A.G. Contract No.: KR03-0561TRN
ADOT ECS FILE No.: JPA 03-030
COS File No.: #2003-096-COS
Project: Advance Overlay Projects
Section: Scottsdale Road Raintree Drive
90th Street - McDonald Drive
McDonald Drive – McKellips Road
TRACS No.H6371 01C / 02C / 03C
5 Year Tentative Program Item #s
2004 - #21604
2005 - #19305
2006 - #17406

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SCOTTSDALE

THIS AGREEMENT is entered into 7th July, 2003 pursuant to Arizona Revised Statutes Section 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 SCOTTSDALE, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. DEFINITIONS

"Accelerated Construction Schedule" means the Advance Plan of Construction of the multiple phases of existing Pima Freeway to be constructed with Asphalt Rubberized Friction Course (ARFC) surfacing, hereinafter referred to as rubberized asphalt, outlined on Exhibit "A" and Exhibit "B", attached here to and made a part hereof.

"City Loan" means those funds to be advanced by the City to the State for the sole purpose of accelerating construction of rubberized asphalt along portions of the Pima Freeway.

"City's Deposit" means the monies estimated to be deposited by the City with the State Treasurer by wire transfer for the benefit of the Department's Contract Accounting office, to fund actual costs of the Accelerated Construction Schedule, referenced herein. Estimates are based on $325,000.00 per mile of construction.

"Department" means the Arizona Department of Transportation.

NO. 26161
Filed with the Secretary of State
Date Filed: 07/07/03
Janice K. Brewer
Secretary of State
By: Linda D. Graenewald

"Project" or "Projects" means those segments of the existing Pima Freeway outlined on Exhibit A and B, to be designed and constructed in Phases to applicable State standards and specifications, with rubberized asphalt.

"Project Phase" or "Phased Project", means those phases outlined on Exhibit A, identifying the elements of each Project to be designed and constructed.

"State Transportation Board" means the State Transportation Board of the Arizona Department of Transportation.

"State Treasurer" means the Treasurer of the State of Arizona.

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

II. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 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 Section 9-240 and City Charter Section 3-1 of Article I 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. The State has programmed funding in the Fiscal Years (FYs) 2004, 2005 and 2006 of the 2004-2008 Tentative Five Year Construction Program, for construction of the Projects beginning in Fall 2003 and completing in Spring 2006, outlined on Exhibit A.

4. The City desires to accelerate the construction of the Projects referenced above, to be completed in accordance with the Accelerated Project Schedules, outlined on Exhibit A.

5. In order to accelerate and complete construction of the Projects outlined on Exhibit A, the City has agreed to provide, or cause to be provided from sources lawfully available by the City, all necessary funds to advance the construction and pay construction costs of the Projects, in accordance with the Accelerated Project Schedules, outlined on Exhibit A.

6. Unless paid from other lawfully available funds, the State will repay, from State Program Funds, the principal amount of the City Loan on or before November 1, in the State fiscal year that each Project's Phase has been programmed, as outlined on Exhibit A and identified in the 2004-2008 Tentative Five Year Construction Program.

7. The parties hereto agree and acknowledge to the following conditions: 1) The amounts referenced in this agreement are subject to change; 2) The estimated amounts can change substantially; and, 3) Both parties will perform their responsibilities consistent with the agreement.

III. SCOPE OF WORK

1. The State will:

a. Provide to State standards, design plans, specifications and such other documents and services necessary for construction bidding and construction of the Projects. Administer all aspects of the design of the Projects to accommodate the Advanced Construction Schedule.

b. Upon execution of this agreement, invoice the City in the estimated amount shown on Exhibit A. Each of the City's Deposits shall be made prior to Bid Opening of each Project Phase by the State's Contract and Specifications office.

c. After Bid Opening of each Project Phase, and prior to the State's recommendation for approval of award by the State's Transportation Board, notify the City of the bid amount to be recommended and request concurrence within five (5) business days of receipt of notification. If the difference between the bid amount is greater than 10% of the estimates shown on Exhibit A and deposited by the City, the State will provide written justification to the City, and a stipulate the required amount to be added to the City's Deposit. If the City does not notify the State of disapproval within the stated time frame, the State may proceed to recommend award of the bid.

