

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATIONS**

CC: 8C  
Amend No. \_\_\_\_\_

Date prepared: March 13, 2009

Council Meeting Date: April 7, 2009

**TO:** Carl Swenson, City Manager  
**THROUGH:** Susan Thorpe, DCM *ST*  
**FROM:** Sandy Teetsel, Information Technology Director  
**PREPARED BY:** John Imig, I.T. Operations Manager *JWI*

**SUBJECT:** Addendum #3 to existing Intergovernmental Agreement (IGA) between the City of Peoria and the Peoria Unified School District (PUSD) for extension to Elementary Schools 31 and 32.

**RECOMMENDATION:** Discussion and possible action to authorize the City Manager to execute addendum #3 to the existing Intergovernmental Agreement (LCON00807), between the City of Peoria and the Peoria Unified School District (PUSD) concerning extension of the fiber optic data network to Elementary Schools 31 and 32.

**SUMMARY:** The City of Peoria and the Peoria Unified School District (PUSD) entered into an Intergovernmental Agreement to share fiber-optic conduit and cabling for the mutual benefit of both parties. This addendum extends the IGA to include new elementary schools 31 ("Lake Pleasant Elementary") and future school 32 (to be located in Camino a Lago). As with the original IGA, this addendum specifies that the City will gain ownership and maintenance responsibilities to the conduit along arterial roads (specified in the addendum), but will supply PUSD with conduit to the schools, while receiving fiber optic cabling for City use. This addendum has been prepared with the collaboration of PUSD and the City of Peoria Information Technology Department and Traffic Engineering.

**FISCAL NOTE:**

There is no immediate fiscal impact. Operational maintenance will be performed as necessary by the Public Works-Streets Division as part of their normal operating procedures. The Information Technology Department will monitor City-used fiber for City operations and the Traffic Engineering Division will monitor the fiber for traffic operations.

**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# 00807C LIC. # \_\_\_\_\_  
Action Date: \_\_\_\_\_

**ATTACHMENT:**

Addendum #3 to Intergovernmental Agreement between the City of Peoria and the Peoria Unified School District #11

**ADDENDUM #3 TO INTERGOVERNMENTAL AGREEMENT BETWEEN THE  
CITY OF PEORIA AND  
PEORIA UNIFIED SCHOOL DISTRICT # 11  
FOR FIBER OPTIC CABLING  
EXTENSION TO SCHOOLS #31 and #32**

**This Agreement ("Agreement") is made and entered into on the 1st day of February, 2009  
by and between the City of Peoria ("City") and Peoria Unified School District ("PUSD"), a  
political subdivision of the State of Arizona.**

**I. STATUTORY AUTHORITY**

- a. PUSD is empowered by the Arizona Revised Statutes § 11-951, *et seq.*, § 15-342(13), § 15-364, and § 34-461 to enter into this IGA Addendum for Operations, Maintenance and Repair (OM&R).
- b. The City is empowered by Arizona Revised Statutes § 11-952 *et seq.* and Peoria City Charter Article 1, Section 3(15) to enter this IGA Addendum for OM&R.

**II. RECITALS**

a. Fiber optic cabling was installed (City of Peoria/Peoria Unified School District (PUSD) Fiber Optic sharing project – hereinafter referred to as the "Project") by and for the mutual benefit of PUSD and the City in the City right of way according to the terms of an Intergovernmental Agreement ("IGA") between the Peoria Unified School District # 11 and the City of Peoria ("Parties") dated January 22, 2007, which was recorded with the Maricopa County Recorder's Office, number 20070141212. That IGA details the terms and recitals of the Project and is referenced herein. This document shall be deemed as the Fiber optic Cabling Extension to Schools #31 and #32 and shall be considered hereafter as addendum #3 to the IGA.

b. The Project was of mutual benefit to the Parties, and operations and maintenance of the Project are likewise, of mutual significance.

c. Certain agreements, responsibilities, expectations and ownership details were enumerated in the IGA and those agreements, responsibilities, expectations and ownership details are assumed and are included in the original IGA.

d. Incidental to the District's MAN, the City requests, and the District agrees to incorporate in its plans, the installation of conduit and fiber cables to allow sharing of City and District systems, herein referred to as the "Project." The additional conduits and fiber cables will be added along certain road segments, as shown on Exhibit "A", for use by the City and District. The estimated cost share amount for the City of \$0 (City's Share) and the District \$154,963.20 (District's Share), as shown on Exhibit "B", which also illustrates more details of the Project Plans. Exhibits "A" and "B" are attached hereto and incorporated herein by the aforementioned reference. The Parties desire to expand the fiber network infrastructure to the locations of PUSD Elementary School #31 and PUSD Elementary School #32 and to allow the City use of a PUSD conduit on 95<sup>th</sup> Avenue between Olive Avenue and Peoria Avenue and to transfer ownership from PUSD to the City of conduits on Cactus between 83<sup>rd</sup> Avenue and 87<sup>th</sup> Avenue.

