

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: 3C
Amend No. _____

Date Prepared: October 5, 2009

Council Meeting Date: December 1, 2009

TO: Carl Swenson, City Manager

THROUGH: Susan J. Daluddung, Deputy City Manager 

FROM: Andrew Granger, P.E., City Engineer 

THROUGH: Jamal Rahimi, P.E., City Traffic Engineer 

PREPARED BY:  Ronald A. Amaya, Assistant City Traffic Engineer

SUBJECT: Intergovernmental Agreement between the City of Glendale and the City of Peoria for the purpose of purchasing and installing equipment for the Olive Avenue Joint Fiber Project.

RECOMMENDATION:

Discussion and possible action to authorize the execution of an Intergovernmental Agreement (IGA) between the City of Glendale (Glendale) and the City of Peoria (City), for the purchase and installation of equipment for the Olive Avenue Joint Fiber Project, in the amount of \$60,000. Under this IGA, the total project cost will be \$668,642. The Federal Grant Program, administered by the Arizona Department of Transportation, will pay \$449,149 of the project cost, and Glendale will pay an estimated \$159,493 of the project cost.

SUMMARY:

Under the Maricopa Association of Governments Intelligent Transportation System Federal Grant Program, Glendale applied for and received the funding for fiscal year 2010 to enhance the Glendale signal communication system. Participation will enable communication to City signals, and to share data and information with Glendale.

FISCAL NOTE:

Funding for the City will be from the Traffic Signal Interconnect Project Transportation Sales Tax Fund Street System Account 7010-7075-543001-CIPTC-PW00133CO in the amount of \$60,000.

ATTACHMENT:

IGA

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# 10809 LIC. # _____
Action Date: _____

WHEN RECORDED PLEASE RETURN TO:

City of Glendale
City Clerk
5850 West Glendale Avenue
Glendale, Arizona 885301

C _____

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF GLENDALE AND THE CITY OF PEORIA
FOR REGIONAL COMMUNITY NETWORK FIBER ON OLIVE AVENUE**

This Intergovernmental Agreement between the City of Glendale and the City of Peoria for Regional Community Network Fiber on Olive Avenue ("Agreement") is entered into and effective this ____ day of _____, 2009 ("Effective Date"), between the City of Glendale, an Arizona municipal corporation ("Glendale"), and the City of Peoria, an Arizona municipal corporation ("Peoria"), individually referred to as "Party" and collectively as "Parties."

RECITALS

WHEREAS, the Parties have been awarded a grant by the State of Arizona through the Arizona Department of Transportation ("ADOT") for the use of federal monies in connection with the installation of fiber optic communications lines ("Lines") for the improved and expanded operation of the Regional Community Network ("RCN") between governmental agencies; and

WHEREAS, the installation of Lines under this Agreement runs in the vicinity of Olive Avenue between 59th and 75th Avenues ("Project"), which encompasses both Glendale and Peoria jurisdictions; and

WHEREAS, ADOT desires to coordinate the construction of the Project through Glendale; and

WHEREAS, Glendale is willing to coordinate the construction of the Project with ADOT on behalf of both Parties through separate Agreement (Intergovernmental Agreement, ADOT No. JPA 09-008I); and

WHEREAS, this Agreement assigns duties and obligations between the Parties in implementation of the Project; and

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to A.R.S. § 11-952.

NOW, THEREFORE, in consideration of the recitals above and the mutual promises and covenants set forth below, the Parties agree as follows:

AGREEMENT

1. PROJECT.

- A. The Project consists of the installation of Lines and junction boxes along the south side of Olive Avenue between 59th and 75th Avenues. Glendale will construct and maintain all Lines east of the southwest corner of the intersection of 71st and Olive Avenues. Peoria will construct and maintain, including the junction box on the southwest corner of 71st and Olive Avenues, all Lines from and including the southwest corner of 71st and Olive Avenues west to 75th Avenue. Areas of construction and maintenance will be as outlined above and in accordance with the construction and maintenance standards as required by each Party's jurisdiction.
- B. By operation of this Agreement, Peoria consents to Glendale's access to the junction box for routine communication and blue stake activities.
- C. Glendale and Peoria will own all Lines within the areas of responsibility as outlined above but each will reserve at least two fibers within the Lines for the exclusive use of the RCN.
- D. The Parties will coordinate as required for the integration of plans and operations, before, during and after construction of the Project.

