

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: _____
Amend No. _____

Date prepared: March 3, 2010

Council Meeting Date: May 4, 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 Roadway Improvement Agreement with the Christ's Church of the Valley 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 Roadway Improvement Agreement with Christ's Church of the Valley (CCV) 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 CCV as part of the Happy Valley Road Improvements project.

As part of the development requirements for CCV and the Deer Valley Unified School District (DVUSD), both were responsible to conduct a traffic signal warrant study for the intersection of Happy Valley Road and aligned CCV and DVUSD driveway within one year after the completion of the Happy Valley Road improvements.

CCV 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.

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: _____

Staff and the City Attorney's Office negotiated an agreement with CCV to advance the signal installation. The responsibilities under the terms of the IGA are defined as follows:

Christ's Church of the Valley

- Submit payment for its share of the construction cost of \$129,464 for the DVUSD/CCV improvements on January 1, 2011 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 CCV 30 days prior to the due dates listed in the IGA, January 1, 2011, 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.

FISCAL NOTE:

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

ATTACHMENT:

1. Resolution

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

RESOLUTION NO. 2010-27

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, ARIZONA, ADOPTING A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT WITH THE CHRIST'S CHURCH OF THE VALLEY (CCV) 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 Christ's Church of the Valley 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 Christ's Church of the Valley for reimbursement of costs for construction of Happy Valley Road School/Church improvements

Resolution No. 2010-27
IGA with Christ's Church of the Valley and the City of Peoria
Happy Valley Road Project – School/Church Improvements
May 4, 2010
Page 2 of 2 Pages

PASSED AND APPROVED by the Mayor and City Council of the City of Peoria, Arizona
this 4th 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

**ROADWAY IMPROVEMENT AGREEMENT BETWEEN
CHRIST'S CHURCH OF THE VALLEY AND
THE CITY OF PEORIA**

This Roadway Improvement Agreement ("Agreement") is entered into as of the 29 day of March, 2010 ("Effective Date"), by and between **Christ's Church of the Valley**, an _____ ("Landowner") and the **City of Peoria**, an Arizona municipal corporation organized and existing under the laws of the State of Arizona (the "City"). The Landowner and the City are collectively referred to as the "Parties" and independently as "Landowner," "City," or "Party."

RECITALS

A. 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 Landowner.

B. Landowner's facility is located at 7007 W. Happy Valley Road. Directly across from the facility is the Terramar Elementary School, owned and operated by the Deer Valley Unified School District ("DVUSD").

C. 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 Landowner and DVUSD 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.

D. The portions of the Happy Valley Road Project that provide a direct benefit to the Landowner (as well as DVUSD) 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 Landowner 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.

AGREEMENT

NOW THEREFORE, IN CONSIDERATION of the foregoing Recitals, and the mutual promises, covenants, and agreements hereinafter contained, and each act of the Parties hereto, the Parties agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

2. 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:

<u>Exhibit</u>	<u>Description</u>
A	Scope of Work/Project Plan for School/Church Improvements
B	Cost for School/Church Improvements

3. City Obligations. The City shall:

- a. Complete the School/Church Improvements no later than January 1, 2009.
- b. Ensure that the School/Church Improvements are constructed in compliance with all existing plans and specifications.
- c. Provide written billing statements to Landowner 30 days prior to the due dates specific in Section 4.
- d. Invoice Landowner 30 days prior to January 1, 2011 in the amount of \$129,464.00 of the design and construction costs of the School/Church Improvements.

4. Landowner Obligations. The Landowner shall:

- a. Submit payment to City in the amount of \$129,464.00 for its share of the design and construction costs of the School/Church Improvements. Such payment shall be due on January 1, 2011.

5. Indemnification. Each Party shall indemnify and hold harmless the other Party, its directors, officers, employees, and agents, for, from and against all claims, demands, suits and costs including, but not limited to, costs of defense, reasonable attorneys' fees, witness fees of any type, losses, damages, expenses and liabilities, whether direct or indirect, and whether to any person including, but not limited to, employees of the Party, or to property, to which the other Party, its directors, officers, employees, or agents may be put or subject to by reason of (i) any act or omission by

the respective Party, or any of its directors, officers, employees, agents, or invitees relating to the Party's actions under this Agreement by any person or entity, including but not limited to the Party and the party's employees, agents, contractors, or invitees; or (ii) any failure on the part of the other Party, or any of its directors, officers, employees, or agents to fulfill its obligations hereunder except to the extent that any loss, damage, expense, and liability is attributable to the negligent or willful acts and misconduct of the Party, its directors, officers, employees, and agents. The provisions of this Section shall survive revocation and/or termination of this Agreement.