THEREFORE, in consideration of the mutual agreements expressed herein, the Parties agree as follows:

**III. AGREEMENT**

- 1. **Term.** This Agreement shall become effective April 1, 2009 and shall continue for the

term of the original IGA. One or multiple year extensions may be made by mutual agreement of the Parties through the renewal of the original IGA. Failure of either Party to provide notice of its desire to stop, suspend or modify the terms of this agreement shall be deemed as mutual agreement to the extension.

## **2. OWNERSHIP.**

a. "Owner" shall be interpreted as the Project Owner for the area in question or for the entire area of that Party's ownership, as the context may dictate.

b. PUSD shall retain ownership of the Project until completion with the exceptions noted in this Addendum. In these areas of exception, the City will retain ownership, operations, maintenance, and repair responsibilities.

c. PUSD will supply 96 strands of fiber for City use and ownership from the intersection of Whispering Ridge and Vistancia Boulevard north to the intersection of Lone Mountain Road and Vistancia Boulevard and from Lone Mountain Road to Westland Road.

d. The City will gain ownership of existing conduits located within the City Right-of-Way on Cactus Avenue, between 83<sup>rd</sup> Avenue and 87<sup>th</sup> Avenue.

e. The City of Peoria shall retain ownership of conduit, inner duct and fiber optic cabling located within the City Right-of-Way, with the exceptions noted below:

i. Lone Mountain Road and Westland Road to Lake Pleasant E.S.

ii. Lake Pleasant Parkway and 98<sup>th</sup> Avenue to Elementary School #32.

## **3. PARTIES RESPONSIBILITIES.**

a. The District shall:

i. Upon execution of this Agreement, agree to be the City's designated agent for the construction of the Project. While the actual costs of the Project shall be determined upon completion of construction, the City's contribution (with the exception of maintenance) is its current conduit infrastructure. Any additional conduit necessary to complete the City backbone connection (identified in Exhibit "A.1") will be paid for by the District as part of the overall cost of the project.

ii. Prepare design plans, specifications, as-builts and other such documents and services required for construction bidding and construction of the Project, and provide such to the City for their review and comment. Provide the City with copies of the design plans, specifications, as-builts and other such documents for their records. Additionally, the District shall obtain a no-cost construction permit from the City with the approved construction plans.

iii. Award one construction contract for the Project. Administer the Project and make all payments to the contractor. Be responsible for contractor claims for extra compensation due to delays for whatever reason, attributable to the District.

iv. Upon completion of the Project and final inspection, notify the City in writing that the Project has been constructed in accordance with the Project Plans and other related documents, and has been satisfactorily completed.

v. Provide cable splices where both parties mutually agree and such will be indicated on the Project plans.

vi. Review the design documents required for construction of the City's System and the District MAN and provide comments as appropriate.

- vii. Within the design and construction of the District's MAN, at no additional cost to the City, keep the City and the District's fiber optic networks completely separated where practical for maintenance purposes.
  - viii. Designate one (1) conduit solely for the City's use, at no cost to the City as shown in Exhibit "A.3" on 95<sup>th</sup> Avenue between Olive Avenue and Peoria Avenue.
- b. The City shall:
- i. Upon execution of this Agreement, designate the District as authorized agent for the Project.
  - ii. Review the design plans, specifications and other such documents and services required for construction bidding and construction of the Project and provide comments to the District as appropriate.
  - iii. Designate one (1) conduit solely for the District's use, at no cost to the District as shown in Exhibits "A.1" and "A.2" or designate one (1) conduit that would be inner ducted with Max Cell for shared City and District use.
  - iv. Provide cable splices where both Parties mutually agree and such will be indicated on the Project plans.
  - v. Within the design and construction of the City's System, at no cost to the District, keep the City and the District's fiber optic networks completely separated where practical for maintenance purposes.
  - vi. Provide design plans, specifications, and other such documents and services required for construction bidding and construction of the District MAN.
  - vii. Review the design documents required for construction of the District's MAN on City right-of-way and provide comments as appropriate.
  - viii. Grant a no-fee Permit for the construction of the District's MAN components within the City's rights-of-way.
  - ix. Waive all City permit fees that will be required to construct the District MAN.
- c. Both Parties Agree:
- i. The City will have ownership of all new conduits installed along the MAN backbone as shown on Exhibit "A.1".
  - ii. The District will have ownership of all new conduit infrastructure installed along the MAN laterals, to include conduits, fiber cables, pull boxes, and splice points as shown on Exhibits "A.1" and "A.2".
  - iii. The District and the City will have co-ownership of the following infrastructure along the MAN backbone, fiber cables, pull boxes, and splice points as shown on Exhibits "A.1" and "A.2".
  - iv. The District and the City will coordinate with one another when responding to and repairing any damage to either fiber system or facility, which may impact the other's system through shared use of fiber optic

cable, pull boxes, inner duct, conduit or devices as agreed upon in Addendum #2 FOR FIBER OPTIC CABLING OPERATIONS, MAINTENANCE AND REPAIR

