricopa County jurisdiction, the City has an interest related to the annexation and development of the Westwing Access/Vistancia Extension as a future access to development in the area. As such, the State requests the City to acquire the necessary rights of way and construct the access road connection from Happy Valley Road known as the Westwing Access/Vistancia Extension up to APS right of way herein referred to as the "Project".

The State has agreed to prepare the design drawings and specifications for construction and provide legal descriptions for the right-of-way acquisition at no cost to the City. However, the State is recommending that an IGA be executed between the State and the City which establishes the responsibilities for the right-of-way acquisition and construction activities. Under the terms of the IGA, the City will be the lead agency and State will pay the City for all costs associated with the right-of-way acquisition and construction activities.

A summary of each party's responsibilities identified in the attached IGA for Westwing Access/Vistancia Extension is provided below:

CITY

a. Upon execution of this Agreement, agree to be the authorized agent for and on behalf of the State. Invoice the State \$544,958.00 for the estimated costs to acquire the necessary rights of way from State Land Department and accomplish the construction of the Project including all fixed rates.

b. Upon receipt of the right of way plans, proceed in acquiring the necessary rights of way for the Project.

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- c. Upon receipt of the State's design plans, specifications, and other such documents and services, advertise for bids and award one or more construction contracts(s) for the Project. Administer the Project and make all payments to the contractor(s). Be responsible for contractor claims for extra compensation due to delays, attributable to the City.
- d. Notify the State, should costs exceed the current estimated amount, prior to the City incurring additional costs.
- e. Upon completion of the Project and final inspection, notify the State in writing that the Project has been constructed in accordance with the Project Plans and other related documents, and has been satisfactorily completed. Be responsible for maintenance upon completion of the Project.

STATE

- a. Upon execution of this Agreement hereby designate the City as the authorized agent for and on behalf of the State and within 30-days from receipt of invoice, remit \$544,958.00 for the estimated costs to accomplish acquisition of the necessary rights of way and construction of the Project including all fixed rates.
- b. Prepare design plans, specifications, right of way plans, environmental clearances and other such documents and services required for construction and construction of the Project and provide to the City.
- c. Be responsible for all costs relative to the construction of the Project based on approved plans. If notified by the City that additional funds are required for the Project, upon approval, remit said funds upon 30-days receipt of an invoice.

A summary of the costs associated with the right-of-way acquisition and construction of the State requested elements are provided below:

Construction	\$ 270,577
14% Construction Engineering and Admin	\$ 37,881
Right of Way	<u>\$ 236,500</u>
Total ADOT Costs	\$ 544,958

ATTACHMENTS:

1. Resolution
2. Intergovernmental Agreement
3. Vicinity Map

RESOLUTION NO. 08-109

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, ARIZONA, ADOPTING A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA FOR THE DESIGN AND CONSTRUCTION OF CERTAIN IMPROVEMENTS TO STATE ROUTE 303 LOOP (SR303L) FROM HAPPY VALLEY PARKWAY TO LAKE PLEASANT PARKWAY, KNOWN AS WESTWING ACCESS/VISTANCIA EXTENSION.

WHEREAS, the City of Peoria Mayor and City Council are authorized by Title 9, Chapter 2, Article 4, Section 9-276 (1) to lay out and establish or otherwise improve streets, alleys, avenues, sidewalks, etc. and by Title 11, Chapter 7, Section 11-951 *et seq.* to enter into intergovernmental agreements with other governing bodies for services or joint exercise of powers; and

WHEREAS, the City desires to enter into an intergovernmental agreement with the State of Arizona for the design and construction of certain improvements to State Route 303L from Happy Valley Parkway to Lake Pleasant Parkway, known as Westwing Access/Vistancia Extension; and

WHEREAS, the City is willing in order to pay for the costs associated with the design and construction of certain improvements to State Route 303L from Happy Valley Parkway to Lake Pleasant Parkway, known as Westwing Access/Vistancia Extension, and

WHEREAS, by the City entering into the Intergovernmental Agreement with the State of Arizona the public interest will best be served.

THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of Peoria, Arizona approves and adopts this Resolution to enter into an intergovernmental agreement with the State of Arizona for the design and construction of certain improvements to State Route 303L from Happy Valley Parkway to Lake Pleasant Parkway, known as Westwing Access/Vistancia Extension.

Resolution No. 08-109

State of Arizona for design and construction of certain improvements to SR303L-Happy Valley Pkwy to Lake Pleasant Pkwy, known as Westwing Access/Vistancia Extension.

July 1, 2008

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PASSED AND APPROVED by the Mayor and City Council of the City of Peoria, Arizona this 1st day of July, 2008.

