

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

cc: 5C
Amend No. _____

Date prepared: September 30, 2009 Council Meeting Date: November 17, 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: Burton Charron, P. E., Senior Civil Engineer 

SUBJECT: Adoption of the Resolution approving the Intergovernmental Agreement between the State of Arizona (ADOT) and the City of Peoria for the Pavement Preservation of certain roadways located in the vicinity between 83rd Avenue and 99th Avenue and Union Hills Drive to Deer Valley Road. Federal Project No. ARRA-PEO-0(205)A; Pavement Preservation (Multiple Locations); TRACS No.: SS754RRD

RECOMMENDATION:

That Mayor and Council 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 Pavement Preservation Improvements and the corresponding obligations set forth in the IGA.

SUMMARY:

The City of Peoria through its participation in the Maricopa Association of Governments (MAG) Regional Transportation Plan (RTP) has identified several roadways as candidates to be considered for various federal, state, county and local funding programs.

The Arizona Department of Transportation (ADOT), Local Governments Section, acts as project administrator for the Regional Transportation Projects (RTP) within the Phoenix metro area. In addition MAG, ADOT and the City of Peoria assure that projects in the RTP are administered to meet the criteria recommended by the funding resources and programs.

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. # 09-130
LCON# 10509 LIC. # _____
Action Date: _____

The Pavement Preservation Improvement Project was subsequently endorsed through the Maricopa Association of Governments, regional transportation authority. The Pavement Preservation Improvements will be applied to the following roadways (see attached map) and will include appropriate pavement markings and bike lane markings:

1. Beardsley Road – 83rd Avenue to 99th Avenue.
2. 91st Avenue – Union Hills Drive to Beardsley Road
3. 83rd Avenue – Union Hills Drive to Village Parkway
4. 83rd Avenue – Lake Pleasant Parkway to Deer Valley Road
5. Lake Pleasant Road – Beardsley Road to Rose Garden Lane

The City of Peoria anticipates the majority of the funding will be through the ARRA funding and the City's participation, if necessary, will be in the form of unused funding from existing CIP projects. A summary of the proposed City funding breakdown is shown in Exhibit A.

The purpose of this Resolution and subject IGA is to establish both City and State (ADOT) obligations (funding or otherwise) as it relates to the aforementioned requested ARRA/Recovery Act Funds; Pavement Preservation Improvements Project.

