

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: 4C
Amend No. _____

Date prepared: July 27, 2010

Council Meeting Date: September 21, 2010

TO: Carl Swenson, City Manager
THROUGH: Susan J. Daluddung, Deputy City Manager
FROM: Andrew Granger, P. E., Engineering Director
SUBJECT: Lake Pleasant Parkway; Westwing Parkway to Central Arizona Project Canal (Engineering Project No. EN00241, IGA/JPA 10-075-I, TRACS No.: SS 880 03D)

RECOMMENDATION:

Discussion and possible action to approve the Intergovernmental Agreement (IGA) with the Arizona Department of Transportation (ADOT) for the final design of Lake Pleasant Parkway; Dynamite (Westwing Parkway) to the Central Arizona Project (CAP) Canal.

SUMMARY:

In February 2010 Maricopa Association of Governments approved Federal Surface Transportation Program (STP) funds for the final design of Lake Pleasant Parkway from Westwing Parkway to the CAP Canal.

On May 28, 2010 the final Design Concept Report (DCR) Update and 30% plans were submitted to and accepted by the city.

On June 15, 2010 Council approved the contract amendment to provide final design services for Lake Pleasant Parkway from Westwing Parkway to the CAP Canal.

Staff is now recommending the approval of the IGA between the Arizona Department of Transportation and city for federal funding of the final design services for Lake Pleasant Parkway from Westwing Parkway to the CAP Canal.

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. #** 2010-78
LCON# 09210 **LIC. #** _____
Action Date: _____

Under the terms of the agreement ADOT will:

- Submit all documentation required to the Federal Highway Administration (FHWA) containing the above-mentioned project with the recommendation that funding be approved for design and funding.
- Approve the project, if such project funds are available from and authorized by FHWA for the project. Be the designated authorized agent for the city.

The City will:

- Designate the State as authorized agent for the city, if such project is approved by the FHWA and project funds are available.
- Be responsible for any overage of costs exceeding the maximum Federal funds available for the project.
- Be responsible for any unforeseen conditions or circumstances which increase the cost of said work. Should a change in the extent or scope of the work called for in this Agreement become necessary, be obligated to incur and will pay for said increased costs.
- Enter into an agreement with the design consultant which states that the design consultant shall provide services as required and requested throughout the design and construction phases of the project.
- Upon completion of the project, agree to accept and assume full responsibility of said project in writing.

The design will meet all State and Federal requirements and include the following improvements:

- 4 lane cross section plus bike lanes,
- 36-inch water line (UT00148) and 21-inch sanitary sewer (UT00151),
- 6 lane bridge over the CAP Canal,
- ITS, traffic signal, street lighting improvements,
- drainage improvements,
- extension of dry utilities after coordination with each utility company, and
- landscape/irrigation system improvements.

The project schedule is as follows:

Task	Schedule
Design	July 2010 to December 2011
ROW Acquisition	July 2010 to Spring 2012
Construction	Summer 2012 to Summer 2014

FISCAL NOTE:

Funding for this IGA is available in the FY11 CIP. Payment for final design will be made from the Federal Funded Capital Projects Street System Account 4555-4555-543001-CIPST-EN00241DS (\$1,907,000), the Transportation Sales Tax Street System Account 7010-7075-543001-CIPST-EN00241DS (\$447,991), the County Transportation Tax Capital Projects Street System Account 4550-4550-543001-CIPST-EN00241DS (\$369,759), the Water Expansion Water System Account 2161-2221-543002-CIPWR-UT00148DS (\$151,735), and the Wastewater Expansion Wastewater System Account 2510-2630-543003-CIPWW-UT00151DS (\$133,265).

Payment for the DCR will be made from the Wastewater Expansion Fund Wastewater System Account 2510-2630-543003-CIPWW-UT00151DS (\$10,821).