**4. Legal Relations and Responsibilities.** It is understood and agreed that neither Party nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done under or in connection with any work, authority, or jurisdiction delegated to it under this Agreement so long as such was done in good faith. Each Party shall defend and, to the extent permitted by Arizona law, indemnify, save, and hold harmless the other Party, the governing body thereof, and its officers, agents, and employees from all claims, suits, or action of every name, kind, and description brought for or on account of injuries to or death of any person or damage to property resulting from anything done or omitted to be done by the responsible Party under or in connection with any work, authority or jurisdiction delegated to the Party under this Agreement. It is understood and agreed that neither Party nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done under or in connection with any work, authority, or jurisdiction delegated to it under this Agreement.

**5. Notices.** All notices (except calls for service) required or provided for under this Agreement shall be in writing and either (i) delivered in person and sent by facsimile or (ii) sent by certified mail, postage prepaid, return receipt requested and facsimile. Notice shall be deemed effective on actual receipt or upon refusal of delivery. Notices shall be delivered or mailed to the other Party as indicated below:

**Peoria Unified School District #11**

Dr. Denton Santarelli  
Superintendent  
6330 West Thunderbird Road  
Glendale, AZ 85306  
Telephone: 623-486-6000  
Facsimile: 623-486-6009

**City of Peoria**

Public Works Director, Bill Mattingly  
9875 N. 85th Avenue  
Peoria, AZ 85345  
Telephone: 623-773-5156  
Facsimile: 623-773-7223

The address or facsimile number of any Party or person herein designated to receive notices may be changed by delivering or mailing and faxing notice of such new address or facsimile number to other parties in the manner specified for the giving of notice.

**13. Time is of the Essence.** Time is of the essence for this Agreement. Each time period specified herein for performance of any obligation or the accrual of any right forms a material part of the consideration for the execution of this Agreement.

**14. Covenant of Good Faith and Fair Dealing.** The City and PUSD agree that each shall at all times act in good faith in order to carry out the terms of this Agreement and shall do nothing contrary to or to avoid the spirit and intent of this Agreement.

**15. Entire Agreement.** This Agreement constitutes the entire agreement between the PUSD on one side and the City on the other with respect to the subject matter of this Agreement. This Agreement is specifically intended by the parties to supersede all previous negotiations and

agreements between the PUSD on one side and the City on the other except that it is specifically intended for incorporation into the First IGA which gives rise to this agreement.

**16. Amendments.** This Agreement may only be amended by a written instrument signed by both parties hereto.

**17. Rules of Interpretation.** This Agreement and each of its provisions shall be deemed to be jointly prepared by the Parties hereto, and no Party shall claim the benefit of any rule of interpretation by this State, whether by statute or otherwise, which would cause ambiguities in this Agreement or any of its provisions to be interpreted against the Party who draft it or whose attorney drafted it.

**18. Headings.** The headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms or provisions of this Agreement.

**19. Waiver of Breach; Notice of Alleged Breach.** The waiver by one Party hereto of a breach of any term or condition of this Agreement by another Party shall not be deemed a waiver of any subsequent breach of the same or other term or condition of this Agreement, with any subsequent breach by any Party being independent of any breach which may have prior thereto. Any Party claiming that another Party is in breach of this Agreement shall provide notice of the alleged breach in the manner required in the IGA incorporated herein by reference. The Party alleged to be in breach shall have 30 days to cure the breach unless a different time period is specified in this Agreement for the particular act or breach.

**20. Governing Laws, Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. The Parties hereby stipulate that any court of competent jurisdiction located within the County of Maricopa, State of Arizona shall be the proper court in which to commence an action to enforce the terms of this Agreement.

**21. No Third Party Beneficiary; Defense of Agreement.** This Agreement is intended solely for the benefit of the Parties hereto and shall not be construed to create any rights for any other person or entity. If any third Party brings a legal action or proceeding against any Party to this Agreement in order to attack, set aside, void or annul this Agreement or any of its terms or provisions, then the Parties shall join and cooperate fully in the defense of such action.