2. FUNDING.

- A. The estimated total cost of the Project is \$668,642. Total federal funds to be disbursed for the Project by ADOT are \$449,149. Glendale's contribution is \$159,493 and Peoria's contribution is \$60,000. ADOT will bid the construction of the Project and administer the disbursement of funds to construction contractors.
- B. No later than 60 days from the Effective Date of this Agreement, Peoria shall remit its \$60,000 contribution to Glendale. Upon receipt of an invoice from ADOT, Glendale will remit the Parties' contributions to ADOT.
- C. If the total cost of construction is less than the estimate above, any funds ADOT returns will be allocated 70% to Glendale and 30% to Peoria. If costs exceed the estimated cost the Parties may either: i) by letter amendment to this Agreement,

agree to the additional amount and their percentage share, but not exceeding 30% of the collective contributions; or ii) terminate this Agreement in accordance with Paragraph 5 below.

3. CONTINGENCY.

The operation of this Agreement is contingent upon the final approval of the intergovernmental agreement between Glendale and ADOT concerning the funding of the Project.

4. INDEMNIFICATION.

Each Party shall defend, indemnify and hold the other harmless, including its elected or appointed officials, agents, boards, commissions and employees, from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of the Party, including its agents, employees and invitees, in connection with the Party's operations on the Project and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that arise out of the failure of the Party to comply with any provision of this Agreement. Each Party shall in all instances be indemnified by the other against all losses, damages or claims due to the negligence or fault of the other Party. Each Party shall give the other prompt notice of any claim made or suit instituted that may subject that Party to liability under this paragraph, and either Party shall have the right to compromise and defend the same to the extent of its own interest. Either Party, may, but does not have the duty to, participate in the defense of any claim or litigation with attorneys of that Party's selection and at that Party's sole cost without relieving the other of any obligations hereunder. The obligations under this paragraph survive any termination of this Agreement or activities or operations between the Parties concerning the Project.

5. TERM.

This Agreement shall remain in effect so long as both Parties maintain and operate the Project. This Agreement may be terminated upon 30 days written notice as stated in paragraph 2(C) above, by mutual agreement of the Parties or with 180 days notice by either Party upon cessation of the operation of the RCN.

6. DEFAULT.

Either Party may place the other in default of this Agreement by giving the other Party 30 days written notice of failure to comply with any provision of this Agreement. During the 30 day notice period, the Party alleged to be in default shall cure any default; otherwise, the Party providing notice may exercise any other remedy allowed by law or equity.

7. MISCELLANEOUS.

- A. This Agreement may be amended at any time upon mutual agreement of the Parties.
- B. This Agreement is subject to cancellation for conflicts of interests pursuant to A.R.S. § 38-511, as may be amended.
- C. Both Parties warrant, to the extent applicable under A.R.S. § 41-4401, that they have registered with and will continue to participate in the E-Verify program established by the United States Department of Homeland Security and Social Security Administration or any successor program; each warrants compliance with all federal immigration laws and understands that any breach of this warranty subjects either Party to penalties, including termination of this Agreement; and finally, each Party understands that both have the right to inspect the papers of the other or any of its employees participating in this Agreement to ensure compliance with this paragraph.
- D. Both Parties, and on behalf of any subcontractor, certify, to the extent applicable under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that neither has “scrutinized” business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

8. NOTICE.

Any notices or reports required under this Agreement shall be provided by United Postal Service, certified mail, return receipt requested and sent to the following addresses:

To Glendale: City of Glendale
 Transportation Department
 5850 West Glenn Drive, Suite 315
 Glendale, Arizona 85301

with a copy to: City of Glendale
 City Attorney
 5850 West Glendale Avenue
 Glendale, Arizona 85301

To Peoria: City of Peoria
 Transportation Department
 8401 West Monroe Street
 Peoria, Arizona 85345

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date of the last signature affixed below.

CITY OF GLENDALE

CITY OF PEORIA

Elaine Scruggs, Mayor Date

Bob Barrett, Mayor Date

ATTEST:

ATTEST:

Pam Hanna, City Clerk (SEAL)

Mary Jo Kief, City Clerk (SEAL)

APPROVAL AS TO FORM AND AUTHORITY

In accordance with A.R.S. § 11-952, the undersigned legal counsel acknowledge that they have reviewed the above Agreement on behalf of their respective clients, and as to their respective clients only, have determined that this Agreement is in proper form and within the powers and authority granted under the laws of this State to each of their clients.

Craig D. Tindall, Glendale City Attorney

Stephen M. Kemp, Peoria City Attorney