

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: 8C
Amend No. _____

Date prepared: May 22, 2009

Council Meeting Date: July 7, 2009

TO: Carl Swenson, City Manager
THROUGH: Susan J. Daluddung, Deputy City Manager
FROM: Andrew Granger, P. E., Engineering Director
THROUGH: Dan Nissen, P. E., Assistant City Engineer
PREPARED BY: Chris Kmetty, P. E., Senior Civil Engineer

SUBJECT: Adoption of the Resolution approving the Intergovernmental Agreement with the State of Arizona for the construction of the Beardsley Road extension and Bridge over New River from Loop 101 (Agua Fria Freeway) to 83rd Avenue/Lake Pleasant Parkway (Engineering Project No. P-0702, AG Contract No. Pxxx-2009-xxxxxx, ADOT File No. IGA/JPA 09-044, TRACS No. HSS75501 C)

RECOMMENDATION:

Discussion and possible action to adopt the Resolution approving the Intergovernmental Agreement (IGA) with the State of Arizona for the use and benefit of American Recovery and Reinvestment Act of 2009 (ARRA funds) for construction of the Beardsley Road extension and bridge over New River from Loop 101 to 83rd Avenue/Lake Pleasant Parkway.

SUMMARY:

In July 2008, Mayor and Council approved an IGA with the Arizona Department of Transportation (ADOT), City of Glendale and the Maricopa Association of Governments for the design and construction of the Beardsley Connector Project. The City must enter into an additional IGA with the State of Arizona for the acquisition of and distribution of ARRA funds and to authorize these funds for construction of the project pursuant to federal law and regulations. The City Attorney has reviewed the draft IGA and found it to be acceptable.

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. # 0481
LCON# 05109 LIC. # _____
Action Date: _____

The project consists of the following:

- widening Beardsley Road between 83rd and 81st Avenues,
- a new Beardsley Road alignment constructed from 81st Avenue east to a newly constructed southbound frontage road on the west side of SR101L,
- a bridge over New River;
- bank stabilization in New River;
- raised median islands along 83rd Avenue south of Beardsley Road, and
- roadway widening on Lake Pleasant Parkway north of Beardsley Road.

The current project costs are estimated at:

| | |
|----------------------|---------------------|
| ARRA Funds | \$ 2,850,401 |
| CITY OF PEORIA Funds | \$ 2,647,762 |
| Other Federal Funds | <u>\$ 5,991,524</u> |
| TOTAL Project Costs | \$11,489,687 |

A summary of each party's responsibilities is outlined on Attachment A.

FISCAL NOTE:

Payment will be from the Beardsley Road Extension GO Bonds Fund Street System Account 4220-4220-543001-CIPST-PW00152CO in the amount of \$2,647,762.

ATTACHMENTS:

1. Attachment A – IGA Agency Responsibilities
2. Resolution
3. Draft IGA

ATTACHMENT A – IGA Agency Responsibilities

STATE WILL:

1. Be the authorized agent for the construction of the project.
2. Perform and prepare all documents required by the Federal Highway Administration to qualify and receive ARRA Funds.
3. Enter into a Project Agreement with the Federal Highway Administration on behalf of the City to request maximum ARRA funds available for ARRA qualified construction activities.

CITY OF PEORIA WILL:

1. Remit payment to the State funds for all work not eligible for ARRA funds.
2. Certify all rights of way.
3. Permit construction of the project without cost to the State,
4. Maintain all improvements after construction and an accepted and agreed to Letter of Acceptance and Approval.
5. Enter into a separate agreement with design consultant to provide all post design and as built plans.

RESOLUTION NO. 09-87

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 AND THE CITY OF PEORIA FOR CONSTRUCTION OF THE BEARDSLEY ROAD EXTENSION AND BRIDGE OVER NEW RIVER FROM LOOP 101 (AGUA FRIA FREEWAY) TO BEARDSLEY ROAD AT 83RD AVENUE/LAKE PLEASANT PARKWAY, PEORIA'S PHASE I OF THE BEARDSLEY CONNECTION PROJECT.

