

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

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

**Date prepared: December 13, 2010**

**Council Meeting Date: January 18, 2011**

---

**TO:** Carl Swenson, City Manager

**THROUGH:** Susan J. Daluddung, Deputy City Manager

**FROM:** Andrew Granger, P. E., Engineering Director

**SUBJECT:** Intergovernmental Agreement, Arizona Department of Transportation, Westgreen Estates Unit 9 Soundwall, State Route 101 Loop, Agua Fria Freeway (Northern to Olive Avenues).

**RECOMMENDATION:**

Discussion and possible action to adopt the Resolution approving the Intergovernmental Agreement (IGA) between the City of Peoria and the State of Arizona, through the Department of Transportation (ADOT), to provide funding for construction of a noise wall along the south boundary of the Sun Valley Elementary School drainage basin in the amount of \$534,748. (Project No. EN00324, ADOT File No.: IGA/JPA 10-122I, AG Contract No.: P001 201X XXXXXX).

**SUMMARY:**

Maricopa Association of Governments (MAG) is funding the construction of noise walls in Maricopa County to help mitigate noise along the valley freeway system. One of the proposed sections is along SR 101L from Northern Avenue to Olive Avenue. Originally, the wall in this area was to extend south of the Sun Valley Elementary School (see attached site plan) which would screen the undeveloped commercial property to the south of the school. To preserve the visibility to the commercial parcel, the City requested the wall be constructed along the southern boundary of the school parcel. ADOT agreed to this request; however, they would only provide the funding for an amount equal to the savings of the deleted wall and would not construct it.

Per the IGA, the City will take the ADOT funding to prepare the construction documents, obtain the necessary easements and construct the wall. Maintenance of the wall will ultimately be the responsibility of the Peoria Unified School District.

Under the terms of the agreement each party is responsible for the following:

**The State**

1. Upon receipt of invoice from the City, remit \$534,748.
2. Upon completion of construction, not be responsible for the structural integrity and maintenance of the wall.

**The City**

1. Upon execution of this Agreement, invoice the State a lump sum fixed amount of \$534,748.
2. Use the fixed amount of \$534,748 towards the construction of the subject wall.
3. Prepare the construction plans and necessary clearances required to construct the wall.

The funding for the design is scheduled for FY12 and construction in FY13.