Bob Barrett, Mayor

ATTEST:

Mary Jo Kief, City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

ADOT File No.: IGA/JPA.: 08-087 I
AG Contract No.: P001-XXXX-XXXXXX
Project: SR303L (Vistancia Extension)
Section: Happy Valley Parkway
to Lake Pleasant Parkway
TRACS No.: H7156 01D/01C
Budget Source Item No.: 44908

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 between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PEORIA, acting by and through its CITY MANAGER (the "City"). Collectively referred to as, the "Parties".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section §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 § 48-572 and 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 State has programmed in fiscal year (FY) 2009 the design and construction of new roadway known as State Route 303L (SR303L), from Happy Valley Parkway to Lake Pleasant Parkway. Because the State's construction is eliminating access to the Arizona Public Service (APS) Westwing Substation, it is necessary for the State to replace the access. Due to the City's future interest to expand roadway in the area, the State requests the City to acquire the necessary rights of way and construct the access road connection from Happy Valley Road known as the Vistancia Extension up to APS right of way, herein referred to as the "Project", currently estimated at **\$544,958.00** and shown on Exhibit "A", attached hereto and made a part hereof.

4. The Parties hereto agree and acknowledge to the following conditions: a) The amounts referenced in this Agreement are subject to change; b) The estimated amounts can change substantially; and c) Both Parties will perform their responsibilities consistent with this Agreement.

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

II. SCOPE OF WORK

1. The City will:

a. Upon execution of this Agreement, agree to be the authorized agent for and on behalf of the State. Invoice the State **\$544,958.00** for the estimated costs to acquire the necessary rights of way from State Land Department and accomplish the construction of the Project including all fixed rates.

b. Upon receipt of the right of way plans, proceed in acquiring the necessary rights of way for the Project.

c. Upon receipt of the State's design plans, specifications, and other such documents and services, advertise for bids and award one or more construction contracts(s) for the Project. Administer the Project and make all payments to the contractor(s). Be responsible for contractor claims for extra compensation due to delays, attributable to the City.

d. Notify the State, should costs exceed the current estimated amount, prior to the City incurring additional costs.

e. Upon completion of the Project and final inspection, notify the State in writing that the Project has been constructed in accordance with the Project Plans and other related documents, and has been satisfactorily completed. Be responsible for maintenance upon completion of the Project.

2. The State will:

a. Upon execution of this Agreement hereby designate the City as the authorized agent for and on behalf of the State and within 30-days from receipt of invoice, remit **\$544,958.00** for the estimated costs to accomplish acquisition of the necessary rights of way and construction of the Project including all fixed rates.

b. Prepare design plans, specifications, right of way plans, environmental clearances and other such documents and services required for construction bidding and construction of the Project and provide to the City.

c. Be responsible for all costs relative to the construction of the Project based on approved plans. If notified by the City that additional funds are required for the Project, upon approval, remit said funds upon 30-days receipt of an invoice.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall become effective upon filing with the Secretary of State.

2. This Agreement shall remain in full force and effect until completion of the work contemplated herein and all reimbursements. This Agreement may be cancelled at any time with 30-days written notice to either party. Should the City fail to fulfill its obligations set forth in this Agreement or withdraw its proposed plans for whatever reason, the City shall be responsible for all costs incurred by the State up to the time of the City's withdrawal.

3. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or other expenses (including, but not limited to, reasonable attorneys' fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death), property damage and any other claims (including, but not

limited to, claims of derivative or vicarious liability), which are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract to both Parties, who shall be afforded the same rights and interests under this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities 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".

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

8. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by Arizona Revised Statutes Sections 12-1518, as applicable.

9. 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 South 17 Avenue, MD 637E
Phoenix, AZ 85007
(602)712-7124 FAX: 602-712-3132

City of Peoria
Attn: City Engineer
9875 N. 85th Avenue
Peoria, Arizona 85345
(623) 773-7301 FAX: (623) 773-7211

10. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel 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

STATE OF ARIZONA
Department of Transportation

By _____
BOB BARRETT
Mayor

By _____
FLOYD P. ROEHRICH, Jr., P.E.
Deputy State Engineer Valley Transportation

ATTEST:

By _____
MARY JO KIEF
Clerk

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 OF PEORIA 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

**EXHIBIT A
SUMMARY**

**SR303L, HAPPY VALLEY PKWY TO LAKE PLEASANT PKWY
303 MA 025 H7156 01C
DESCRIPTION AND COST OF ITEMS FOR THE CITY OF PEORIA ENHANCEMENTS**

