

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: 4C
Amend No. _____

Date prepared: October 27, 2008

Council Meeting Date: December 2, 2008

TO: Carl Swenson, City Manager

THROUGH: Susan Daluddung, Deputy City Manager *SD*

FROM: Andrew Granger, P. E., City Engineer *AG*

THROUGH: Dan Nissen, P. E., Assistant City Engineer

PREPARED BY: Ben Wilson, P. E., City Engineer *BW*

SUBJECT: Adopt a Resolution approving the Intergovernmental Agreement (IGA) between the State of Arizona and the City of Peoria for the construction of the roadway widening improvements at 91st Avenue and Olive Avenue. (Project No. P-0315, AG Contract No. P001-2008-004979, File No. IGA/JPA 08-120I, TRACS No.: SS 603 01C)

RECOMMENDATION:

Discussion and possible action to adopt the Resolution approving the Intergovernmental Agreement (IGA) with the State of Arizona and authorize the Mayor to execute the IGA between the State of Arizona and City of Peoria (City) for the construction of the roadway widening improvements at 91st Avenue and Olive Avenue, Project No. P-0315.

Approve a budget transfer within the project in the amount of \$150,000 from the Land Acquisition Account, 4210-4210-540000-CIPST-PW00245 to the Street System Account, 4220-4220-543001-CIPST-PW00245.

Authorize the use of reserves from the General Obligation (GO) Bond Fund and approve a budget transfer in the amount of \$531,552 from the General Fund Capital Projects Contingency Account, 1000-0310-570000 to the 91st and Olive Intersection Improvement Project, GO Bond Fund, Street System Account, 4220-4220-543001-CIPST-PW00245.

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. # 08-158
LCON# 20008 LIC. # _____
Action Date: _____

SUMMARY:

The City's Transportation Plan has identified the intersection of 91st Avenue and Olive Avenue as having a poor level of service and a very high accident rate. A mitigation analysis was performed that focused on intersection performance and an intersection lane configuration was recommended which included adding through lanes, dual left turn lanes and separate right turn lanes.

The City of Peoria and the State of Arizona through the Arizona Department of Transportation (ADOT) are in the process of finalizing plans for a Federal Aid Project for widening the intersection at 91st Avenue and Olive Avenue. The project entails roadway widening, public utility relocation, landscape restoration, coordination with Salt River Project (SRP) for their irrigation removal and relocation, right-of-way acquisition, paving, curb and gutter, curb returns with ramps, tying into the existing storm drain system, street striping, signage, and traffic signal modifications. The project will be built within newly acquired right-of-way or on right-of-way dedicated by property owners in the area where additional right-of-way was needed.

ADOT is responsible for reviewing construction plans and specifications, issuing right-of-way, utility and environmental clearances and will handle the advertising and bidding for the project. They will also provide construction management and inspection during construction. The design phase is reaching 100% and arrangements are being made to prepare for the construction phase of the project.

ADOT has submitted an IGA for the acquisition of federal funds for construction of the project. The construction funding for the project is provided partially by Federal Aid funds through a grant for Congestion Management Air Quality (CMAQ) and the remainder by City matching funds. The total estimated cost of the project is \$3,285,000. The Federal Aid funds are capped at \$800,000 and the City's matching share is \$2,485,000.

The responsibilities for each agency identified in the agreement are summarized below:

STATE

- 1) Submit a program to the Federal Highway Administration (FHWA) containing this project with a recommendation that it be approved,
- 2) upon approval by FHWA, and with the aid and consent of the City, the State will advertise the project for bid,
- 3) enter into a project agreement with FHWA on behalf of the City covering the work in the construction contract and will request maximum federal funding,
- 4) upon execution of the agreement, invoice the City for the City's estimated share of the project, currently estimated at \$2,485,000, and
- 5) is not obligated to maintain the project, should the City fail to budget or provide proper and perpetual maintenance.

CITY OF PEORIA

- 1) Upon execution of the agreement, designate the State as the authorized agent, and deposit funds with the State in the amount estimated at \$2,485,000,
- 2) be responsible for all costs incurred in performing and accomplishing the work, and budget accordingly,
- 3) provide for cost in the City budget for annual maintenance of the project, enter into an agreement with the design consultant to provide services throughout the construction phase of the project, and will post design services for preparing as-built drawings.