ATTACHMENTS:

1. Intergovernmental Agreement
2. Resolution
3. Vicinity Map
4. Location Map

CONTACT: Chris Kmetty, P.E., Senior Civil Engineer, 623-773-7247

ADOT File No.: IGA/JPA 10-075-I
AG Contract No.: P0012010 002835
Project No.: Lake Pleasant Parkway
Design
Section: Lake Pleasant Parkway,
Dynamite Blvd to CAP Canal
TRACS No.: SS 880 03D
MAG/STIP: PEO10-805

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF PEORIA

THIS AGREEMENT is entered into this date _____, 2010, 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 collectively are 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. 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 and estimates will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
 4. The City, in order to obtain Federal funds for the design of the project, is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City and FHWA. The Federal funds will be used for the design of this project.
 5. The interest of the State in this project is the acquisition of Federal funds for the use and benefit of the City and to authorize such Federal funds for the project pursuant to Federal law and regulations. The State shall be the designated agent for the City.
 6. The work proposed under this Agreement is for the design of Lake Pleasant Parkway from Dynamite Boulevard to CAP Canal.
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TRACS No. SS880 03D

Total participating funds	\$2,395,579.00
Federal funds @ 94.3% capped	\$2,259,031.00
Estimated City funds (match) @ 5.7%	\$ 136,548.00
Estimated City funds (other) @100%	<u>\$ 614,171.00</u>
Estimated Design Project Costs	\$3,009,750.00

The Parties acknowledge that the eventual actual cost may exceed the estimate, and in such case, the City is responsible for any and all costs exceeding the estimate. Actual costs may be less than the estimate and not needed for the Project, at which time any excess funding will be de-obligated from the Project.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Submit all documentation required to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that funding be approved for design and funding. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.

b. Request the maximum Federal funds programmed for the design of this Project, including design engineering and administration costs. Should costs be deemed ineligible or exceed the maximum Federal funds available it is understood and agreed that the City will be responsible for these costs.

c. Approve the Project, if such project funds are available from and authorized by FHWA for the Project. Be the designated authorized agent for the City.

d. 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.

e. No more than monthly and within thirty (30) days of receipt and approval of an invoice from the City, reimburse the City, up to a total of **\$2,259,031.00** for approved costs.

2. The City will:

a. Designate the State as authorized agent for the City, if such project is approved by the FHWA and project funds are available.

b. Upon notification from the State of FHWA authorization, proceed to advertise for, receive and open bids and enter into a contract(s) with a firm(s) to whom the award is made for the design of the Project. Such Project is to be performed, completed, accepted and paid for in accordance with the requirements of the approved contract between the City and their designer.

c. Be responsible for any overage of costs exceeding the maximum Federal funds available for the Project. Agree that the cost of the analysis and work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA.

d. Within thirty (30) days of payment to the contractor for services, and no more than monthly, invoice the State for reimbursement of approved costs, providing all necessary documentation.

e. Be responsible for any unforeseen conditions or circumstances which increase the cost of said work. Should a change in the extent or scope of the work called for in this Agreement become necessary, be obligated to incur and will pay for said increased costs.

f. Pursuant to 23 USC 102(b), repay all Federal funds reimbursements for preliminary engineering costs on the Project if it does not advance to right of way acquisition or construction within 10 years after Federal funds were first made available.

g. 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 and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award 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. **The City shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State as an additional indemnitee in the City contracts with its contractors.** It is understood and agreed that the State's participation is confined to securing federal aid on behalf of the City and requirements contained in this Agreement; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely 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 covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

4. The cost of the project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (FHWA).

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

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 09-09 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: City Manager's Office
8401 W. Monroe Street
Peoria, Arizona 85345
(623) 773-7306
(623) 773-7300

12. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The City warrants compliance with all Federal immigration laws and regulations relating to employees and warrants 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 City may be subject to penalties up to and including termination of the Agreement.

c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the City 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, of Peoria

By _____
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

ATTEST:

By _____
MARY JO WADDELL
City Clerk

8-5-10- ly

JPA 10-075-I

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

RESOLUTION NO. 2010-78

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 DEPARTMENT OF TRANSPORTATION FOR THE DESIGN OF LAKE PLEASANT PARKWAY FROM DYNAMITE BOULEVARD TO CENTRAL ARIZONA PROJECT (CAP) CANAL.

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 Department of Transportation for the design of Lake Pleasant Parkway from Dynamite Boulevard CAP Canal; and

WHEREAS, the State will submit all documentation required to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that funding be approved for design; and

WHEREAS, if federal funding is available from and authorized by FHWA for the Project, the State will be designated as the authorized agent for the City; and

WHEREAS, no more than monthly and within thirty (30) days of receipt and approval of an invoice from the City, reimburse the City, up to a total of **\$2,259,031** for approved costs; and

WHEREAS, upon notification from the State of FHWA authorization, proceed to advertise for, receive and open bids and enter into contract(s) with firm(s) to whom award is made for design of the Project; and

WHEREAS, 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 FHWA for its approval.

