CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS

CC: 4C

Amend No. _____

Date prepared: January 5, 2010 **Council Meeting Date: February 16, 2010**

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

SUBJECT: Adoption of the Resolution approving the Intergovernmental Agreement with the Deer Valley Unified School District for reimbursement of the traffic signal installation at Happy Valley Road and the Terramar Elementary School driveway (Project No. PW00146)

RECOMMENDATION:

Discussion and possible action to adopt the Resolution allowing approval of the Intergovernmental Agreement (IGA) with the Deer Valley Unified School District (DVUSD) in the amount not to exceed $129,464 for reimbursement of the traffic signal installation at Happy Valley Road and the Terramar Elementary School driveway.

SUMMARY:

The City of Peoria installed a traffic signal at the intersection of Happy Valley Road and the aligned driveway between Terramar Elementary School and Christ's Church of the Valley (CCV) as part of the Happy Valley Road Improvements project.

As described in a letter dated January 13, 2003 concerning the intersection of 71st Avenue alignment and Happy Valley Road, the Traffic Analysis concluded that the DVUSD and CCV would be responsible to conduct, at their cost, a full traffic signal warrant study for the intersection within one year after the completion of the Happy Valley Road improvements.

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. #**2010-11

LCON# 01810 **LIC. #**_____

Action Date:

REV. 08/08

The DVUSD agreed that combining efforts with the city to have the traffic study completed and the traffic signal installed in conjunction with the Happy Valley Road improvements would be beneficial to both parties.

Staff and the City Attorney's Office negotiated an agreement with DVUSD to advance the signal installation earlier than stated in the 2003 letter. The responsibilites under the terms of the IGA are defined as follows:

Deer Valley Unified School District

- Submit payment for its share of the construction cost of $129,464 for the DVUSD/CCV improvements on June 30, 2009 or two years from the date the improvements are completed.

City of Peoria

- Complete DVUSD/CCV improvements no later than January 1, 2009.
- Ensure that the DVUSD/CCV improvements are constructed in compliance with all existing plans and specifications.
- Provide written billing statements to DVUSD 30 days prior to the due dates listed in the IGA, June 30, 2009, or two years from the date that the DVUSD/CCV improvements are completed, whichever date is later.

The DVUSD/CCV improvements are complete and were fully opened to the public December 20, 2008.

The DVUSD paid the city $142,378 in July 2009 based on the original estimated cost for the work. Now that the final accounting has been completed for the Happy Valley Road project, a cost savings was realized in the amount of $12,914. The city will reimburse DVUSD for the overpayment.

FISCAL NOTE:

There will be no further city obligation under this agreement. Payment from DVUSD will reimburse the city for costs related to the construction of the DVUSD/CCV improvements.

ATTACHMENTS:

1. Resolution
2. Vicinity Map

PREPARED BY: Chris Kmetty, P. E., Senior Civil Engineer

RESOLUTION NO. 2010-11

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, ARIZONA, ADOPTING A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT WITH THE DEER VALLEY UNIFIED SCHOOL DISTRICT (DVUSD) AND THE CITY OF PEORIA (CITY) FOR REIMBURSEMENT OF COSTS FOR CONSTRUCTION OF HAPPY VALLEY ROAD SCHOOL/CHURCH IMPROVEMENTS.

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 Deer Valley Unified School District for reimbursement of costs for construction of Happy Valley Road School/Church improvements; and

WHEREAS, The City constructed certain Happy Valley Road project improvements that provide direct benefit to the DVUSD and the CCV including; a traffic signal at the intersection of Happy Valley Road and the aligned driveways for the Terramar Elementary School and the CCV (71st Avenue alignment and Happy Valley Road), median improvements, and turn lane improvements; and

WHEREAS, The parties acknowledge and agree that they are community partners, and construction of the improvements and the payment process as identified in the agreement is in the best interest of the respective parties; and

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 Deer Valley Unified School District for reimbursement of costs for construction of Happy Valley Road School/Church improvements

PASSED AND APPROVED by the Mayor and City Council of the City of Peoria, Arizona this 16th day of February 2010.