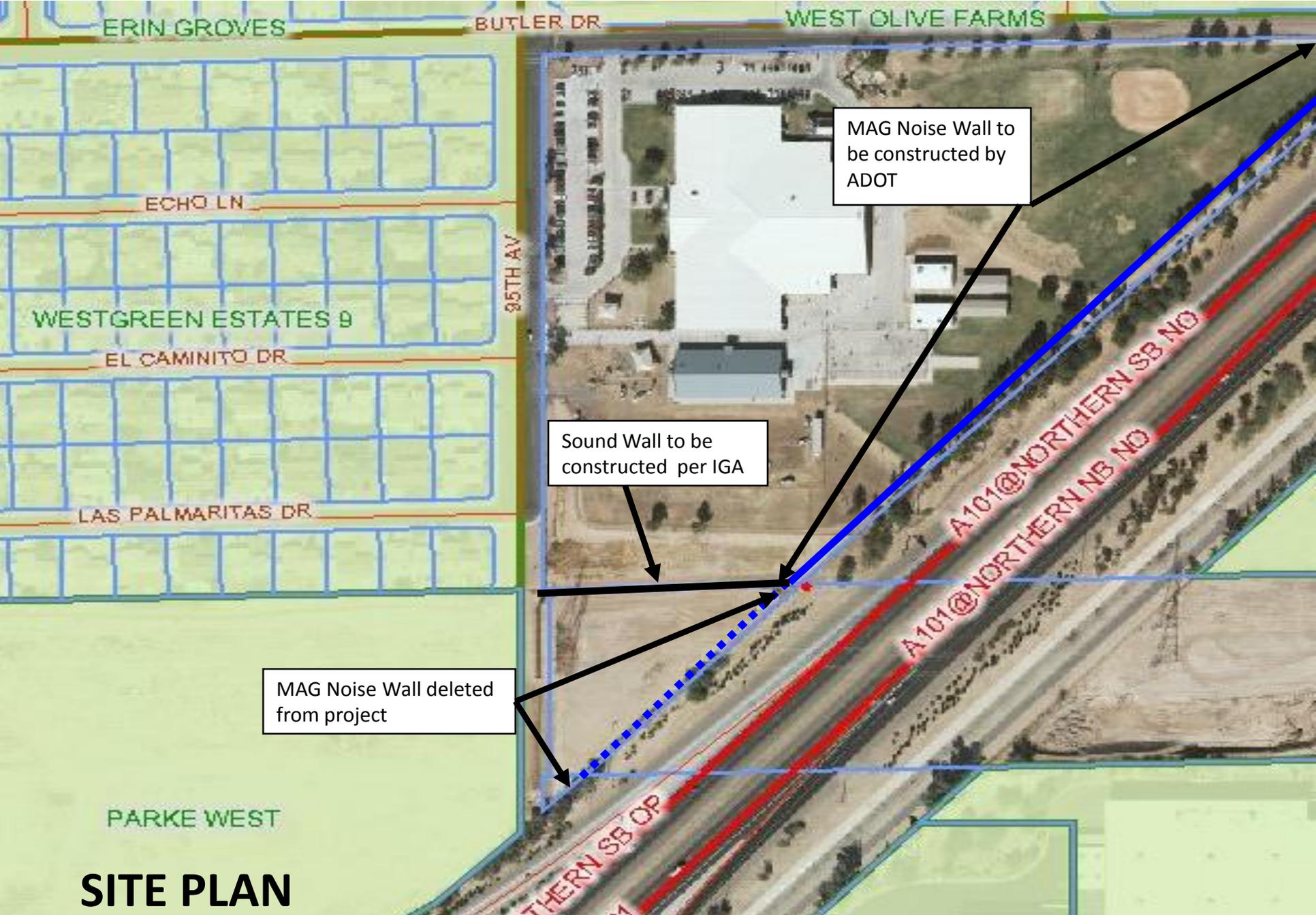
**FISCAL NOTE:**

The budget for the Westgreen Estates Soundwall identifies \$574,476 as outside sources based on a preliminary estimate. The actual amount for outside sources according to the IGA is \$534,748.

**ATTACHMENTS:**

1. Site Plan
2. Vicinity Map
3. Resolution w/ IGA

**CONTACT:** Dan Nissen, Assistant City Engineer, 623-773-7214



ERIN GROVES

BUTLER DR

WEST OLIVE FARMS

ECHO LN

WESTGREEN ESTATES 9

EL CAMINITO DR

LAS PALMARITAS DR

35TH AV

PARKE WEST

MAG Noise Wall to be constructed by ADOT

Sound Wall to be constructed per IGA

MAG Noise Wall deleted from project

# SITE PLAN

35TH AV

A101@NORTHERN SB NO  
A101@NORTHERN NB NO

NORTHERN SB OP



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



Westgreen Estates Unit 9 Soundwall  
Loop 101; Northern Avenue - Olive Avenue

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. 2011-10

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 AND THE CITY OF PEORIA FOR CONSTRUCTION OF A NOISE WALL ALONG THE SUN VALLEY ELEMENTARY SCHOOL'S SOUTH BOUNDARY AND PERPENDICULAR TO 95TH AVENUE.

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 a noise wall along the Sun Valley Elementary School's south boundary and perpendicular to 95th Avenue; and

WHEREAS, the noise wall along State Route 101 Loop, from Northern Avenue and Olive Avenue, will provide noise mitigation to the Sun Valley Elementary School along State Route 101 Loop. Originally, the wall was going to extend south of the school property as an overlapping wall along the east edge of the proposed southbound frontage road to provide mitigation to the homes west of 95<sup>th</sup> Avenue; and

WHEREAS, at the City's request, the south extension/overlapping wall will instead be constructed along the school's south boundary and perpendicular to 95<sup>th</sup> Avenue; and

WHEREAS, the State agrees to participate with the cost for the City to construct the wall in a lump sum dollar amount equivalent to the State's cost for the original extension/overlapping wall, based on the estimated amount of \$534,748; and

RES. 2011-10  
IGA with State of AZ and City of Peoria  
L101 Noise Wall - Replacement of Wall Extension/overlap  
January 18, 2010  
Page 2 of 3 Pages

WHEREAS, the City will be responsible for the design and construction of the described section of noise wall; and Peoria has programmed the design of the wall in FY12 and the Construction in FY13; and

THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of Peoria, Arizona approves and adopts this Resolution to enter into an Intergovernmental Agreement with the State of Arizona, and the City of Peoria (attached) for construction of a noise wall along the Sun Valley Elementary School's south boundary and perpendicular to 95th Avenue.

PASSED AND APPROVED by the Mayor and City Council of the City of Peoria, Arizona this 18<sup>th</sup> day of January 2011.

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

ATTEST:

\_\_\_\_\_  
Wanda Nelson, City Clerk

APPROVED AS TO FORM:

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

*Attachment:*

1. Intergovernmental Agreement

**ADOT File No.: IGA/JPA 10-122I**  
AG Contract No.: P001 201X XXXXXX  
Project: Maricopa Regional Supplemental  
Noise Walls  
Section: SR 101L, Agua Fria Freeway  
(Northern to Olive Avenues)  
**COG/MPO TIP Item No.: DOT 10-900**  
**TRACS No. H7525 01C**  
**Budget Source:**