**22. Partial Invalidity and Severability.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, then the remaining provisions shall nonetheless continue in full force and effect, without being impaired or invalidated in any way, with such invalid, void or unenforceable provision being severable from the remainder of this Agreement.

**23. Successors and Assigns; Restrictions on Transfer and Assignment.** This Agreement shall inure to the benefit of and bind the successors and assigns of the Parties. All terms and provisions of this Agreement are fully enforceable by and against such successors and assigns.

**24. Warranty of Capacity to Execute.** Each Party warrants that the undersigned has or have the capacity to sign this Agreement on their or its behalf. Specifically, the Peoria Unified School District Governing Board has authorized its PUSD Administrator or designee to sign this Agreement on behalf of the PUSD, and the Peoria City Council has authorized its City Manager to sign this Agreement on behalf of the City.

**25. Original Counterparts.** This Agreement shall be executed in three original counterparts, each of which shall be deemed an original, but all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

PEORIA UNIFIED SCHOOL DISTRICT  
a political subdivision of the State of Arizona

Dated: 3-11-09

*Denton Santarelli*

By Its Superintendent (Signature)

Dr. Denton Santarelli

ACKNOWLEDGEMENT

STATE OF ARIZONA

COUNTY OF MARICOPA

*Dr. Denton Santarelli*

On this date, before me, a Notary Public, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to this instrument and acknowledged that they executed the same. If this person's name is subscribed in a representative capacity, it is for the principal named and in the capacity indicated.

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of March ~~2008~~ by \_\_\_\_\_ and/or \_\_\_\_\_

2009 (ms)

*M. Oliva Ohlson*

Notary Public

My Commission Expires: July 15, 2011



INTERGOVERNMENTAL AGREEMENT DETERMINATION

This IGA Addendum #3 has been reviewed by the attorney for the Peoria Unified School District and it is determined that the OM&R IGA is in the proper form and within the powers and authority granted under the laws of the State of Arizona to the Peoria Unified School District.

APPROVED AS TO FORM:

\_\_\_\_\_

Signature

DATE: \_\_\_\_\_

CITY OF PEORIA, ARIZONA,  
an Arizona municipal corporation

Dated:

\_\_\_\_\_

By Its City Manager (Signature):

Carl Swenson

ATTEST:

\_\_\_\_\_  
Mary Jo Kief, City Clerk

**INTERGOVERNMENTAL AGREEMENT DETERMINATION**

This IGA Addendum #3 has been reviewed by the Office of the City Attorney as legal counsel for the City of Peoria, who has determined that the OM&R is in the proper form and within the powers and authority granted under the laws of the State of Arizona to the City of Peoria.

OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_  
Stephen M. Kemp, City Attorney