_____
Bob Barrett, Mayor

ATTEST:

_____
Mary Jo Waddell, City Clerk

APPROVED AS TO FORM:

_____
Stephen M. Kemp, City Attorney

Attachment:

1. Intergovernmental Agreement

When recorded return to:

Deer Valley Unified School District No. 97
20402 N. 15th Avenue
Phoenix, Arizona 86027-3699
Attn: Jim Migliorino, Director of Fiscal Services

INTERGOVERNMENTAL AGREEMENT REGARDING ROADWAY IMPROVEMENTS IMPACTING TERRAMAR ELEMENTARY SCHOOL

I. PARTIES

This Agreement is entered into on this ____ day of _____, 2010, pursuant to A.R.S. § 11-951, et seq., between the following entities for the joint exercise of their powers:

DEER VALLEY UNIFIED SCHOOL DISTRICT NO. 97
A political subdivision of the State of Arizona
(hereinafter "the District")

And

CITY OF PEORIA
An Arizona municipal corporation
(hereinafter "the City")

II. STATUTORY AUTHORITY

The parties to this Agreement are empowered to carry on activities included in this Agreement pursuant to:

A.R.S. § 11-951, et seq.
A.R.S. § 11-952
A.R.S. § 15-342(13)
A.R.S. § 15-364
And
PEORIA CITY CHARTER, ARTICLE I, Sec. 3

III. RECITALS AND PURPOSE

A. The District owns the land and operates an elementary school known as Terramar Elementary School located at 7000 West Happy Valley Road in Peoria, Arizona ("Terramar School Property").

LCON01810

B. The City currently is undergoing a roadway improvement construction project on Happy Valley Road between 67th Avenue and 75th Avenue in Peoria ("Happy Valley Road Project"). Portions of the Happy Valley Road Project provide a general public benefit, and other portions provide a direct benefit to the District.

C. The Terramar School Property is directly across the street from the Christ's Church of the Valley facility ("CCV").

D. As described in a letter dated January 13, 2003 from the City to Paul Basha, Olsson Associates concerning the intersection of 71st Avenue and Happy Valley Road, the City's Traffic Impact Analysis concluded that the District and CCV would be required to conduct, at their cost, a full traffic signal warrant study for the intersection within one year of the completion of the Happy Valley Road Project.

E. The portions of the Happy Valley Road Project that provide a direct benefit to the District (as well as CCV) include a traffic signal at 71st Avenue and Happy Valley Road, median improvements, and turn lane improvements (collectively the "School/Church Improvements").

E. In order to complete the Happy Valley Road Project in a timely manner and comply with City's requirements concerning the payment of roadway improvements, the Parties have agreed to a construction and payment process for the District to reimburse City for one-half of the costs of the School/Church Improvements.

F. The Parties acknowledge and agree that they are community partners, and each Party has determined that the construction and payment process described herein is in the best interest of the respective Party through improved traffic safety and traffic management.

Therefore, the parties agree as follows:

IV. INCORPORATION OF EXHIBITS

The following documents are referred to in this Agreement and are attached hereto and made a part of this Agreement by this reference:

Exhibit	Description
A	Description and Costs for School/Church Improvements

V. COVENANTS

A. City Obligations. The City shall:

1. Complete the School/Church Improvements no later than January 1, 2009.
2. Ensure that the School/Church Improvements are constructed in compliance with all existing plans and specifications.

3. Provide written billing statements to District 30 days prior to the due dates specific in Subsection B.

B. District Obligations.

The District shall: submit payment to City in the amount of $129,464 for its share of the construction costs of the School/Church Improvements. Such payment shall be due on June 30, 2009 or two years from the date that the School/Church Improvements are completed, whichever date is later.