d. If the City disapproves the bid amount to be recommended for approval and award, the State will make the determination to proceed with the Projects without the City's participation on an individual Project Phase basis. If the City disapproves of the bid amount and does not desire to proceed with the Project Phases, the State will return all funds from the City's Deposit, less the Project costs incurred by the State, up to the time of receipt of the City's notification to cancel the Project Phases. If both parties disapprove of the bid amount, each party agree to share in the Project costs incurred by the State, up to the cancellation of the Project Phases.

e. Upon receipt of the City's concurrence, and if applicable, receipt of any additional funds required, recommend by resolution, approval and award the contract by the State's Transportation Board. Administer the construction of same and make all payments to the contractor(s). Be responsible for any contractor claims for extra compensation attributable to the State.

f. Expend the funds provided from the City's Deposit, or other lawful funds, for the sole purpose of paying contractor payments associated with the cost for advance construction of each Phase of the Projects, on a schedule as near as possible to the Accelerated Construction Schedule, outlined on Exhibit A.

g. Repay the City the actual principal amount advanced to the State through the City Loan, on or before November 1, with funds lawfully available in the applicable State programmed fiscal years for the Project Phases, shown on Exhibit A.

h. Within 60 days after the completion of construction of each Project, provide to the City a report of actual construction costs for each Project that identifies the total construction costs detailed by month with separate identification of amounts paid to contractor(s) versus other Project costs.

2. The City will:

a. Be responsible for all costs associated with the advancement of the Projects identified herein, and agree that all applicable funds shall be deposited with the State Treasurer's Office prior to Bid Award by the State's Transportation Board of the Projects. Said funds for Project Phases 1, 2 and 3 is an estimated total of $3,900,000.00. Estimates are based on $325,000.00 per mile of construction.

b. Upon execution of this agreement and receipt of an each invoice from the State, deposit with the State Treasurer's Office, the estimated amount for each Project Phase, shown on Exhibit A, prior to Bid Opening of each Project Phase by the State's Contract and Specifications office.

c. Upon notification from the State and the City's concurrence of the bid amount, deposit any additional estimated funds required, if applicable, prior to contract award of each Project Phase construction contract, should the contract award amount be greater than the City's deposit referenced in II.2.b herein, from any lawfully available source, to the State solely for the purpose to pay the contractor payments and all necessary costs associated with the advance construction of each Phase of the

Projects, on a schedule as near as possible to the Accelerated Construction Schedule outlined on Exhibit A. Be responsible for any contractor claims for extra compensation attributable to the City.

d. Authorize the State Treasurer's Office to accept withdraw requests from a designated representative of the State.

IV. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in force and effect until completion of the design, construction of the Projects and repayment by the State of the actual principle amount of the City Loan.

2. In the event this Agreement is terminated by the City, all Project costs incurred by the State, in connection with the design or bidding process for the construction contracts, shall be borne by the City. The State shall share in the Project costs incurred, should both parties agree to cancel the Project due to excessive Project costs.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract. The City shall have like rights regarding State and contractor records pertaining to this Agreement and the Projects.

6. The provisions of A.R.S.§ 41-1463 and Executive Order Number 99-4 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Intergovernmental Agreement. (Non-Availability of Funds. Every payment obligation of ADOT under this contract 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 contract, this contract may be terminated by ADOT at the end of the period for which the funds are available. No liability shall accrue to ADOT in the event this provision is exercised, and ADOT shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.)

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. (Non-Discrimination. The contractor shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans With Disabilities Act. The contractor shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.)