Exhibit A.1

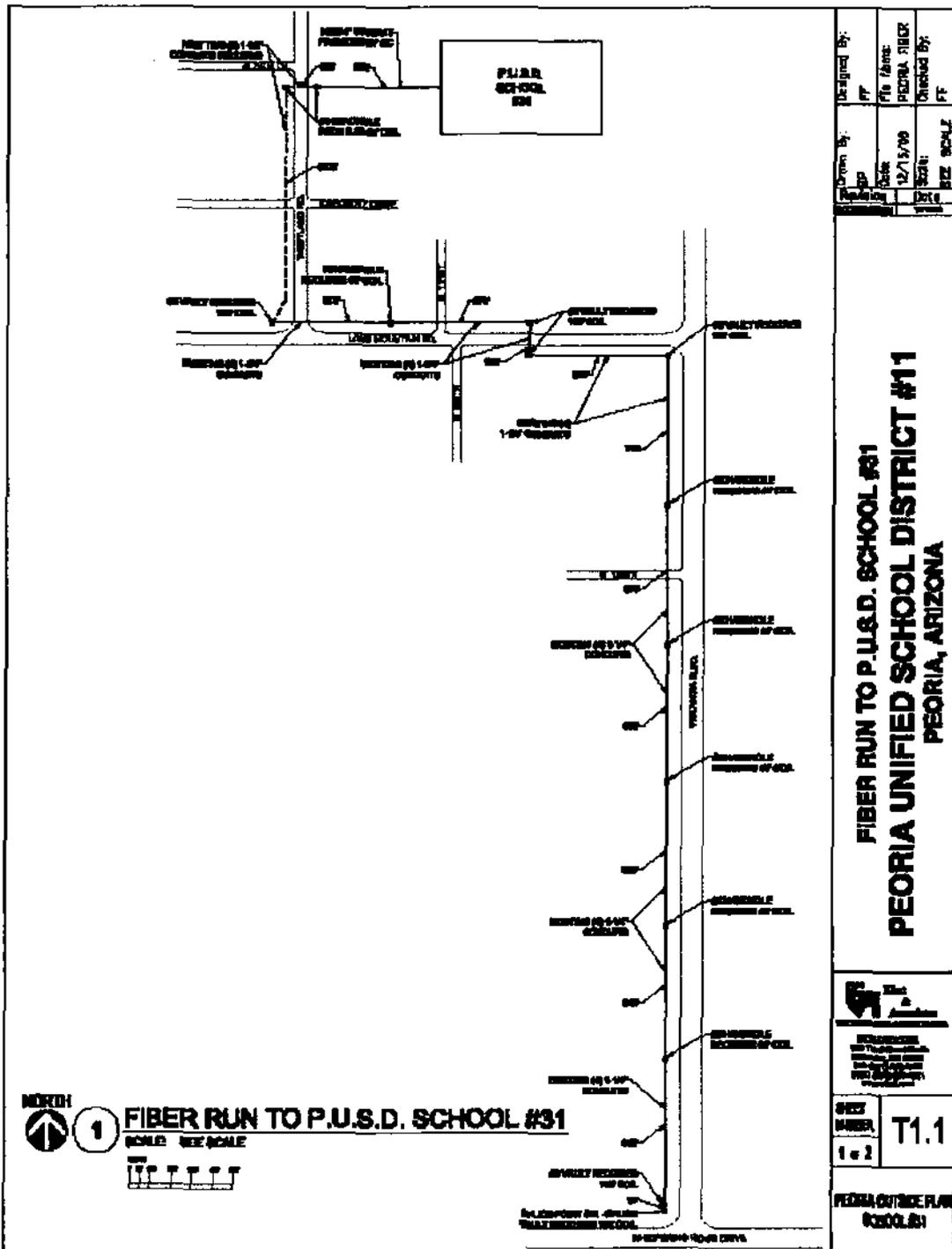
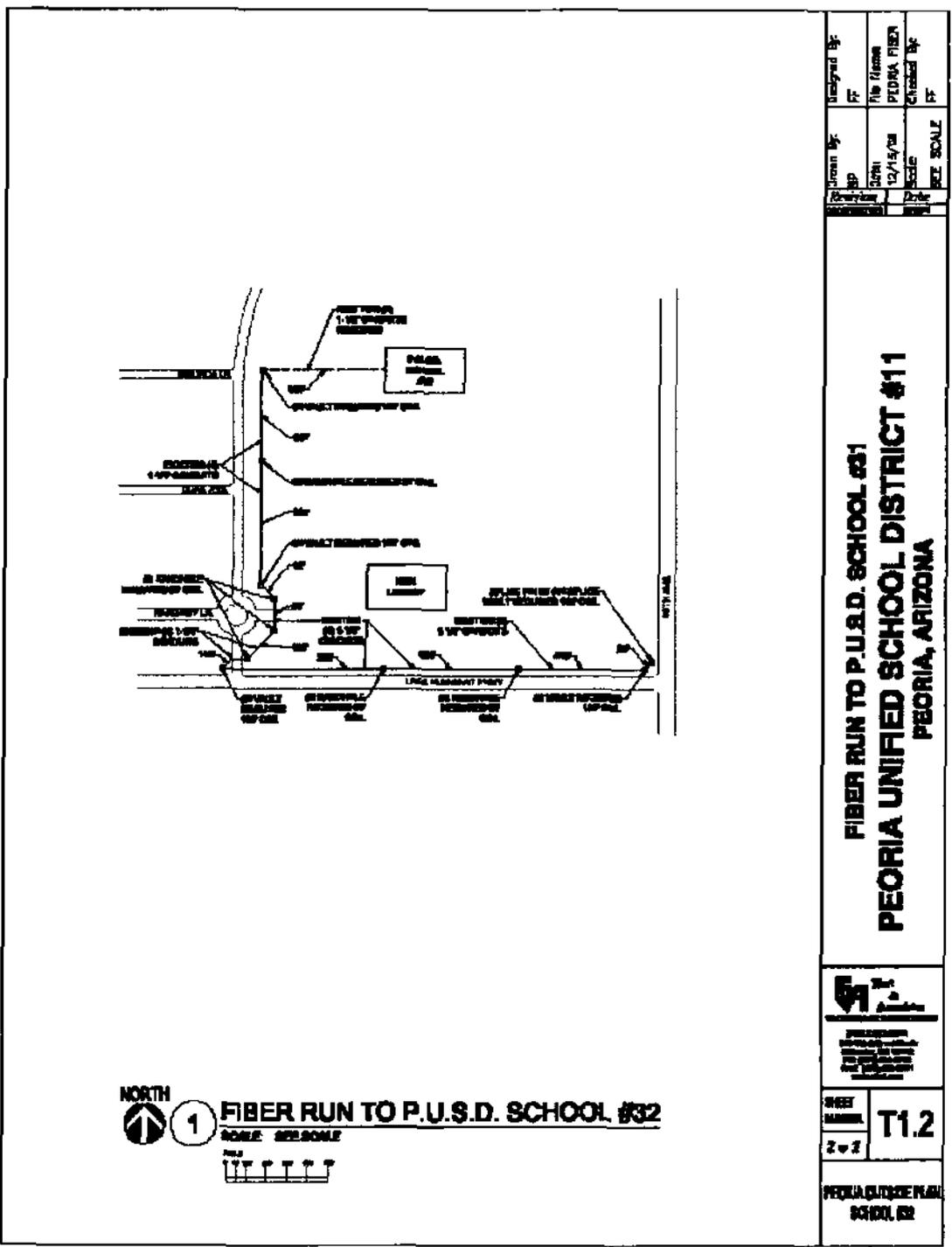


