

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATIONS**

cc: 8C  
Amend No. \_\_\_\_\_

Date prepared: October 5, 2010      Council Meeting Date: November 16, 2010

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**TO:** Carl Swenson, City Manager  
**THROUGH:** Susan J. Daluddung, Deputy City Manager  
**FROM:** Andrew Granger, P. E., Engineering Director  
**SUBJECT:** Intergovernmental Agreement, State of Arizona, New River Trail Olive Avenue Underpass, Olive Avenue and New River Trail.

**RECOMMENDATION:**

Discussion and possible action to adopt Resolution 2010-93 approving the Intergovernmental Agreement (IGA) with the State of Arizona for construction of the New River Trail Olive Avenue Underpass Project, located at Olive Avenue and New River Trail. (Engineering Project No. CS00142, ADOT File No. IGA/JPA 09-212I, TRACS No. SS72801C).

**SUMMARY:**

In March 2009, Maricopa Association of Governments (MAG) approved federal funds (\$700,000) for FY 2011 for the construction of the New River Trail Olive Avenue Underpass.

In July 2010, the Arizona Department of Transportation (ADOT) approved the plans and sent the City a draft IGA for review. The City and ADOT came to final terms on the IGA language in September 2010.

Staff is now recommending approval of the IGA between ADOT and the City for construction of the Olive Avenue Underpass at New River Trail.

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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. # 2010-93  
LCON# 11710 LIC. # \_\_\_\_\_  
Action Date: \_\_\_\_\_

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Under the terms of the agreement ADOT will:

- Submit a program to the Federal Highway Administration (FHWA) containing the above mentioned project with the recommendation that it be approved for construction and funding;
- Upon Approval of the funding by FHWA, proceed to advertise for, receive and open bids, subject to the concurrence of the FHWA and the City, to whom the award is made for and enter into a contract with a firm for the construction of the project.

The City will:

- Designate the State as authorized agent for the City;
- Be responsible for any overage of costs exceeding the maximum federal funds available for the project (estimated at \$480,000);
- Enter into an agreement with the design consultant for construction related services as requested by the City throughout construction;
- Provide a set of as-built plans upon completion of the construction phase of the project. An electronic version of the as-built plans shall be forwarded to ADOT Local Government Section.

The construction of the project will meet all State and Federal requirements and include the following improvements:

- Below grade concrete underpass at Olive Avenue;
- Lighting inside underpass;
- Storm drain modifications to existing structures on Olive Ave and New River;
- Safety rail along new trail improvements south and north of new underpass.

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The project schedule is as follows:

| Task                       | Schedule                  |
|----------------------------|---------------------------|
| Design Complete            | Fall 2010                 |
| Construction               | Winter 2011 – Summer 2011 |
| Finalize Project with ADOT | Fall 2011                 |

**FISCAL NOTE:**

Funding for this project is available in the FY 11 Capital Improvement Program. Payment for construction for the City portion of \$480,000 will be made from the Proposed GO Bonds, Parks Improvements Account 4240-4240-543005-CIPRT-CS00142. The remaining \$700,000 will be funded with federal funds as outlined in the attached draft IGA.

**ATTACHMENTS:**

1. Vicinity Map
2. Resolution
3. Intergovernmental Agreement (IGA)

**CONTACT:** Ed Striffler, X7721



NOT TO SCALE

- DOVE VALLEY RD
- LONE MOUNTAIN RD
- MONTGOMERY RD
- DIXILETA DR
- PEAK VIEW RD
- DYNAMITE BL
- PINNACLE VISTA DR
- JOMAX RD
- YEARLING RD
- HAPPY VALLEY RD
- CALLE LEJOS
- PINNACLE PEAK RD
- WILLIAMS RD
- DEER VALLEY RD
- ROSE GARDEN LN
- BEARDSLEY RD
- UTOPIA RD
- UNION HILLS DR
- GROVERS AVE
- BELL RD
- PARADISE LN
- GREENWAY RD
- ACOMA DR
- THUNDERBIRD RD
- SWEETWATER AVE
- CACTUS RD
- CHOLLA ST
- PEORIA AVE
- MOUNTAIN VIEW RD
- OLIVE AVE
- BUTLER DR
- NORTHERN AVE

