

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: 10C
Amend No. _____

Date prepared: October 27, 2008

Council Meeting Date: November 18, 2008

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

SUBJECT: Addendum #2 to existing Intergovernmental Agreement (IGA) between the City of Peoria and the Peoria Unified School District (PUSD) for Operations, Maintenance and Repair of fiber optic data network.

RECOMMENDATION: Discussion and possible action to authorize the City Manager to execute addendum #2 to the existing Intergovernmental Agreement (LCON00807), between the City of Peoria and the Peoria Unified School District (PUSD) concerning Operations, Maintenance and Repair of fiber optic data network.

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. However, the original IGA was intentionally silent as to the ultimate maintenance responsibilities of said conduit and fiber. This addendum assigns ownership and maintenance responsibilities to the City of Peoria, with the exception of those conduit/fiber segments outlined in the last page of Addendum #2, which were specifically installed for the exclusive use of PUSD in serving its schools. This addendum has been prepared with the collaboration of PUSD and the City of Peoria Information Technology, Public Works and Engineering Departments.

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. In the event of a major break of the fiber and dependent upon the severity of the break, contingency funding will be requested for repair. The responsible

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# 00807B LIC. # _____
Action Date: _____

party/parties for the break will be billed to reimburse the City for the cost of the repairs.

ATTACHMENT:

Addendum #2 to Intergovernmental Agreement between the City of Peoria and the Peoria Unified School District #11

**ADDENDUM #2 TO INTERGOVERNMENTAL AGREEMENT BETWEEN THE
CITY OF PEORIA AND
PEORIA UNIFIED SCHOOL DISTRICT # 11
FOR FIBER OPTIC CABLING
OPERATIONS, MAINTENANCE AND REPAIR**

This Agreement ("Agreement") is made and entered into on the 1st day of December, 2008 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 Recorders Office, number 20070141212. That IGA details the terms and recitals of the Project and is referenced herein. The terms of the IGA were intentionally silent as to the operations and maintenance of the completed Project to be detailed by separate agreement of the Parties subsequent to the IGA. This document shall be deemed as that operations and maintenance agreement and shall be considered hereafter as addendum #2 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. The Parties desire to set forth in this Agreement, terms of operations and maintenance which will abide for five years, with options for one or multiple year extensions each year after that, by mutual agreement of the Parties.

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

III. AGREEMENT

1. **Term.** This Agreement shall become effective December 1, 2008 and shall continue for a term of five years from the date of signing. One or multiple year extensions may be made by mutual agreement of the Parties. 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. **Definitions.** As used in this OM&R IGA, the following terms shall mean:

Call for Service – call placed to the project owner to notify of a service problem or interruption.

City – the City of Peoria, a political subdivision of the State of Arizona.

Inventory – location and product detail of Project areas with ownership delineation that may be utilized for the purpose of operation, maintenance, repair or Blue Stake service.

Maintenance – scheduled activities conducted for the purpose of upkeep of the project.

Operation – the day to day functions of the Project.

Owner – Party designated by the IGA and/or addenda thereto as the Party maintaining ownership of the Project.

Project – design, plans, construction and product; conduit, inner duct, fiber optic cabling, site, as context may dictate.

PUSD – Peoria Unified School District # 11, a political subdivision of the State of Arizona.

Repair – activities necessary to restore operation.

Response – arrival of technical personnel for the purpose of troubleshooting and coordination of repair/restoration of service.

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

c. PUSD will supply 12 strands (6 pair) of fiber for City use within the northern leg of the backbone, running between the PUSD Cholla Data Center, located at 6625 W. Cholla St., and the PUSD North Data Center, located at 9621 W. Speckled Gecko Drive. Additionally, PUSD agrees to supply the City with sufficient rack space within the PUSD North Data Center for rack-mounted network distribution equipment, not to exceed eight (8) rack units ("RU") in height (14"), for the purpose of distributing data between the 83rd Ave, Lake Pleasant Parkway and 95th Ave/Beardsley legs of the network.

4. Responsibilities include inventory, operations, maintenance, response, repair and utility locating ("Blue Stake") service.

5. Operation. Owner agrees to operate the Project including operation, maintenance, and repair and to provide administrative, technical, and/or contractual personnel who are qualified to respond at each level of the operation, maintenance, and repair. This includes inventory, utility location service ("Blue Stake"), periodic maintenance, response, repair, troubleshooting, in house and contractor services, parts, labor, materials, and any inherent, incidental, or peripheral costs associated with such operation.

6. Maintenance. Owner agrees to perform routine inspection and maintenance services as is associated with manufacturer, City, or industry standard recommendations at the Owner's discretion. Maintenance may be performed by in-house or contractual services at the Owner's discretion.