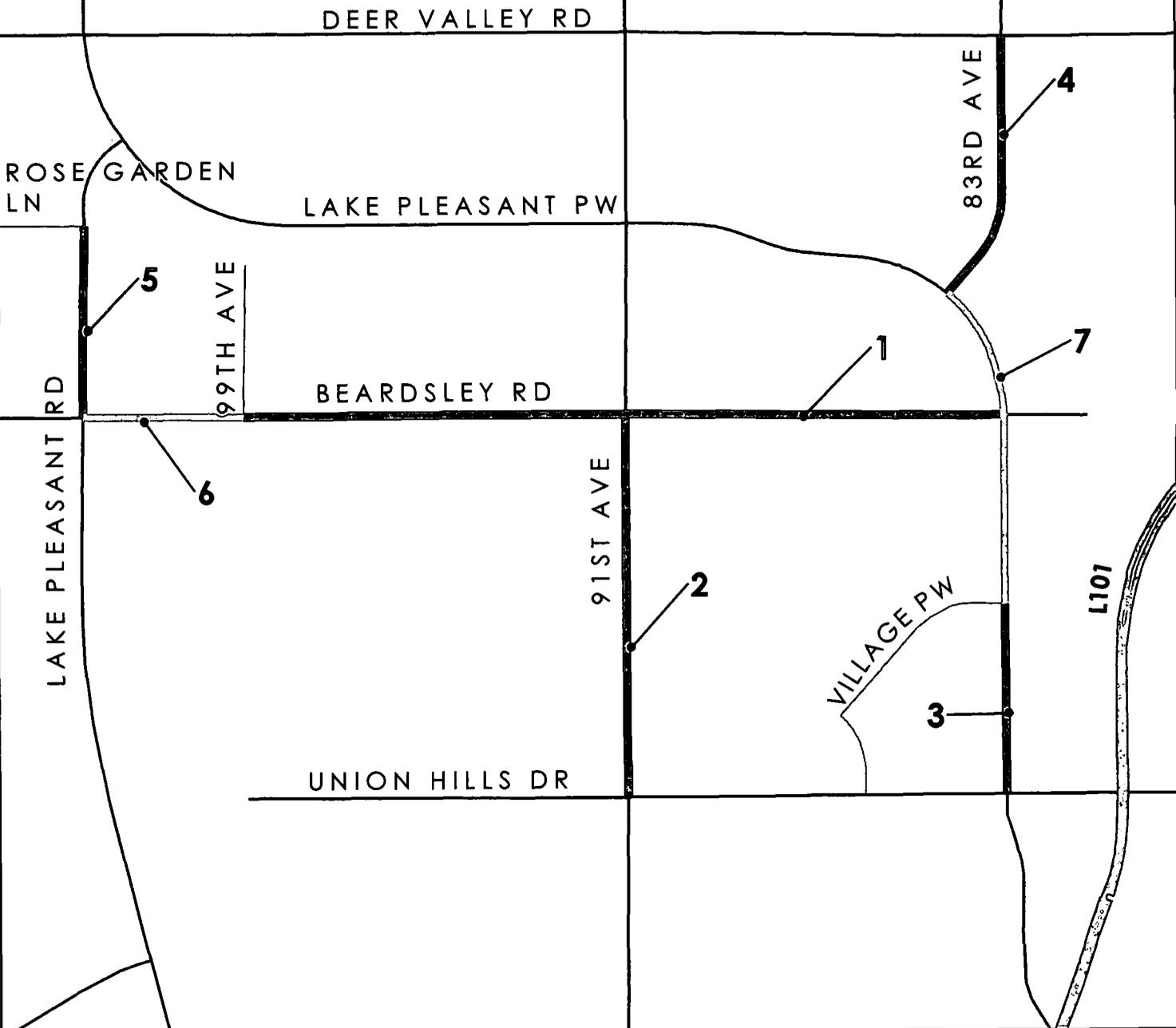
Attachment A shows a summary breakdown of the City and State responsibilities included in the IGA.

Anticipated Schedule:

November 2009 – Complete Environmental Clearance and Design
Spring 2010 – Construction

ATTACHMENT:

1. Map
2. Exhibit A
3. Attachment A – Agency Responsibilities
4. Resolution
5. IGA



LEGEND

- 1. Beardsley Road - 83rd Ave to 99th Ave
- 2. 91st Avenue - Union Hills Dr to Beardsley Rd
- 3. 83rd Avenue - Union Hills Dr to Village PW
- 4. 83rd Avenue - Lake Pleasant PW to Deer Valley Rd
- 5. Lake Pleasant Road - Beardsley Rd to Rose Garden Ln
- 6. To be completed as part of Beardsley Widening
- 7. To be completed as part of Beardsley Connector

City of Peoria
ARRA Pavement
Preservation



NOTE:
This Map is based on imprecise source data, subject to change and FOR GENERAL REFERENCE ONLY.
Source Document: C:\PROJECTS\ENGINEERING\Information\GIS\Map\GIS\ARRA_Pavement_Preservation.mxd
Date: 11/14/2011 by: M5200\JEREA\ARRA_Pavement_Preservation.mxd

EXHIBIT "A"

PROPOSED CITY SHARE FUNDING

Segment	From	To	Length L.F.	PROJECT	ARRA	City		
				Cost/L.F. \$ 113.64		WBV EN00003	Beardsley PW0065	Streets Maint. PW00138
Beardsley Rd.	83rd Av.	99th Av.	10,560	\$ 1,200,000	\$ 530,050	\$ 360,000	\$275,000	\$ 34,950
91st Av.	Union Hills Dr.	Beardsley Rd.	5,280	\$ 600,000	\$ 600,000			
83rd Av.	Union Hills Dr.	Village Pkwy.	2,640	\$ 300,000				\$ 300,000
Lake Pleasant Rd.	Beardsley Rd.	Rose Garden Ln.	2,640	\$ 300,000				\$ 300,000
83rd Av.	Lake Pleasant Pkwy.	Deer Valley Rd.	3,800	\$ 431,818				\$ 431,818
			24,920	\$ 2,831,818	\$ 1,130,050	\$ 360,000	\$ 275,000	\$ 1,066,768