**INTERGOVERNMENTAL AGREEMENT**  
BETWEEN  
THE STATE OF ARIZONA,  
AND  
THE CITY OF PEORIA

THIS AGREEMENT is entered into \_\_\_\_\_, 2011, pursuant to Arizona Revised Statutes, §11-951 through §11-954 and §28-7010, 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. Relative to a noise wall mitigation study completed at the request of the Maricopa Association of Governments (MAG), the State has programmed (with Proposition 400 funding) for the construction of noise walls in Maricopa County to help mitigate noise along the valley freeway system.
4. The noise wall along SR 101L, from Northern Avenue and Olive Avenue, will provide noise mitigation to the Sun Valley Elementary School along SR 101L. Originally, the wall was going to extend south of the school property as an overlapping wall along the east edge of the proposed southbound frontage road to provide mitigation to the homes west of 95<sup>th</sup> Avenue; however, per the City's request, the south extension/overlapping wall will instead be constructed along the school's south boundary and perpendicular to 95<sup>th</sup> Avenue and will extend approximately to the west end of the 9<sup>th</sup> home west of 95<sup>th</sup> Avenue, herein referred to as the "Project". The City will construct this 1,150 feet long noise wall along the school's south boundary, as shown on Exhibit A, attached hereto and made a part hereof.
5. The State agrees to participate with the cost for the City to construct the wall extension in a lump sum dollar amount equivalent to the State's cost for the original extension/overlapping wall, based on the estimated amount of \$534,748.00, shown on Exhibit B, attached hereto and made a part hereof.
6. The Parties hereto agree and acknowledge to the following conditions: a) All Parties will perform their responsibilities consistent with this Agreement; and b) Any changes to the scope of work relative to the construction of the noise wall along SR101L, will only occur upon the mutual written agreement of the Parties, by amendment to this Agreement.

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

---

---

## **II. SCOPE OF WORK**

### 1. The State will:

a. Upon execution of this Agreement and receipt of invoice from the City, remit the lump sum amount of \$534,748.00 for the State's cost participation in the Project which includes fixed rates, as shown in Exhibit B.

b. Not be responsible for the construction, structural integrity or any future maintenance of the Project wall constructed by the City.

### 2. The City will:

a. Upon execution of this Agreement, invoice the State the lump sum amount of \$534,748.00 for the State's cost participation in the Project including all fixed rates, as shown in Exhibit B.

b. Be responsible for the construction plans and acquire necessary clearances/permits required to construct the Project. Be responsible for the construction of the Project. Any and all damages to the State's noise wall along SR101L during the City's construction of this wall extension along the school's south boundary shall be repaired by the City's contractor at no cost to the State.

c. Return all funds provided by the State within 30 days of cancellation, should the City cancel the Project and not construct the noise wall within five (5) years after the State has remitted the funds referenced herein.

## **III. MISCELLANEOUS PROVISIONS**

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

2. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project by the City and all reimbursements. This Agreement may be cancelled at any time prior to the City's advertisement of the Project upon thirty-days (30) written notice to the State.

3. Each Party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or other expenses (including, but not limited to, reasonable attorneys' fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death), property damage and any other claims (including, but not limited to, claims of derivative or vicarious liability), which are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

6. The City and the State (Arizona Department of Transportation) (ADOT) warrants compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the City will provide information that is requested by the State (ADOT) to enable the State (ADOT) to comply with the requirements of the Act, as may be applicable.

7. 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 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. **Non-Availability of Funds:** Every payment obligation of the State or the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State or the City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised, and the State or the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

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

a. The Parties' warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes § 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 Parties may be subject to penalties up to and including termination of the Amendment.

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).

10. Pursuant to Arizona Revised Statutes § 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 Arizona Revised Statutes § 35-391 and/or § 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.

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

12. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by Arizona Revised Statutes § 12-1518, as applicable.

13. 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 85007-3212  
(602) 712-7124  
Fax: 602-712-3132

City of Peoria  
Engineering Director  
9875 N. 85<sup>th</sup> Avenue  
Peoria, Arizona 85345  
(623) 773-7215  
FAX: (623) 773-7211

For Finance:

Arizona Department of Transportation  
Attn: Contract Payables  
206 S. 17<sup>th</sup> Avenue, MD 204B  
Phoenix, AZ 85007

For Finance:

City of Peoria  
Attn: Dan Leahy, Accounting Supervisor  
8401 W. Monroe Street  
Peoria, AZ 85345

For Permits – Contact:  
Arizona Department of Transportation  
Phoenix Maintenance District Permits Office  
2140 W Hilton Ave, Mail Drop PM00  
Phoenix, AZ 85009-6913

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 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 \_\_\_\_\_  
 ROBERT SAMOUR, P.E  
 Deputy State Engineer, Valley Transportation

ATTEST:

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

**IGA/JPA 10-122I**

**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 Arizona Revised Statutes § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY OF PEORIA 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 \_\_\_\_\_, 2011.

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

EXHIBIT "A"



**EXHIBIT "B"**  
**SUMMARY OF JPA COSTS**  
**MARICOPA REGIONAL SUPPLEMENTAL NOISE WALLS**  
**DESCRIPTION AND COST OF PAY ITEMS FOR THE CITY OF PEORIA**

ITEM	COST			DESCRIPTION
	DESIGN	CONSTRUCTION	TOTAL	
1 Wall SW07	0.00	534,748.00	534,748.00	Apply construction cost of SW07 overlapping wall towards the wall along south boundary of school property. City of Peoria will construct this wall under a separate contract
<b>Sub-Total:</b>	<b>0.00</b>	<b>534,748.00</b>	<b>534,748.00</b>	
<b>TOTAL:</b>	<b>0.00</b>	<b>534,748.00</b>	<b>534,748.00</b>	