7. Calls for Service/Contacts. Each Party must provide 24-hour contacts for calls for service as needed in response to service problems, interruption or outage.

For the City: **Monday – Friday, Business Hours**
623-773-7432 or -7456 (Peoria Public Works Department – Streets)
623-773-7280 (Peoria Traffic Engineering Division)
623-773-7251 (Peoria I.T. Department)

Nights, holidays and weekends
623-773-8311 (Peoria Police Department – Non-emergency line) Peoria Traffic Engineering Staff:
602-739-0760 Steve Blair
602-818-7490 Ron Amaya
623-773-7251 (Peoria I.T. Department – On-call Technician)

For PUSD: **Monday – Friday, 7:30am – 5:00pm**
623-486-6000 District Operator
623-486-6294 Kevin Molino
Nights, holidays and weekends
602-208-0109 (PUSD IT DUTY PAGER)
623-512-2080 Kevin Molino

8. Response.

- a. Owner agrees to respond to trouble calls, calls for service, outage, or interruption of service within four (4) hours of such call.
- b. Response may be accomplished by in-house or contracted personnel at the Owner's discretion and at the owner's sole expense.
- c. If response cannot be made within four (4) hours, the Owner will communicate the situation to the other Party with the actual time estimated for response.
- d. If response is made by a Party and it is subsequently determined that the other Party is the Owner, the responding Party will make appropriate notifications immediately, and the Owner will take over the Response within (4) hours of the call.

9. Repair. Repairs may be completed by in-house or contractual service providers at the Owner's sole discretion. In each case, every effort will be made to restore service within eight (8) hours of the call for service. If restoration of service cannot be made within eight hours, the Owner will communicate the situation to the other Party with the actual time estimated for completion.

10. Costs.

- a. All costs associated with any aspect of operations and maintenance shall be borne by the Owner.
- b. If, in the course of a response/repair, costs are incurred for property that is not owned by the responding Party, that responding Party shall invoice the Owner as soon as practicable.
- c. In the case of joints or connections or indiscernible ownership, the Parties shall split the repair costs at a 50/50 ratio if no other equitable ratio is agreed upon.

11. 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, 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.

12. 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.

City of Peoria, Peoria Unified School District #11
Fiber Optic Sharing IGA
Addendum #2
Ownership, Fiber Maintenance and Repair Response

Ownership

- A. 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:
- a. 72nd Ave, Peoria to North Lane (Ira Murphy E.S.)
 - b. 77th Ave, Peoria to Mountain View Rd. (Santa Fe E.S.)
 - c. 79th Ave, Acoma to Greenway Rd (Paseo Verde E.S.)
 - d. 81st Ave, Lone Cactus Dr to W Deanna Dr (Frontier E.S.)
 - e. 87th Ave, Union Hills Dr to Apache E.S.
 - f. 87th Ave, Northern to Mountain View Rd. (Alta Loma E.S.)
 - g. 87th Ave, Lake Pleasant Pkwy to Coyote Hills E.S.
 - h. 87th Ave, Cactus Rd to Canterbury Dr alignment (Cheyenne E.S.)
 - i. 89th Ave, Northern to Orangewood Dr (Raymond S Kellis H.S.)
 - j. 91st Ave, Kelton Lane to Desert Harbor E.S.
 - k. 95th Ave, Butler Dr to Olive (incl. Sun Valley E.S.)
 - l. 95th Ave, Peoria to PUSD Bus Yard
 - m. 111th Ave, South of Olive (Country Meadows E.S.)
 - n. Acoma Dr from 83rd Ave to 79th Ave (Centennial H.S.)
 - o. Cholla St, 67th Ave to 83rd Ave (Sundance E.S., Peoria E.S., Peoria H.S.)
 - p. Lone Cactus Dr, 83rd Ave to 81st Ave
 - q. Sweetwater Ave, 79th Ave to 86th Ave (Oasis E.S., Sky View E.S.)
 - r. Surrey Ave, 67th Ave to 71st Ave, 71st Ave from Surrey to Sweetwater (Oakwood E.S.)
 - s. Williams Rd, Lake Pleasant Rd to 109th Ave (Zuni Hills E.S.)
 - t. Whispering Ridge, Vistancia Blvd to Vistancia E.S.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

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

Dated:

By Its Superintendent (Signature)

Dr. Denton Santarelli

ACKNOWLEDGEMENT

STATE OF ARIZONA

COUNTY OF MARICOPA

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 _____ day of, 2008, by _____ and/or _____.

Notary Public

My Commission Expires:

INTERGOVERNMENTAL AGREEMENT DETERMINATION

This IGA Addendum #2 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 #2 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