Resolution No. 2010-78
IGA with State of AZ
Design of Lake Pleasant Parkway from Dynamite Blvd to CAP Canal
September 21, 2010
Page 2 of 2 Pages

THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of Peoria, Arizona approves and adopts this Resolution to enter into the Intergovernmental Agreement with the State of Arizona Department of Transportation for the design of Lake Pleasant Parkway from Dynamite Boulevard to CAP Canal.

PASSED AND ADOPTED by the Mayor and City Council of the City of Peoria, Arizona this 21st day of September, 2010.

Bob Barrett, Mayor

ATTEST:

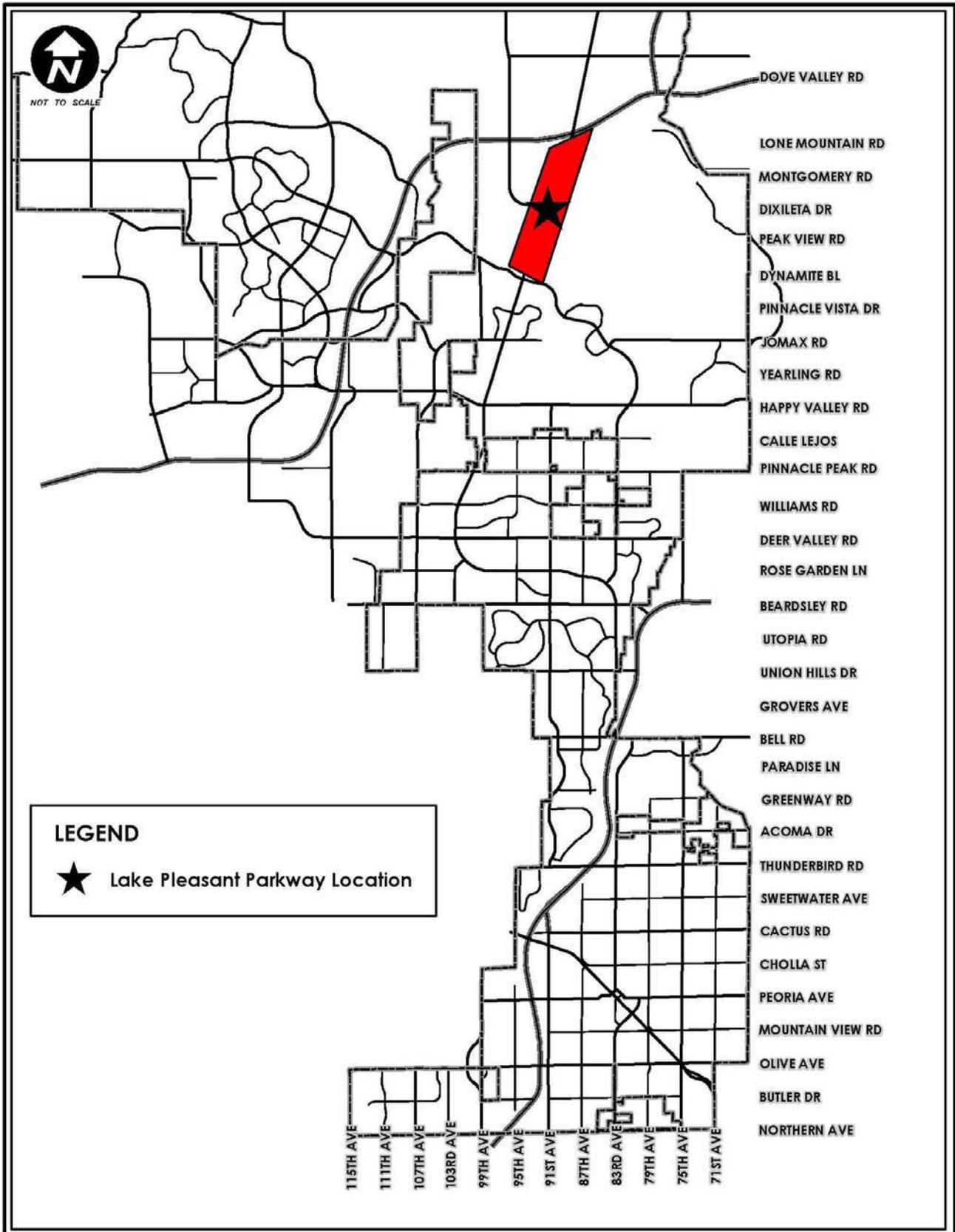
Rhonda Simmons, Acting City Clerk

APPROVED AS TO FORM:

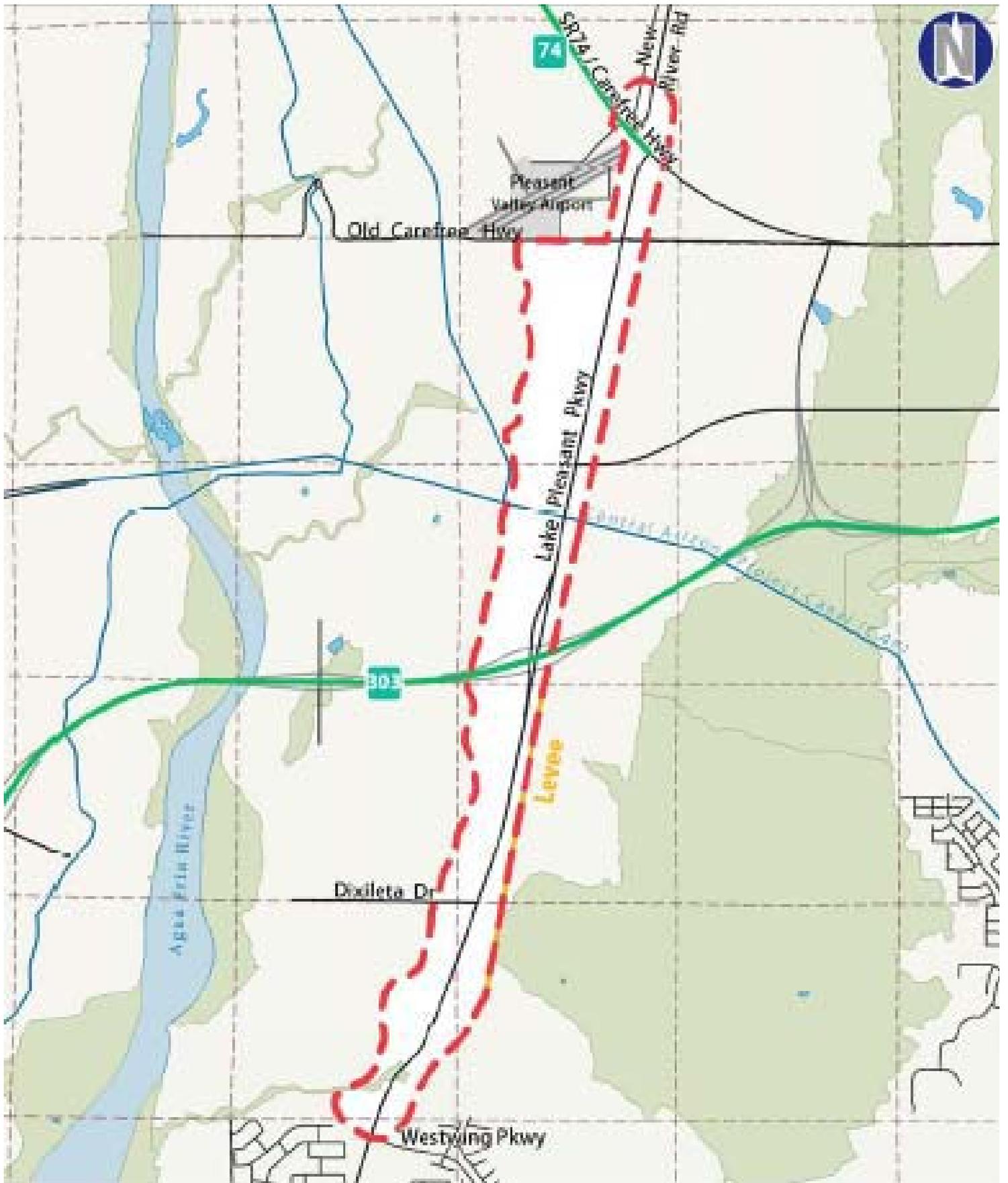
Stephen M. Kemp, City Attorney



LPP – Westwing Pkwy to L303



VICINITY MAP



LOCATION MAP