TOTALS:

\$ 2,831,818 **\$ 1,130,050**

\$ 1,701,768

LENGTH:

4.72 MILES

Attachment A – IGA Agency Responsibilities

CITY OF PEORIA WILL:

- a. Hereby designate the State as the authorized agent for the City.
- b. Review 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 of 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'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. Be responsible for any and 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. As an annual item in the City's budget, provide for the cost of 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. Provide a set of as-built plans upon completion of the construction phase of the Project. An electronic version of the as-built plans shall be forwarded to Arizona Department of Transportation Local Government Section.
- l. Upon completion of the Project, agree to accept and assume full responsibility of said Project in writing.

STATE WILL:

- a. Prepare and provide design plans, specifications and other such documents and services required for the construction of the Project and incorporate comments from the City as appropriate.
- b. On behalf of the City, perform 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 the Agreement.
- c. Upon approval by the FHWA, and with the aid and consent of the City, and FHWA, proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the City. The State will enter into a contract(s) with a firm(s) to whom the award is made of the construction for the Project; administer contract(s) for the Project and make all payments to the contractor(s).
- d. Enter into a Project Agreement with FHWA on behalf of the City covering 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 costs 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.

RESOLUTION NO. 09-130

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 PAVEMENT PRESERVATION IMPROVEMENTS ALONG CERTAIN ROADWAYS LOCATED WITHIN THE CITY OF PEORIA.

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 pavement preservation improvements along certain roadways located within the City of Peoria; and

WHEREAS, the City is willing to pay for the costs, in accordance with the provisions set forth in the accompanying Intergovernmental Agreement, associated with the Pavement Preservation Improvements for certain roadways located within the City of Peoria; and

WHEREAS, the City is willing to abide by all related terms, in accordance with the provisions set forth in the accompanying Intergovernmental Agreement, associated with the Pavement Preservation Improvements for certain roadways located within the City of Peoria; 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 pavement preservation improvements along certain roadways located within the City of Peoria

Resolution No. 09-130

State of Arizona for construction of certain Pavement Preservation Improvements along
certain roadways located within the City of Peoria

November 17, 2009

Page 2 of 2 Pages

PASSED AND ADOPTED by the Mayor and City Council of the City of
Peoria, Arizona this 17th day of November, 2009.

Bob Barrett, Mayor

ATTEST:

Mary Jo Waddell, City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

ADOT File No.: IGA/JPA 09-0451
AG Contract No.: P001 2009 003755
Project No.: PE0-0(205)
Project: Pavement Preservation
Section: Beardsley Road -Lake Pleasant
Parkway - 83rd Avenue
TRACS No.: SS754 01C
Budget Source Item No.: ARRA

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF PEORIA

THIS AGREEMENT is entered into this date PLEASE DO NOT ENTER, 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 consists of improvements and asphalt pavement rehabilitation within the existing curbs throughout the City of Peoria along Beardsley Road, Lake Pleasant Parkway and/or 83rd Avenue, 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 design and construction of the project, including the construction engineering and administration cost (CE).

The current Project costs are as follows:

TRACS No. SS754 01C

ARRA/Recovery Act Funds	\$1,130,050.00
CITY OF PEORIA Funds	<u>\$ 266,220.00</u>
*TOTAL Project Costs	\$1,396,270.00
*(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, and FHWA, proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the City. The State will enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project; administer contracts(s) for the Project and make all payments to the contractor(s).

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'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. Be responsible for any and 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. As an annual item in the City's budget, provide for the cost of 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. Provide a set of as-built plans upon completion of the construction phase of the Project. An electronic version of the as-built plans shall be forwarded to Arizona Department of Transportation Local Government Section.
- l. Upon completion of the Project, agree to accept and assume full responsibility of said Project in writing.

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. 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. Both parties warrant compliance with all Federal immigration laws and regulations relating to employees and warrant 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 parties may be subject to penalties up to and including termination of the Agreement.

c. Both parties retain the legal right to inspect the papers of any employee who works on the Project to ensure that the party 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.

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

LCON10509

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