Exhibit A.2



<p><b>FIBER RUN TO P.U.S.D. SCHOOL #31</b></p> <p><b>PEORIA UNIFIED SCHOOL DISTRICT #11</b></p> <p><b>PEORIA, ARIZONA</b></p>		<p>Designed By:</p> <p>FF</p>
<p>Drawn By:</p> <p>John</p>	<p>File Name:</p> <p>PEORIA FIBER</p>	<p>Checked By:</p> <p>FF</p>
<p>Date:</p> <p>12/15/08</p>	<p>Scale:</p> <p>SEE SCALE</p>	
<p><b>PEORIA UNIFIED SCHOOL DISTRICT #32</b></p>		
<p>Sheet Number:</p> <p>2 of 2</p>	<p>Sheet Title:</p> <p><b>T1.2</b></p>	

Exhibit A.3

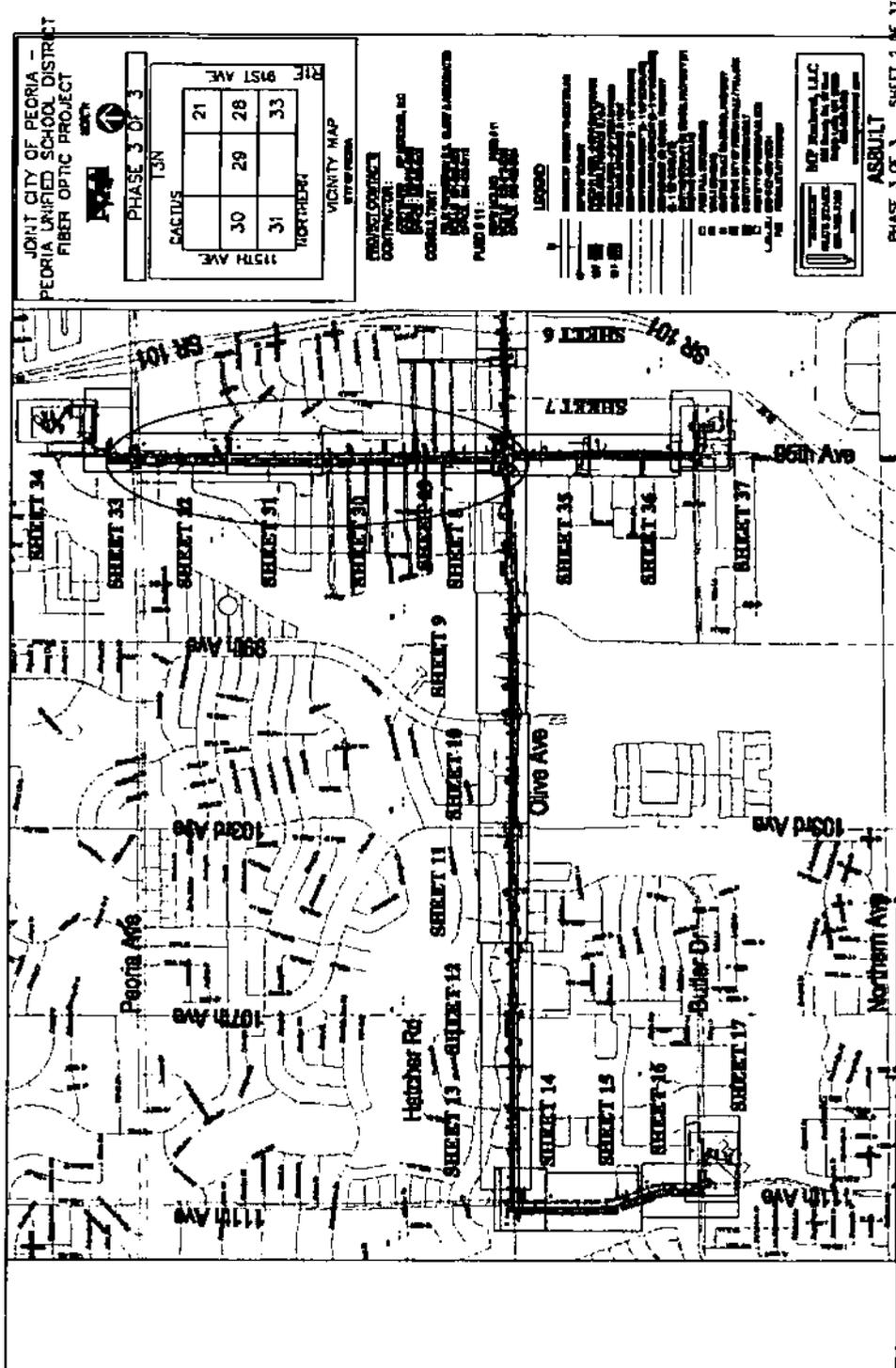
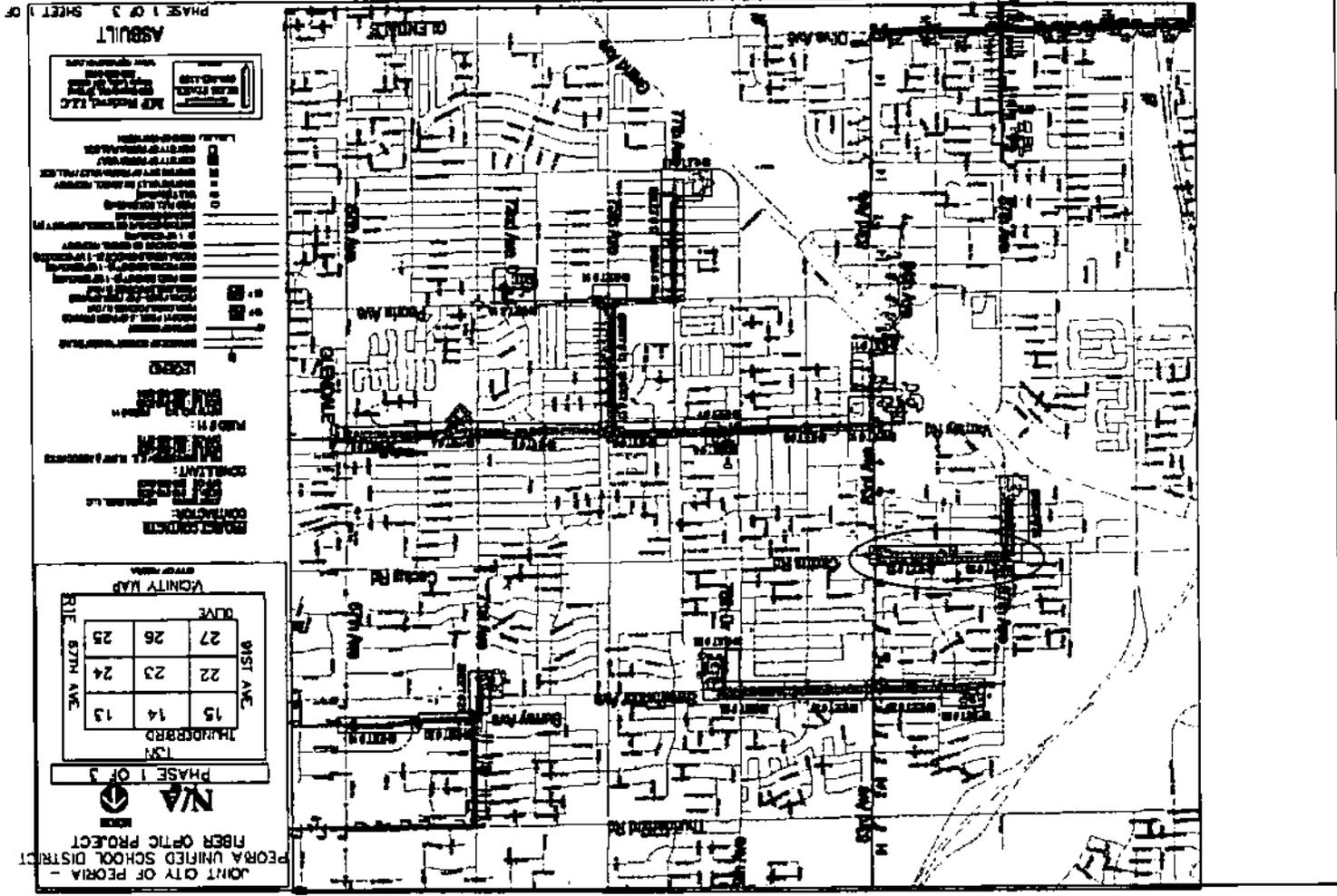