ITEM	COST			TOTAL	DESCRIPTION
	DESIGN	CONSTRUCTION	RIGHT-OF-WAY		
1 Westwing Access Road	\$0	\$270,577	\$236,600	\$507,077	ADOT provides funds for the City of Peoria to acquire R/W, and construct a half collector street along the Vistanica Extension alignment.
14% CONSTRUCTION ENGINEERING AND ADMINISTRATION	\$0	\$37,881	\$0	\$37,881	Construction Engineering and Administration was calculated on a percentage basis of the cost of Item 1.
ITEM 1 TOTAL	\$0	\$308,458	\$236,600	\$544,958	

**EXHIBIT A
ITEM 1 SUMMARY BACKUP
303 MA 025 H7156 01C**

JPA 08-087
Date: 6/04/08

SR303L, HAPPY VALLEY PKWY TO LAKE PLEASANT PKWY				
303 MA025 H7156 01C				
WESTWING ACCESS ROAD				
Half Collector Street				
Clear & Grub (35' wide x 2,000' long)/43,560 sq ft per acre	ACRE	1.607	2,000.00	\$3,214
Roadway Excavation (1' deep x 35' wide x 2000' long)/27 cu ft /cu yd	CU YD	2,593	6.00	\$15,558
4" AC (3/4" Mix) (0.333' deep x 24' wide x 2000' long x 147 pounds/cu ft)/2,000 pounds/ton	TON	1,175	70.00	\$82,250
8" AB, Class 2. (0.667' deep x 28' wide x 2000' long)/27 cu ft per cu .yd	CU YD	1,383	30.00	\$41,490
Misc Add On's Mobilization, Dust Control, SWPPP, Survey, Culverts, Traffic, Contingency for Unknown Items at 36% of construction cost				\$51,304
SUBTOTAL CONSTRUCTION COST				\$183,816
CONTINGENCY FOR UNKNOWN ITEMS (Dust Control, SWPPP, Drainage) at 23%				\$44,578
SUBTOTAL CONSTRUCTION COST (1)				\$238,394
GENERAL CONSTRUCTION ITEMS				
MAINTENANCE OF TRAFFIC SHARE	L SUM	1	1.5% of (A)	\$3,576
CONSTRUCTION SURVEYING AND LAYOUT SHARE	L SUM	1	1% of (A)	\$2,384
CONTRACTOR QUANTITY CONTROL SHARE	L SUM	1	1% of (A)	\$2,384
MOBILIZATION SHARE	L SUM	1	10% of (A)	\$23,839
SUBTOTAL GENERAL CONSTRUCTION COST (2)				\$32,183
ITEM 1 SUBTOTAL COST FOR WESTWING ACCESS ROAD				\$270,577
ADMINISTRATION			5% of (B)	\$13,529
CONSTRUCTION ENGINEERING			9% of (B)	\$24,352
ITEM 1 PROJECT TOTAL CONSTRUCTION COST FOR WESTWING ACCESS ROAD				\$308,458
Right-of-way: 35' wide x 1,320' long	Sq Ft	46,200	\$5.00	\$231,000
Fees: \$1500 for ABLD, \$4000 for Appraisal	L Sum	1	\$5,500.00	\$5,500
ITEM 1 PROJECT TOTAL RIGHT-OF-WAY COST FOR WESTWING ACCESS ROAD (2)				\$236,500

**EXHIBIT A
ITEM 1 SUMMARY BACKUP
303 MA 025 H7156 01C**

JPA 06-067
Date: 6/04/08

	SUBTOTAL FOR ACCESS ROAD CONSTRUCTION & ROW FOR WESTWING ACCESS ROAD				\$544,958
	8% Design Cost (3) paid by ADOT with project				\$0
	ITEM 1 TOTAL FOR ACCESS ROAD CONSTRUCTION, ROW & DESIGN FOR WESTWING ACCESS ROAD				\$544,958
	NOTES				
1	Construction Surveying and Layout was calculated on a percentage basis (1.0% fixed rate) of the construction cost of the City's items				
2	Contractor Quality Control was calculated on a percentage basis (1.0% fixed rate) of the construction cost of the City's items				
3	Mobilization was calculated on a percentage basis (10.0% fixed rate) of the City's construction cost				
4	Construction Engineering and Administration plus Consultant Construction Management is calculated on a percentage basis (14.0% fixed rate)				
5	Maintenance of Traffic is calculated on a percentage basis (1.5% fixed rate) of the construction of the City's items				
6	Design Engineering is not applicable				
7	Engineering Administration is not applicable				



City of Peoria
Westwing Access Road