8. In the event of any controversy which may arise out of this Agreement, the parties shall agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. 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:

For Agreement Correspondence:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007

City of Scottsdale
City Manager
7447 E. Indian School Road #205
Scottsdale, AZ 85251

For Technical Reference Contact:

Arizona Department of Transportation
Roadway Design Group
Attn: Richard DeBoer, Project Manager
206 S. 17th Avenue, Mail Drop 615E
Phoenix, AZ 85007

City of Scottsdale
Transportation General Manager
Attn: John Little
7447 E. Indian School Road #205
Scottsdale, AZ 85251

For Financial Reference Contact:

Arizona Department of Transportation
Fiscal Services Management Division
Attn: Contract Accounting Manager
205 S. 17th Avenue, Mail Drop 204B
Phoenix, AZ 85007

10. Attached hereto and incorporated herein is the written determination of each party's legal counsel pursuant to Arizona Revised Statutes Section 11-952.D that the parties are authorized under the laws of the State of Arizona to enter into this Agreement and that the Agreement is in proper form.

11. This Agreement may only be amended with the written consent of the parties hereto.

N WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF SCOTTSDALE,

By _____
MARY MANROSS
Mayor

STATE OF ARIZONA
Department of Transportation

By _____
DANIEL S. LANCE, P.E.
Deputy State Engineer

ATTEST

By _____
SONIA ROBERTSON
City Clerk

FISCAL MANAGEMENT SERVICES

By N/A
Budget Manager

G:03-031-DIR-Scottsdale-AC Overlay
Initial draft 07Apr2003-ly
20May2003-lg

EXHIBIT A

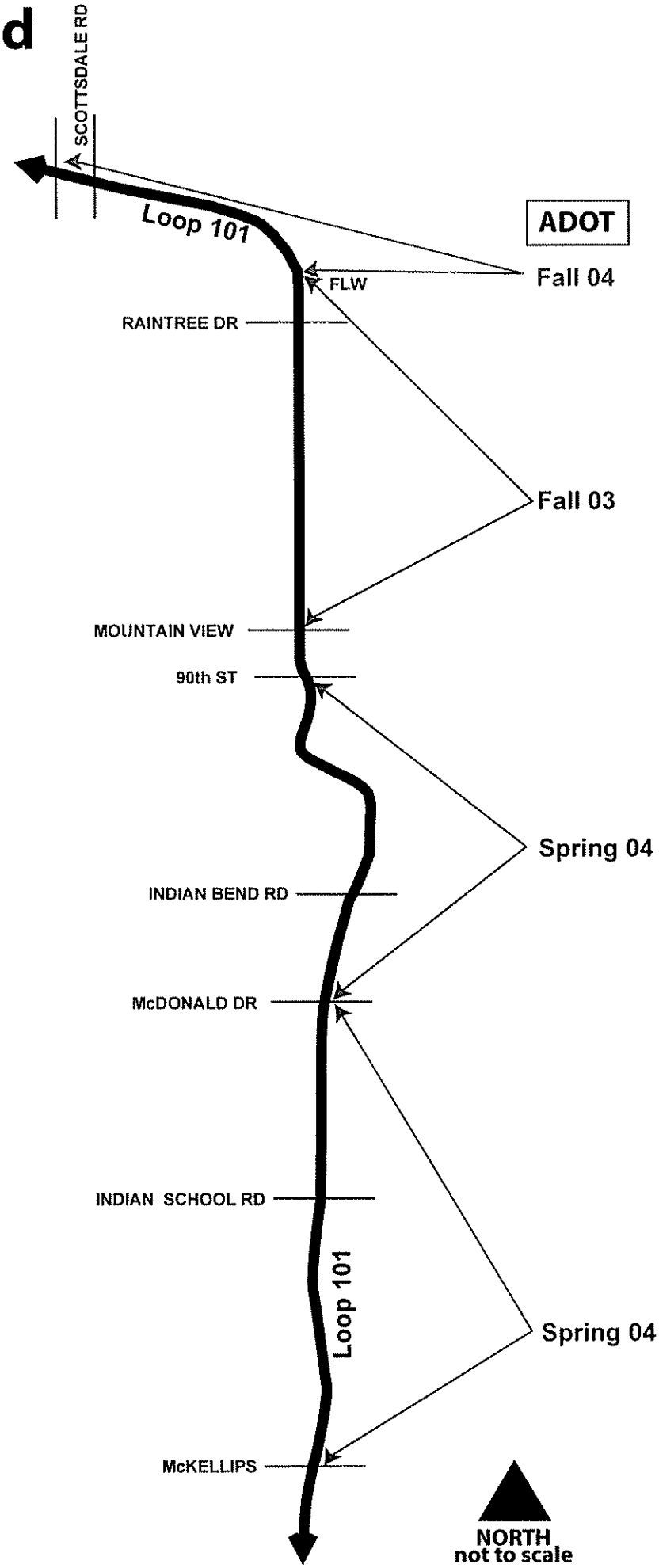
RUBBERIZED ASPHALT SURFACING ADVANCED PLAN