WHEREAS, the City of Peoria (City) 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 construction of the Beardsley Road extension and bridge over New River from Loop 101 (Agua Fria Freeway) to Beardsley Road at 83rd Avenue/Lake Pleasant Pkwy, Phase I, of the City's Beardsley Connection Project; and

WHEREAS, Peoria has programmed the design and construction of a two-phase project in FY 2009. Peoria's **Phase I** project consists of widening Beardsley Road between 83rd and 81st Avenues; a new Beardsley Road alignment constructed from 81st Avenue east to a newly constructed southbound frontage road on the west side of SR 101L, including a new Peoria bridge (Beardsley Connector) over New River; bank stabilization in New River; raised median islands along 83rd Avenue south of Beardsley Road and roadway widening on Lake Pleasant Parkway north of Beardsley Road. **Phase I** was to be designed and constructed by Peoria, solely at Peoria's expense and constructed independently of Peoria's **Phase II** project.

Peoria's **Phase II** project will consist of the design and construction of a new SR 101L southbound frontage road from 75th Avenue to Union Hills Drive; westbound ramp reconfiguration west of 75th Avenue; the construction of a U-Turn structure north of Union Hills Drive over SR 101L; the approach and departing ramps to the U-Turn structure and the associated southbound and northbound Union Hills Drive to SR 101L ramp reconfigurations. **Phase II** was to be designed by Peoria and constructed by the State.

WHEREAS, in conjunction with Peoria's Project, Peoria requested the State accelerate the design and construction of the State's Project from FY 2011 and FY 2012 respectively to FY 2009, in order to combine with Peoria's Project for one construction contract, herein referred to as the "Combined Project".

WHEREAS, Congress has authorized appropriations for the American Recovery and Reinvestment Act of 2009 (ARRA 2009) for the disbursement of funds and investment in certain projects, including but not limited to, roads, bridges, mass transit, energy efficient buildings, flood control, clean water and other infrastructure projects to save and create jobs for long term growth and stability.

WHEREAS, The work contemplated under this Agreement is the construction of the Beardsley Road extension and bridge over New River from Loop 101 (Agua Fria Freeway) to Beardsley Road at 83rd Avenue/Lake Pleasant Pkwy, hereinafter referred to as the "Project". The State shall advertise, bid and award the Project.

WHEREAS, 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 by the State to the Federal Highway Administration (FHWA) for its approval.

WHEREAS, The interest of the State in this project is the acquisition and distribution of ARRA/Recovery Act Funds for the use and benefit of the City and to authorize such ARRA/Recovery Act Funds for the project pursuant to Federal law and regulations. The State shall be the designated agent for the City.

WHEREAS, The ARRA/Recovery Act Funds will be used for the construction of the project, including the construction engineering and administration cost (CE).

THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of Peoria, Arizona approves and adopts this Resolution to enter an Intergovernmental Agreement with the State of Arizona, and the City of Peoria (attached) for construction of Peoria's Phase I of the Beardsley Connection.

PASSED AND APPROVED by the Mayor and City Council of the City of Peoria, Arizona this 7th day of July, 2009.

Bob Barrett, Mayor

ATTEST:

Mary Jo Kief, City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

Attachment:

1. Intergovernmental Agreement

ADOT File No.: IGA/JPA 09-0441
AG Contract No.: Pxxx200xxxxxxx
Project No.: PE0-0(206)
Project: Extension & Bridge
Section: Beardsley Road Connection
TRACS No.: SS755 01C
Budget Source Item No.: ARRA

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF PEORIA

THIS AGREEMENT is entered into this date _____, 2009, 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 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. Congress has authorized appropriations for the American Recovery and Reinvestment Act of 2009 (ARRA 2009) for the disbursement of funds and investment in certain projects, including but not limited to, roads, bridges, mass transit, energy efficient buildings, flood control, clean water and other infrastructure projects to save and create jobs for long term growth and stability

4. The work contemplated under this Agreement is the construction of the Beardsley Road extension and bridge over New River from Loop 101 (Agua Fria Freeway) to Beardsley Road at 83rd Avenue/Lake Pleasant Pkwy, hereinafter referred to as the "Project". The State shall advertise, bid and award the Project.

5. 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 by the State to the Federal Highway Administration (FHWA) for its approval.

6. The interest of the State in this project is the acquisition and distribution of ARRA/Recovery Act Funds for the use and benefit of the City and to authorize such ARRA/Recovery Act 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 ARRA/Recovery Act Funds will be used for the construction of the project, including the construction engineering and administration cost (CE).

The current Project costs are as follows:

TRACS No. SS755 01c

| | |
|--|------------------------|
| ARRA/Recovery Act Funds | \$2,850,401.00 |
| CITY OF PEORIA Funds | \$2,647,762.00 |
| Other Federal Funds | <u>\$5,991,524.00</u> |
| *TOTAL Project Costs | \$11,489,687.00 |
| *(Includes CE and project contingencies) | |

The parties acknowledge that the eventual actual cost may exceed the estimate, and such case the City is responsible for any and all costs exceeding the estimate.