Exhibit A.4



**Exhibit B**

Peoria USD #11	School #31					
Description	Units	Labor Price	Material Price	Total Labor	Total Material	Total L & M
Bore HS 2-1.5" Ducts		\$ 17.00	\$ 1.05	\$ -	\$ -	\$ -
Bore 2-1.5" Ducts		\$ 15.00	\$ 1.05	\$ -	\$ -	\$ -
Rock Bore 2-1.5" Ducts	1,800.00	\$ 53.00	\$ 1.40	\$ 95,400.00	\$ 2,520.00	\$ 97,920.00
Trench 4-1.5" Ducts (Peoria)				\$ -	\$ -	\$ -
Trench 6-1.25" Ducts (Peoria)		\$ 14.00	\$ 2.12	\$ -	\$ -	\$ -
Pull 3-1.25" into existing 4"		\$ 5.00	\$ 1.06	\$ -	\$ -	\$ -
12 SM Fiber	10,000.00	\$ 0.70	\$ 0.48	\$ 7,000.00	\$ 4,800.00	\$ 11,800.00
24 SM Fiber		\$ 0.70	\$ 0.34	\$ -	\$ -	\$ -
24 SM Fiber (Peoria)		\$ 0.70	\$ 0.34	\$ -	\$ -	\$ -
48 SM Fiber				\$ -	\$ -	\$ -
60 SM Fiber		\$ 0.70	\$ 0.55	\$ -	\$ -	\$ -
72 SM Fiber				\$ -	\$ -	\$ -
84 SM Fiber		\$ 0.70	\$ 0.79	\$ -	\$ -	\$ -
96 SM Fiber (Peoria)	7,400.00	\$ 0.70	\$ 1.18	\$ 5,180.00	\$ 8,732.00	\$ 13,912.00
108 SM Fiber		\$ 0.70	\$ 0.98	\$ -	\$ -	\$ -
120 SM Fiber				\$ -	\$ -	\$ -
132 SM Fiber				\$ -	\$ -	\$ -
144 SM Fiber		\$ 0.70	\$ 1.26	\$ -	\$ -	\$ -
288 SM Fiber		\$ 0.80	\$ 2.64	\$ -	\$ -	\$ -
Hand Hole 24X36X36	2.00	\$ 300.00	\$ 838.00	\$ 840.00	\$ 1,676.00	\$ 2,516.00
Hand Hole 30X48X36		\$ 450.00	\$ 715.00	\$ -	\$ -	\$ -
HH over Existing Duct		\$ 750.00	\$ 715.00	\$ -	\$ -	\$ -
City HH Large		\$ 1,200.00	\$ 2,401.00	\$ -	\$ -	\$ -
City HH Small		\$ 550.00	\$ 817.00	\$ -	\$ -	\$ -
Max Cell		\$ 1.25	\$ 1.65	\$ -	\$ -	\$ -
Splice & Test	1.00	\$ 3,850.00	\$ 835.00	\$ 3,850.00	\$ 835.00	\$ 4,685.00
				\$ -	\$ -	\$ -
Fiber Trays		\$ 5.00	\$ 25.46	\$ -	\$ -	\$ -
Building Entrance		\$ 1,500.00	\$ 245.00	\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -	\$ -	\$ -
Engineering	1.00	\$ 1,850.00		\$ 1,850.00	\$ -	\$ 1,850.00
<b>TOTALS</b>				<b>\$ 114,120.00</b>	<b>\$ 18,563.00</b>	<b>\$ 132,683.00</b>

Peoria USD #11	School #32					
Description	Units	Labor Price	Material Price	Total Labor	Total Material	Total L & M
Trench 2-1.5" Ducts	600.00	\$15.00	\$1.40	\$9,000.00	\$840.00	\$9,840.00
12 SM Fiber	5,140.00	\$0.70	\$0.48	\$3,598.00	\$2,487.20	\$6,065.20
Splice & Test	1.00	\$3,850.00	\$835.00	\$3,850.00	\$835.00	\$4,685.00
Engineering	1.00	\$850.00		\$850.00	\$-	\$850.00
<b>TOTALS</b>				<b>\$18,138.00</b>	<b>\$4,142.20</b>	<b>\$22,280.20</b>

**TOTAL \$ 154,963.20**