

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATIONS**

CC: LLR  
Amend No. \_\_\_\_\_

Date prepared: May 6, 2008

Council Meeting Date: May 20, 2008

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**TO:** Terry Ellis, City Manager  
**FROM:** J. P. de la Montaigne, Community Services Director J.P.  
**PREPARED BY:** Kirk Haines, Parks Manager K.H.  
**SUBJECT:** Intergovernmental Agreement with the Arizona Department of Transportation

**RECOMMENDATION:**

That the Mayor and City Council approve an Intergovernmental Agreement with the Arizona Department of Transportation (ADOT) for the development of a multi-use pathway and underpass along Skunk Creek between 83<sup>rd</sup> Avenue and Rio Vista Community Park, and Council also authorizes an expenditure in the amount of \$252,571 to ADOT for matching funds for this project. Funds are available in the FY08 Capital Improvement Fund, Account No. 7920-7920-543005-CIPRT-CS00091CO and 4220-4220-543005-CS00091CO for this expense.

**SUMMARY:**

In 2003, Staff submitted a request for funding to ADOT through a federally funded program, Congestion Mitigation Air Quality, to develop a paved path connection under S.R. Loop 101 and 83<sup>rd</sup> Avenue on the south side of Skunk Creek. The City was awarded \$900,000 for the construction of this project. Since that time, Peoria hired a consultant to complete all the necessary design, environmental and reports associated with federally funded projects, and all necessary permits to move the project toward construction.

The consultant's design work was essentially completed November 2007. ADOT is now ready to move the project forward toward bidding and construction and the attached IGA is the next step in this process to advance this project. ADOT will administer the project from this point forward and construction is projected to begin this fall.

**ATTACHMENT:** Intergovernmental Agreement (3 copies)  
Project Location Map

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**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# 13008 LIC. # \_\_\_\_\_  
Action Date: \_\_\_\_\_

JPA File No.: IGA/JPA 08-028I  
AG Contract No.: P0012008002181  
Project No.:  
Project: Multi-use Pathway  
Section: Skunk Creek-75<sup>th</sup> Ave to New  
River  
TRACS No.: SS 64301C  
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 Agreement is for a new multi-use pathway along Skunk Creek from 75<sup>th</sup> Avenue to New River, hereinafter referred to as the "Project".
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.
6. The State's interest in this project is in the acquisition of Federal funds for the use and benefit of the City, and is the authorized agent for the City in acquiring such Federal funds and administering the Project. Funds expended for the project, are authorized by reason of Federal law and regulations.

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7. The work embraced in this Agreement is for a new multi-use pathway along Skunk Creek from 75<sup>th</sup> Avenue to New River, hereinafter referred to as the "Project". The State shall advertise, bid and award the Project. The estimated construction costs are as follows:

**TRACS No. SS64301C**

*Estimated Project Costs	\$1,152,571.00
Federal Aid Funds @ 94.3% (capped)	\$ 900,000.00
City Funds @ 5.7%	\$ 54,400.00
Estimated City Funds @ 100%	\$ 198,171.00
*Total Estimated City Funds	\$ 252,571.00
*(Includes 15% CE and 5% project contingencies)	

**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 \$252,571.00. 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 with reference to acquiring Federal Funds and administering the Project which entails advertising, bidding, and awarding the Project in addition to performing inspections and overseeing the Project.

b. Upon execution, deposit funds with the State in the 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 \$252,571.00.

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

### **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 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.

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.

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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. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

City of Peoria  
Community Services Department  
Attn: J.P. de la Montaigne  
8401 W. Monroe Street  
Peoria, Arizona 85345  
(623) 773-7137  
(623) 773-7180 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.

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**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 \_\_\_\_\_  
DALE BUSKIRK  
Division Director

ATTEST:

By \_\_\_\_\_  
MARY JO KIEF  
Clerk

08-028-Dist E-SS64301C-Skunk Creek Multi-use Pathway-02 15 08-cc

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# ATTACHMENT

## PROJECT LOCATION MAP

# Skunk Creek Trail Connection