6. Relationship of the Parties. It is acknowledged and understood that the contractual relationship between the Parties is undertaken pursuant to this Agreement and nothing contained in this Agreement will create any partnership, joint venture or agency relationship between the City and the Landowner. No term or provision of this Agreement is intended to, or will be, for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation will have any right or cause of action hereunder, whether as a third-party beneficiary or otherwise, unless stated herein.

9. Amendment or Cancellation of the Agreement. This Agreement may be amended or cancelled, in whole or in part with respect to all or any portion of the Agreement, with the mutual written consent of the Parties hereto.

10. Duration. This Agreement shall terminate when all terms contained in Sections 3 and 4 of the Agreement has been completed. However, Section 5 of the Agreement shall survive revocation and/or termination of this Agreement.

GENERAL PROVISIONS

1. Assignment. Landowner shall not assign, encumber, mortgage or transfer any rights under this Agreement, or the rights and privileges herein, in whole or in part, without the City's prior written consent, which consent may be withheld for any reasonable reason.

2. Attorneys' Fees and Costs. If the City or Landowner defaults in the timely performance of its obligations under this Agreement, the Party not in default shall be entitled to recover court costs and reasonable attorneys' fees, as determined by a court, in any suit or proceeding to enforce its rights under this Agreement. The foregoing shall not in any way limit or restrict any right or remedy at law or equity, which would otherwise be available to such Party in default.

3. Authority. The Landowner represents and warrants to the City: (1) that it is duly formed and validly existing under the laws of the State of Arizona; and (2) that the individual executing this Agreement on behalf of the Landowner is authorized and empowered to bind the Landowner. The City represents and warrants to the Landowner: (1) that it is a duly formed municipal corporation within the State of Arizona; and (2) that the individuals executing this Agreement on behalf of the City are authorized and empowered to bind the City.

4. Cancellation. This Agreement is subject to cancellation for conflict of interest without penalty or further obligation as provided by A.R.S. § 38-511.

5. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

6. Default, Remedies. If any Party to this Agreement breaches any provision of the Agreement, the non-defaulting Party will be entitled to all remedies available at both law and in equity, including but not limited to specific performance.

7. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to this issue and will not be changed or added to except in the manner provided herein. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, other than specifically incorporated herein by reference, are superseded by this Agreement. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, other than specifically incorporated herein by reference, regarding the subject of this Agreement, are superseded by this Agreement.

8. Governing Law. This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona.

9. Severability. If any provision of this Agreement is declared void or unenforceable, the provisions will be severed from this Agreement and the remainder of the Agreement will otherwise remain in full force and effect, provided that the overall intent of the Parties is not materially vitiated by such severability.

10. Service of Notice. All notices and demands required or permitted by this Agreement shall be in writing and shall be deemed to have been given properly when (i) sent by certified mail (postage fully prepaid) or delivered personally or by overnight courier, to the respective address below or to such other address as may be furnished in writing by either Party to the other pursuant to this Section 12; or (ii) transmitted by telefacsimile to the respective telefacsimile number below or to such other telefacsimile number as may be furnished in writing by either Party to the other pursuant to this Section 12, and the appropriate confirmation is received .

Notices to Landowner:

____, Arizona 85____
Facsimile No. ____/____-____
Telephone: ____/____-____

Notices to City:

City of Peoria

Attn: Engineering Director

Peoria, Arizona 85345
Facsimile No. 623/773-____
Telephone No. 623/773-____

the authority to execute this Agreement as such on behalf of CCV by
authority of Board of Elders and that said Shannon R. Kulinski
acknowledges that he executed said Agreement.

Shannon R. Kulinski
Notary Public

My Commission Expires: April 1, 2011

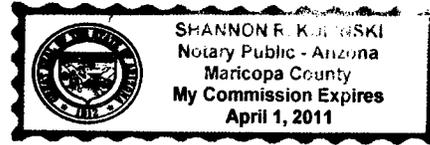


Exhibit "A"

Scope of Work/Project Plan for School/Church Improvements

Exhibit "B"

Summary of costs for School/Church Improvements

Traffic Signal Warrant Study.....	\$ 12,000
Construction of a traffic signal shared driveway.....	\$ 236,696
APS Electrical Connection Cost.....	\$ 10,232
Total Cost.....	\$258,928
CCV Obligation (50%)	\$129,464