Route	Section	Miles	Est. Cost	Approx. Project Start Date	State Fiscal Year*	TRACS No.
	QUIET PAVEMENT (PHASE 1)					
Pima 101	Frank Lloyd Wright - Raintree Dr	0.625	$0.2	September 03	2006	H637101C
	Subtotal:		$0.2			
	QUIET PAVEMENT (PHASE 2)					
Pima 101	McDonald Dr. - McKellips Rd.	5	$1.6	March 04	2005	H637102C
Pima 101	90th St. - McDonald Dr.	3	$1.0	March 04	2006	H637102C
	Subtotal:		$2.6			
	QUIET PAVEMENT (PHASE 3)					
Pima 101	Scottsdale Rd - Frank Lloyd Wright	3.3	$1.1	September 04	2006	H637103C
	Subtotal:		$1.1			
	Total:	11.925	$3.9			

* Represents the state fiscal year in which the city is to be reimbursed the advanced funding

Exhibit B

LOOP 101 Rubberized Asphalt Surfacing



Represents those segments of the Pima Freeway covered under this agreement.

CITY OF SCOTTSDALE ARIZONA

RESOLUTION NO. 6290

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) FOR THE PURPOSE OF ADVANCING FUNDS FOR THE ACCELERATION OF RUBBERIZED ASPHALT ALONG THE PIMA FREEWAY

WHEREAS, the Arizona Revised Statutes 11-951, et seq., provide that public agencies may enter into intergovernmental agreements for joint operation or cooperative action; and

WHEREAS, Section 3-1 of Article I of the Charter of the City of Scottsdale authorizes the City to enter into intergovernmental agreements with various public agencies; and

WHEREAS, the State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

WHEREAS, the State has programmed in federal FY02/03, FY03/04, FY04/05 of the Five Year Construction Program, the construction of rubberized asphalt along the Pima Freeway (101L) from Scottsdale Road to McKellips Road; and

WHEREAS, the City of Scottsdale desires to accelerate segments of this construction as defined herein; and

WHEREAS, the City of Scottsdale desires to enter into an agreement with ADOT for the purpose of advancing to ADOT $3,900,000 in order to accelerate the schedule for applying rubberized asphalt along the Pima Freeway; and,

WHEREAS, the State agrees to repay the funds advanced by the City of Scottsdale based upon the mutually agreed upon repayment schedule.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Arizona, as follows:

Section 1 Mayor Mary Manross is hereby authorized and directed to execute, on behalf of the City of Scottsdale, Intergovernmental Agreement Number 2003-096-COS, with the State, which advances funds to ADOT and accelerates the schedule for rubberized asphalt along the Pima Freeway Loop 101.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 2nd day of June 2003

Mary Manross

Mary Manross, Mayor

ATTEST:

Sonia Robertson
City Clerk

Sonia Robertson

City Clerk

APPROVED AS TO FORM:

David Pennartz
City Attorney

David A. Pennartz

City Attorney

JPA 03-30

APPROVAL OF THE CITY OF SCOTTSDALE ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, among the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF SCOTTSDALE 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 21 day of May, 2003.

David A. Pennant

City Attorney

TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TRANSPORTATION SECTION
WRITER'S DIRECT NO: 602.542.8837

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-0561-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED: 24 June 2003

Terry Goddard
ATTORNEY GENERAL

James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd

1275 WEST WASHINGTON, PHOENIX, ARIZONA 85007-2926 • PHONE 602.542.1680 • FAX 602.542.3646