**LEGEND**



Olive Ave/New River Trail  
 NRT - Olive Ave Underpass  
 CS00142

- 115TH AVE
- 111TH AVE
- 107TH AVE
- 103RD AVE
- 99TH AVE
- 95TH AVE
- 91ST AVE
- 87TH AVE
- 83RD AVE
- 79TH AVE
- 75TH AVE
- 71ST AVE



**VICINITY MAP**

RESOLUTION NO. 2010-93

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA ADOPTING A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA AND THE CITY OF PEORIA FOR CONSTRUCTION OF NEW RIVER TRAIL OLIVE AVENUE UNDERPASS

WHEREAS, the City of Peoria 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 (State) for the construction of New River Trail Olive Avenue Underpass;

WHEREAS, by the City entering into the Intergovernmental Agreement with the State the public interest will best be served.

THEREFORE, it is resolved by the Mayor and Council of the City of Peoria, Maricopa County, Arizona approves and adopts this Resolution to enter into an Intergovernmental Agreement with the State for the construction of the New River Trail Olive Avenue Underpass.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Maricopa County, Arizona, this 16<sup>th</sup> day of November 2010.

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

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

ADOT File No.: IGA/JPA 09-212I  
AG Contract No.: Pxxxxxxxxxxxxxx  
COG/MPO TIP No.  
Project: Olive Ave underpass  
Section: Olive Avenue at New River  
Trail  
**TRACS No.: SS 72801C**  
**Budget Source Item No.: N/A**

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE 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 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.
  3. Congress has authorized appropriations for, but not limited, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
  4. 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 to the State and Federal Highway Administration (FHWA) for its approval.
  5. The City, in order to obtain Federal funds for the construction 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, including actual construction engineering and administration costs (CE).
  6. 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.
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7. The work contemplated under this Agreement is for the construction of the Olive Avenue Underpass at New River Trail, hereinafter referred to as the "Project". The State shall advertise, bid and award the Project. The estimated construction costs are as follows:

**TRACS No. SS72801C**

|   |                       |
|---|-----------------------|
| *Estimated Project Costs                        | <b>\$1,200,000.00</b> |
| Federal Aid Funds @ 94.3% (capped)              | \$ 700,000.00         |
| City Funds @ 5.7%                               | <u>\$ 480,000.00</u>  |
| *Total Estimated City Funds                     | <b>\$1,180,000.00</b> |
| *(Includes 15% CE and 5% project contingencies) |                       |

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

**II. SCOPE OF WORK**

1. The State will:

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction and funding. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans.

b. Upon approval by FHWA, and with the aid and consent of the City and the FHWA, the State shall proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the City, to whom the award is made for and enter into a contract(s) with a firms(s) for the construction of the project.

c. Enter into a Project Agreement with FHWA on behalf of the City covering the work encompassed in said construction contract and will request the maximum Federal Funds available, including construction engineering and administration costs. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

d. Upon execution of this Agreement, invoice the City for the City's estimated share of the Project, currently estimated at **\$480,000.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

e. 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.

2. The City will:

a. Upon execution of this Agreement designate the State as authorized agent for the City.

b. Upon execution, deposit with the State \$480,000.00 which is the amount by which the total cost of the work provided for in this Agreement exceeds the amount of Federal Aid (capped) received, allocated, currently estimated at **\$700,000.00**.

c. Be entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not, and pay all invoices from the State within thirty (30) days of receipt.

d. Provide for cost and, as an annual item in the City's budget, proper maintenance of the Project including all of the Project components.

- e. Enter into an agreement with the Design Consultant which states that the Design Consultant shall provide services as required and requested throughout the Construction Phase of the Project.
- f. Provide a set of as-built plans upon completion of the construction phase of the Project. An electronic version of the as-built plans shall be forwarded to Arizona Department of Transportation Local Government Section.
- 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. 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 construction and construction engineering work 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 99-4 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. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, Arizona 85007  
(602) 712-7124  
(602) 712-3132 Fax

City of Peoria  
Attn: Karl F. Zook  
8401 W. Monroe Street  
Peoria, Arizona 85345  
(623) 773-7260  
(623) 773-7212 Fax

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

By \_\_\_\_\_  
SAM MAROUFKHANI, P.E.  
Deputy State Engineer, Development

ATTEST:

By \_\_\_\_\_  
City Clerk

**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