

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATIONS**

CC: \_\_\_\_\_  
Amend No. \_\_\_\_\_

Date prepared: April 7, 2010

Council Meeting Date: May 4, 2010

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**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:** Amendment No. One to the Intergovernmental Agreement with the State of Arizona for the construction of the Beardsley Road Extension (known as Beardsley Connection by ADOT) (PW00152, AG Contract No. P001-2009-003754, ADOT File No. IGA/JPA 09-044, TRACS No. HSS75501 C)

**RECOMMENDATION:**

Discussion and possible action to adopt the Resolution approving Amendment No. One to the Intergovernmental Agreement (IGA) with the State of Arizona for the construction of the Beardsley Road Extension, known as the Beardsley Connection by ADOT.

**SUMMARY:**

In July 2008 Mayor and Council approved an Intergovernmental Agreement (IGA) with the State of Arizona, Department of Transportation (ADOT), City of Glendale and the Maricopa Association of Governments (MAG) for the design and construction of the Beardsley Connector Project.

In July 2009 Mayor and Council approved an IGA with ADOT that approved federal funding for the project. According to the IGA, the funding for the total project was estimated and to be funded by the parties as summarized below:

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**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# \_\_\_\_\_ LIC. # \_\_\_\_\_  
Action Date: \_\_\_\_\_

Council Communication  
Beardsley Road Extension  
Amendment No. One to ADOT IGA  
May 4, 2010  
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<b>ARRA/Recovery Act Fund</b>	<b>\$ 2,850,401</b>
CITY OF PEORIA Funds	\$ 2,647,762
Other Federal Funds	<u>\$ 5,991,524</u>
<b>TOTAL Project Costs</b>	<b>\$11,489,687</b>

The City paid ADOT the \$2,647,762 identified above. In November 2009, ADOT opened bids for the project and costs were less than estimated. As a result, the parties are recommending approval of Amendment No. One, which revises the total project cost and the parties funding responsibilities. A summary is provided below.

<b>ARRA/Recovery Act Fund</b>	<b>\$ 1,723,712</b>
CITY OF PEORIA Funds	\$ 370,247
Other Federal Funds	<u>\$ 6,125,315</u>
<b>TOTAL Project Costs</b>	<b>\$ 7,919,274</b>

Upon execution of this agreement ADOT will promptly refund Peoria \$2,277,515 for the difference in these amounts.

**ATTACHMENTS:**

1. Resolution
2. IGA

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

RESOLUTION NO. 2010-26

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, ARIZONA, ADOPTING A RESOLUTION APPROVING AMENDMENT NO. ONE TO THE INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA AND THE CITY OF PEORIA FOR CONSTRUCTION OF THE BEARDSLEY ROAD EXTENSION, KNOWN AS BEARDSLEY ROAD CONNECTION BY ADOT, PEORIA'S PHASE I OF THE BEARDSLEY EXTENSION 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 83<sup>rd</sup> Avenue/Lake Pleasant Pkwy, Phase I, of the City's Beardsley Extension Project; and

WHEREAS, in consideration of the mutual agreements, due to changed conditions in available funding and estimated costs the parties agree to amend the original agreement.

WHEREAS, consistent with the terms of the original agreement, ADOT invoiced the City in the amount of \$2,647,762.00, and payment was made by the City. Under the amended terms, Peoria made an overpayment to ADOT in the amount of \$2,277,515.00. Accordingly, upon execution of the amended agreement, ADOT will refund to the City the amount of \$1,822,012.00 (80% of the overpayment) with the balance to be refunded upon completion of the project and after adjustment for actual final Project Costs as part of the close-out process.

Resolution No. 2010-26  
IGA with State of AZ and City of Peoria  
Peoria's Phase I Beardsley Connection Project  
May 4, 2010  
Page 2 of 3 Pages

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 Extension.

PASSED AND APPROVED by the Mayor and City Council of the City of Peoria, Arizona this 4<sup>th</sup> day of May 2010.

\_\_\_\_\_  
Bob Barrett, Mayor

ATTEST:

\_\_\_\_\_  
Mary Jo Waddell, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephen M. Kemp, City Attorney

*Attachment:*

1. Intergovernmental Agreement Amendment No. One

ADOT File No.: IGA/ JPA 09-044I  
AG Contract No.: P001 2009 003754  
**Amendment No. One**  
Project No.: PEO-0(206)  
Project: Beardsley Road Connection  
Section: Beardsley Road  
TRACS No.: **SS755 01C**  
Budget Source Item No.: **ARRA**

**AMENDMENT NO. ONE  
TO  
INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF PEORIA

**THIS AGREEMENT**, entered into this date PLEASE DO NOT ENTER, 2010, Amendment No. One amending JPA No. 09-044I, A.G. Contract No.: P001 2009 003754, and executed October 26, 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.

**THEREFORE, in consideration of the mutual Agreements expressed herein, due to changed conditions in available funding and estimated costs the Parties agree to amend the original Agreement as follows:**

1. Section I, Paragraph 7 is amended as follows:

**TRACS No. SS754 01C**

ARRA/Recovery Act Funds	\$ 1,423,712.00
City of Peoria Funds	\$ 370,247.00
Other Federal Funds	<u>\$ 6,125,315.00</u>

**\*TOTAL Project Costs** \$ 7,919,274.00

\*(Includes CE and project contingencies)

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2. Consistent with terms of the original Agreement, ADOT invoiced the City in the amount of \$2,647,762.00, and payment in that amount has been received from the City. Under the amended terms, Peoria has in effect made an overpayment to ADOT in the amount of \$2,277,515.00 (the difference between \$2,647,762.00 and \$370,247.00). Accordingly, upon execution of this Amendment to the original Agreement by all Parties, ADOT will act promptly to make a refund to the City in the amount of \$1,822,012.00 (80% of the overpayment) with the balance to be refunded upon completion of the Project after adjustment for actual final Project costs as part of the normal project close-out process.

**III. MISCELLANEOUS PROVISIONS**

1. 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. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, Arizona 85007  
(602) 712-7124  
(602) 712-3132 Fax

City of Peoria  
Attn: Chris Kmetty, PE  
8401 W. Monroe  
Peoria, Arizona 85345  
(623) 773-7247  
(623) 773-7212 Fax

2. This Amendment shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

**PURSUANT TO ARIZONA REVISED STATUTES** § 11-952 (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

**EXCEPT AS AMENDED** herein, **ALL OTHER** terms and conditions of the original Agreement remain in full force and effect.

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**IN WITNESS WHEREOF**, the Parties have executed this Amended 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 WADDELL**  
City Clerk

**JPA 09-0441  
Amendment No. One**

**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 \_\_\_\_\_, 2010.

\_\_\_\_\_  
City Attorney