VI. NOTICES

Notices required or permitted hereunder shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service (e.g., Federal Express, DHL) or by mutually acknowledged facsimile transmission addressed as follows:

To District:	Virginia McElyea Superintendent Deer Valley Unified School District 20402 N. 15th Avenue Phoenix, Arizona 85027
With a copy to:	Jennifer N. MacLennan Gust Rosenfeld P.L.C. 201 E. Washington, Suite 800 Phoenix, Arizona 85004-2327
To City:	Carl Swenson, City Manager City of Peoria 8401 W. Monroe, Room 300 Peoria, Arizona 85345
With a copy to:	Office of the City Attorney City of Peoria 8401 W. Monroe St. Peoria, Arizona 85345

VII. TIME OF ESSENCE

Time is hereby declared to be of the essence for the performance of all conditions and obligations under this Agreement.

VIII. TERM

A. This Agreement shall become effective on or upon filing with the Maricopa County Recorder after having been approved by the City and the District.

B. This Agreement shall terminate when all terms contained in Section 5 of the Agreement have been completed, or January 1, 2012, whichever date is earlier.

IX. INSURANCE AND INDEMNIFICATION

A. Each party shall secure and maintain during the life of this Agreement appropriate insurance coverage. Such insurance may be in any form, including the party's ordinary coverage or funded self-insurance.

B. In the event of any third party claim or legal action against both the District and the City, the parties to this Agreement agree to discuss and analyze the benefits of a common but mutual defense against such claim or legal action.

X. CANCELLATION

To the extent applicable by provisions of law, the parties hereto acknowledge that this Agreement is subject to cancellation pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein.

XI. APPROPRIATIONS

The obligation of the District to make any payment pursuant to tohis Agreement is a current expense of the District, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the District. If the Board of the District fails to appropriate money sufficient to pay the reimbursements as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fishcal year and the City and District shall be relieved of any subsequesnt obligation under this Agreement.

XII. SUDAN/IRAN

Pursuant to A.R.S. § 35-397, the parties hereby warrant, and represent to each other, that they do not have, and their subconstractors do not have and during the term hereof will not have a scrutinized business oepration in either Sudan or Iran.

XIII. NO AGENCY CREATED

Nothing contained in this Agreement creates any partnership, joint venture, or agency relationship between the City and the District. No term or provision of this Agreement is intended to be for the benfit of any person, firm, organization, or corporation not a party hereto, and no other person, firm, organization, or corporation may have any right or cause of action hereunder.

XIV. GOVERNING LAW

A. This Agreement shall be construed in accordance with the laws of the State of Arizona without regard to its conflict of interest provisions.

B. During the performance of this Agreement, the City and the District agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, nondiscrimination and affirmative action.

XV. AMENDMENTS

Amendments to this Agreement shall be in writing, signed by all parties to the Agreement. Formal amendments shall not be needed to notify parties of address changes, changes in position titles, appointment of designees, etc. Such information may be provided via correspondence between the Parties.

IN WITNESS WHEREOF, the parties enter into this Agreement the date and year first specified above.

CITY OF PEORIA

By:_____
Name:_____
Its:_____

ATTEST:

_____

DEER VALLEY UNIFIED SCHOOL DISTRICT NO. 97

By: [signature]
Name: Jim Migliorino
Its: Executive Director - Fiscal Services

ATTEST:

Shelly A. Goetl

INTERGOVERNMENTAL AGREEMENT DETERMINATION

This Agreement has been reviewed by the Office of the City Attorney as legal counsel for the City of Peoria, who has determined that the Agreement 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.