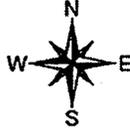
Because the project includes federal funding, ADOTs Local Government Section will be responsible to advertise, award the construction contract, and oversee the construction and project close-out phases. According to ADOT, the project is tentatively scheduled to be advertised for bid in the spring of 2009 and is tentatively scheduled to be completed by the end of 2009.

FISCAL NOTE:

The City will be paying estimated funds in the amount of \$2,485,000. Payment will be from the GO Bond Street System Account, 4210-4210-543001-CIPST-PW00245CO.

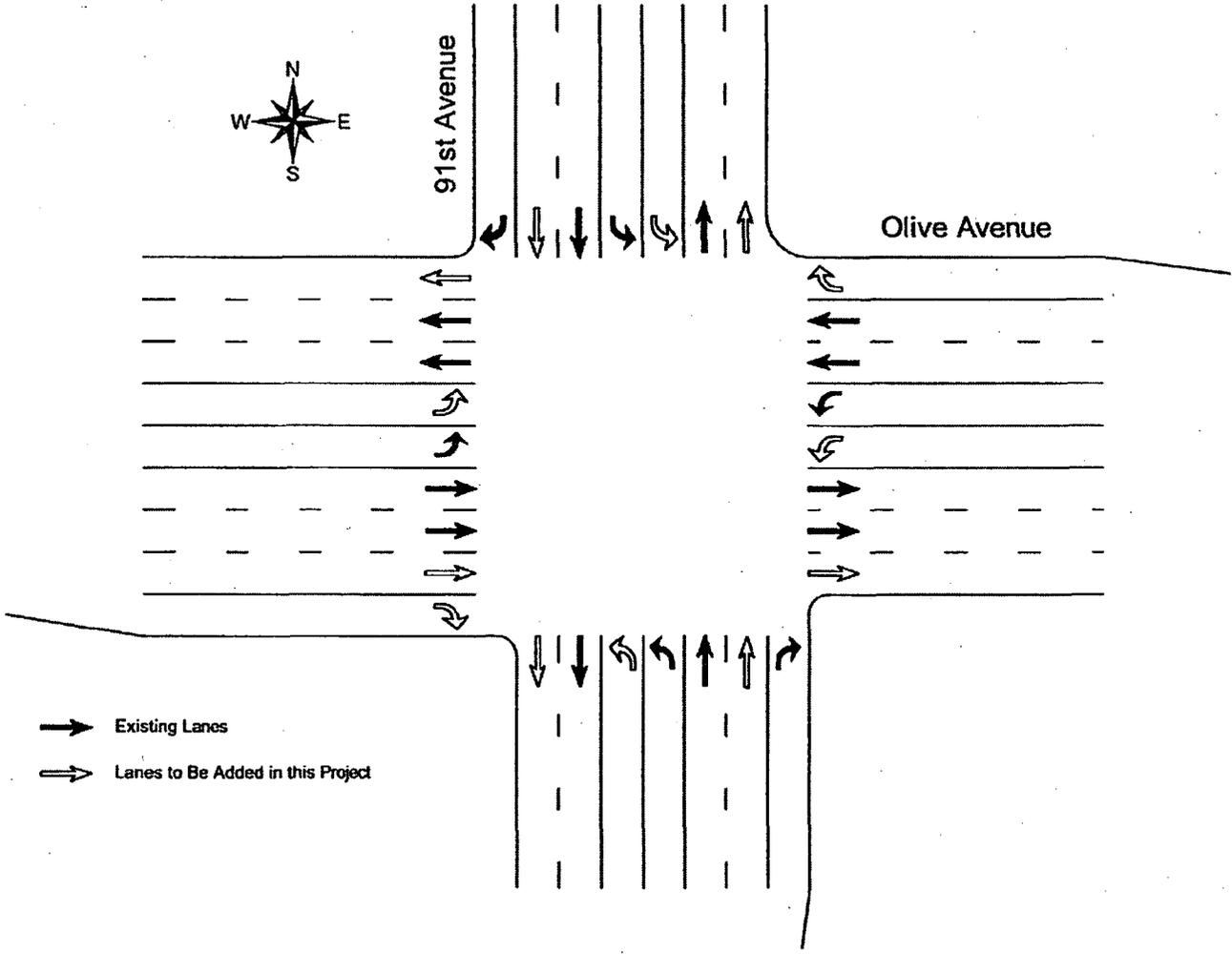
ATTACHMENTS:

1. Vicinity Map
2. Resolution
3. ADOT Intergovernmental Agreement



91st Avenue

Olive Avenue



- Existing Lanes
- - - Lanes to Be Added in this Project

RESOLUTION NO. 08-158

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 CONSTRUCTION OF CERTAIN IMPROVEMENTS TO THE INTERSECITON OF 91ST AVENUE AND OLIVE AVENUE.