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

II. SCOPE OF WORK

1. The State will:

a. Prepare and provide design plans, specifications and other such documents and services required for the construction bidding and construction of the Project and incorporate comments from the City as appropriate.

b. On behalf of the City, perform work and prepare documents required by the FHWA to qualify certain projects for and to receive ARRA/Recovery Act Funds. Such work may consist of, but is not specifically limited to, the review and approval of the prepared environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement.

c. Upon approval by the FHWA, and with the aid and consent of the City, FHWA, and State, the State shall proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the City, and enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. Administer contract(s) for the Project and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by the Project delays attributable to the State.

d. 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 ARRA/Recovery Act Funds available, including construction engineering and administration costs. Should costs exceed the maximum ARRA/Recovery Act Funds available, it is understood and agreed that the City will be responsible for any excess cost not covered by ARRA/Recovery Act Funds.

e. Upon Execution of this Agreement and prior to Award of the Project, invoice the City for the City's share of the Project costs.

f. 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. Review the design documents required for construction of the Project and provide comments to the State as appropriate.
 - c. Upon Execution of this Agreement and receipt of an invoice from the State, the City will remit the City's share of the Project costs.
 - d. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid. Hereby also certifies that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction.
 - e. Not permit or allow any encroachments upon or private use of the right-of-way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.
 - f. Grant the State, without charge, cost, or additional documents and agreements, permission to enter City/County/Town's lands as required to conduct all construction and pre-construction activities related to the Project, including and without limitation, temporary construction easements, or temporary right-of-entry.
 - g. All costs attributable to any engineering change orders requested by the City not covered by ARRA/Recovery Act Funds will be the sole responsibility of the City. The City will also be responsible for contractor claims for additional compensation caused by Project delays attributable to the City.
 - h. Provide for cost and, as an annual item in the City's budget, proper maintenance of the Project, including all of the Project components.
 - i. Pay the State full compensation for all penalties, assessments or sanctions of any kind resulting from any failure to comply with any ARRA/Recovery Act requirement, including but not limited to, auditing, reporting and monitoring the project and its costs.
 - j. Enter into an agreement with the Design Consultant which states that the Design Consultant shall provide professional services as required and requested throughout the Construction Phase of the Project.
 - k. 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, following ADOT procedures. A set of As-Built Plans shall be forwarded to ADOT's Local Government Section.
 - l. Upon completion, a Letter of Approval and Acceptance to ADOT assuming full ownership and responsibility of 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, except any provisions for maintenance/electrical power and/or landscaping maintenance shall be perpetual by the City. Further, this Agreement may be cancelled at any time prior to advertisement 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. **The City shall require its contractors to name the State as an additional insured in the City contractors' insurance policies. The City shall require its contractors to indemnify the State to the same extent to which the contractors indemnify the City.** It is understood and agreed that the State's participation is confined solely to securing federal aid on behalf of the **CITY** and the fulfillment of any other responsibilities of the State as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be 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 design, construction and construction engineering work under this Agreement is to be covered by the ARRA/Recovery Act Funds set aside for this Project, up to the maximum available. The City acknowledges that the eventual actual costs may exceed the maximum available amount of ARRA/Recovery Act funds, or that certain costs may not be accepted by the federal government as eligible for ARRA/Recovery Act funds. Therefore, the City agrees to furnish and provide the difference between actual costs and the ARRA/Recovery Act Funds received.

4. The State will follow reporting requirements in accordance with Section 1201 and Section 1512 of the American Recovery and Reinvestment Act of 2009.

5. This Agreement shall be filed with the Arizona Secretary of State and shall not become effective until the date of said filing.

6. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

7. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

8. 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".

9. **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.

10. 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.

11. 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: Chris Kmetty, PE
8401 West Monroe
Peoria, Arizona 85345
(623) 773-7247
(623) 773-7212 Fax

12. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The City warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. 23-214, Subsection A.

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the City may be subject to penalties up to and including termination of the Agreement.

c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the City or subcontractor is complying with the warranty under paragraph (a).

13. Pursuant to A.R.S. Sections 35-391.06 and 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in A.R.S. Section 35-391 or and 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement. *(Cindy is checking with AG's Office to see if applicable)*

14. 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 _____
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

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 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 _____, 2009.

City Attorney