DATED this ____ day of _____, 2010

OFFICE OF THE CITY ATTORNEY

_____

Stephen M. Kemp, Esq.
8401 W. Monroe, Room 340
Peoria, Arizona 85345

INTERGOVERNMENTAL AGREEMENT DETERMINATION

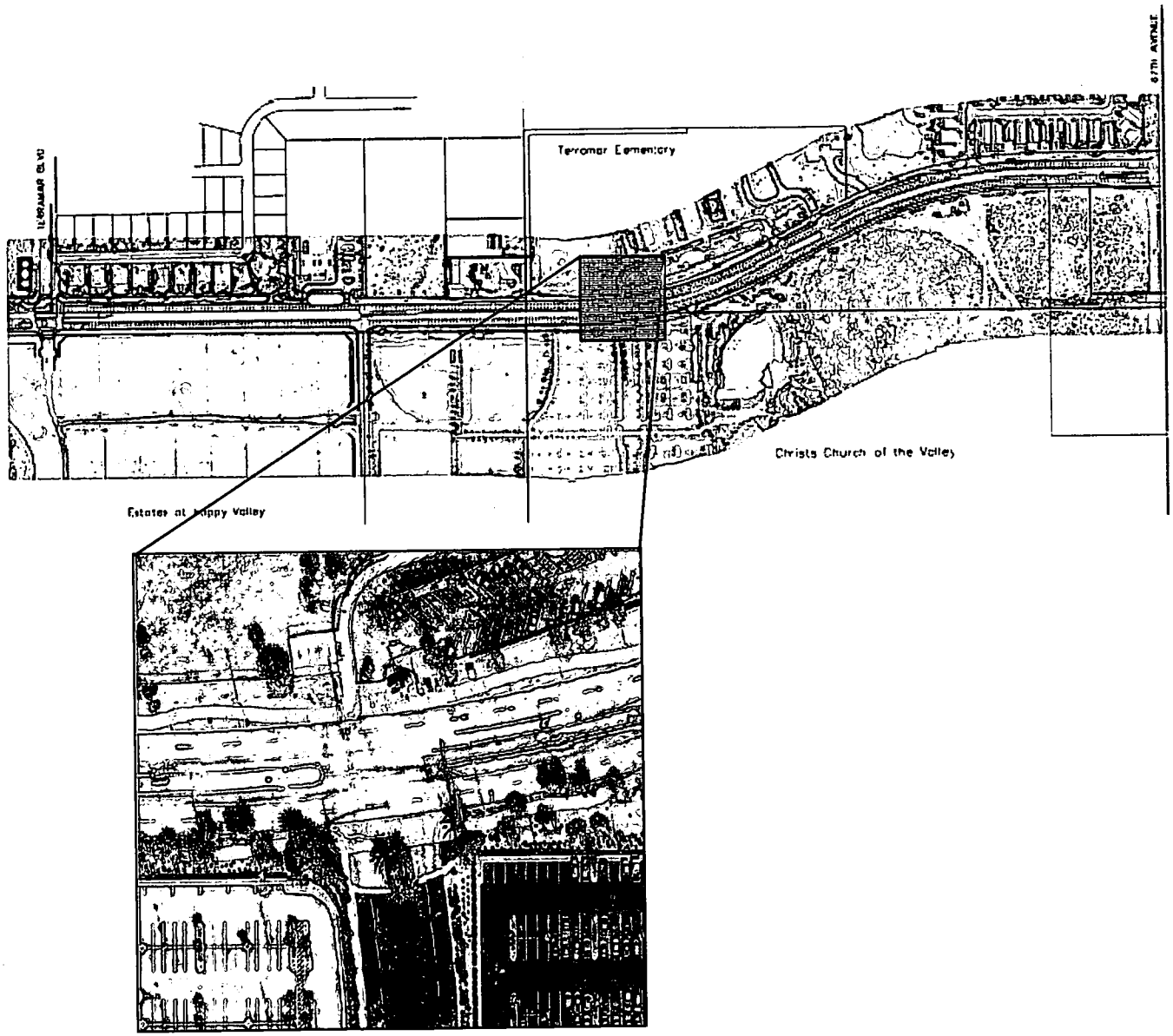
This Agreement has been reviewed by counsel for the Deer Valley Unified School District and it is determined that the Agreement is in the proper form and within the powers and authorities granted under the laws of the State of Arizona to the Deer Valley Unified School District

DATED this 26 day of January, 2010.

DEER VALLEY UNIFIED SCHOOL DISTRICT NO. 97

_____

Jennifer N. MacLennan, Esq.
Gust Rosenfeld P.L.C.
201 E. Washington Street, Suite 800
Phoenix, Arizona 85004-2327



Terramar Elementary/ Christ's Church of the Valley Shared Driveway Signal