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 construction of certain improvements to the intersection of 91st Avenue and Olive Avenue; and

WHEREAS, the City is willing in order to pay for the costs associated with the construction of certain improvements to the intersection of 91st Avenue and Olive Avenue; 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 construction of certain improvements to the intersection of 91st Avenue and Olive Avenue.

Resolution No. 08-158

State of Arizona for construction of certain improvements to the intersection of 91st
Avenue and Olive Avenue.

November 18, 2008

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PASSED AND APPROVED by the Mayor and City Council of the City of
Peoria, Arizona this 2nd day of December, 2008.

Bob Barrett, Mayor

ATTEST:

Mary Jo Kief, City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

ADOT File No.: IGA/JPA 08-120I
AG Contract No.: P001-2008-004979
Project No.:
Project: Intersection Improvements
Section: 91st Ave and Olive Ave
TRACS No.: SS 603 01C
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, 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 § 48-572 to enter into this Agreement and has by meeting minutes, 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. Congress has authorized appropriations for, but not limited, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
 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 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 FHWA, including actual construction engineering and administration costs (CE).
 6. The interest of the State in this project is the acquisition of Federal funds for the use and benefit of the City and to authorize such Federal funds for the project pursuant to Federal law and regulations. The State shall be the designated agent for the City.
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7. The work contemplated under this Agreement is the construction of intersection improvements which will include new left turn lanes and intersection widening, hereinafter referred to as the "Project". The State shall advertise, bid and award the Project. The estimated construction costs are as follows:

TRACS No. SS

*Estimated Project Costs	\$3,285,000.00
Federal Aid Funds @ 94.3% (capped)	\$ 800,000.00
City Funds @ 5.7%	\$ 48,356.00
Estimated City Funds @ 100%	<u>\$2,436,644.00</u>
*Total Estimated City Funds	\$2,485,000.00

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

II. SCOPE OF WORK

1. The State will:

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction and funding. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans.

b. Upon approval by FHWA, and with the aid and consent of the City and the FHWA, the State shall proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the City, to whom the award is made for and enter into a contract(s) with a firms(s) for the construction of the project.

c. Enter into a Project Agreement with FHWA on behalf of the City covering the work encompassed in said construction contract and will request the maximum Federal Funds available, including construction engineering and administration costs. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

d. Upon execution of this Agreement, invoice the City for the City's estimated share of the Project, currently estimated at \$2,485,000.00. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

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

2. The City will:

a. Upon execution of this Agreement designate the State as authorized agent for the City.

b. Upon execution, deposit funds with the State 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 (capped) received, currently estimated at \$2,485,000.00.

c. Be entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not.

d. Provide for cost and, as an annual item in the City's budget, proper maintenance of the Project including all of the Project components.

e. Enter into an agreement with the Design Consultant which states that the Design Consultant shall provide services as required and requested throughout the Construction Phase of the Project.

f. In the agreement with the Design Consultant, require the Design Consultant to provide a set of As-Built Plans upon completion of the Construction Phase of the Project. A set of As-Built Plans shall be forwarded to ADOT's Local Government Section.

g. Enter into an agreement with the Project's Construction Contractor(s) which provides that during ADOT's Sponsored Project Partnering Meeting all parties shall ensure the City has full responsibility for the Project.

III. MISCELLANEOUS PROVISIONS

1. 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 may be 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.

2. 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.

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 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".

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) 712-7124
(602) 712-3132 Fax

City of Peoria
Attn: Engineering Director
9875 N. 85th Avenue
Peoria, Arizona 85345
(623) 773-7212
(623) 773-7211 Fax

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

STATE OF ARIZONA

Department of Transportation

By _____
BOB BARRETT
Mayor

By _____
RAKESH TRIPATHI
Transportation Planning Division Director

ATTEST:

By _____
MARY JO KIEF
Clerk

LCON20008

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