AG Contract No. KR05-1340TRN
ADOT ECS File No. JPA 05-127
Project No.: CM-GIL-0(019)A
TRACS No.: SS610 01D / 03D
Project: Western-Powerline Trail Design
Phase 3

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF GILBERT

THIS AGREEMENT is entered into this date March 23rd, 2006, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF GILBERT, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 9-240 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 Town.

3. Congress has authorized appropriations for, but not limited to, 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 within the boundary of the Town has been selected by the Town; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

5. The interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations, under which funds for the project are authorized to be expended.

6. The Town, in order to obtain federal funds for the design of the project, is willing to provide Town funds to match federal funds in the ratio required or as finally fixed and determined by the Town and FHWA.

NO. 280913
Filed with the Secretary of State
Date Filed: 3-23-06
Secretary of State
By:

7. The work embraced in this agreement is the design of the Western-Powerline Trail, a multi-use path (Phase 3), from Cooper Road to Gilbert Road, hereinafter referred to as the "Project." The estimated costs are as follows:

Estimated Design Cost (**TRACS No.: SS610 03D**)	$ 165,000.00
Estimated Federal-aid funds @ 94.3%	$ 155,595.00
Estimated Town Funds @ 5.7%	$ 9,405.00

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

II. SCOPE OF WORK

1. The cost of the analysis and design work covered by this agreement is to be borne by FHWA and the Town, each in the proportion prescribed and determined by FHWA.

2. Therefore, the Town agrees to set aside funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. The State will reimburse the Town with federal funds for design work addressed under this Agreement at 94.3% of the project cost.

4. The Town will provide any required preliminary engineering and planning studies, the environmental analysis and design of the project. As required by the FHWA, the State will provide design review of the project plans, studies and related documents. When appropriate, the State will provide comments, which will be incorporated into the design documents.

5. The Town may request the State, as authorized agent for the Town, and all at Town expense, to perform certain work and prepare certain documents required by the Federal Highway Administration to qualify certain, highway, bridge and railroad grade crossing projects for and to receive Federal funds. Such work may consist of, but is not specifically limited to, the review and approval of the Town prepared environmental documents, the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations, review of reports, design plans, maps, and specifications, geologic materials testing and analysis; right-of-way related activities (when specifically authorized by, for and on behalf of the Town, and at no cost to the State) and such other related tasks essential to the achievement of the objectives of this agreement.

6. Should some unforeseen conditions or circumstances increase the cost of said work required, by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in the project.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; 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 Town and that the Town 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 cost 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, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of

its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of 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 or attorneys' fees.

2. The cost of the design work covered by this agreement is to be borne by FHWA and the Town, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this agreement. Therefore, the Town 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.

3. This agreement shall remain in force and effect until completion of the work, including related deposits or reimbursements.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. 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 Section 12-1518.

8. This Agreement is subject to all applicable provisions of the Americans with Disability 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 State and the Town 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 the State and the Town at the end of the period for which the funds are available. No liability shall accrue to the State and the Town in the event this provision is exercised, and the State and the Town shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

10. 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 - 616E
Phoenix, AZ 85007
FAX (602)-712-7424

Town of Gilbert
Tami Ryall, Town Deputy Manager
50 East Civic Center Drive
Gilbert, AZ 85296-3401
FAX (480) 497-4943

11. 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.

TOWN OF GILBERT

By_____
STEVEN M. BERMAN
Mayor

STATE OF ARIZONA
Department of Transportation

By_____
SUSAN TELLEZ
Contract Administrator

ATTEST:

By_____
CATHY TEMPLETON
Town Clerk

G:05-126-Gilbert
11-24-05 ghc

JPA 05-127

ATTORNEY APPROVAL FORM FOR THE TOWN OF GILBERT

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the TOWN OF GILBERT, 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 Town 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 8 day of March, 2006.

Susan D. Goodwin

Town Attorney

This is Certified to be a true and correct copy of this original document
Patricia A. Gilbertson
Deputy Town Clerk Date 2-3-06

MINUTES OF THE GILBERT TOWN COUNCIL IN REGULAR MEETING, TUESDAY, DECEMBER 20, 2005 AT 7:00 P.M., 50 EAST CIVIC CENTER DRIVE, GILBERT, ARIZONA

COUNCIL PRESENT: Mayor Berman, Vice Mayor Presmyk, Councilmembers Crozier, Krueger, Morrison, Skousen (telephone), and Urie

COUNCIL ABSENT: None

STAFF PRESENT: Manager Pettit, Assistant Manager Skocypec, Clerk Templeton, Attorney Goodwin, Acting Planning Director Edwards, Planning Manager Cadavid, Assistant Fire Chief Jobusch

CALL TO ORDER OF REGULAR MEETING

Mayor Berman called the meeting to order at 7:17 p.m.

INVOCATION AND PLEDGE OF ALLEGIANCE

Pastor Earle of New Life Community Church gave the invocation. Scouts led the Pledge of Allegiance and introduced themselves.

ROLL CALL

Clerk Templeton called roll and declared a quorum present.

PRESENTATIONS; PROCLAMATIONS

1. Proclamation proclaiming December 20, 2005 as *Paul J. Schatt Integrity in Journalism Day.*

Mayor Berman informed the audience that Mr. Schatt recently passed away and was the editor for the editorial board for the Gilbert Republic. Mayor Berman read a proclamation declaring December 20, 2005 as *Paul J. Schatt Integrity in Journalism Day*, and presented proclamations to Mrs. Laura Schatt and Mr. Phil Boas. Mr. Phil Boas, Arizona Republic, briefly commented on Mr. Schatt's contributions to journalism, as well as what a decent and kind man he was. Mayor Berman expressed admiration for Mr. Schatt's contributions during his 42-year career in journalism and said his career was built on the cornerstone of integrity in journalism.

2. Proclamation declaring December 20, 2005 as *Senator Jay Tibshraeny Day, Champion of the Santan Mountains Regional Park.*

Mayor Berman read a proclamation declaring December 20, 2005 as *Senator Jay Tibshraeny Day, Champion of the Santan Mountains Regional Park*, and presented the proclamation to Senator Tibshraeny. Senator Tibshraeny said it was nice to have a day in Gilbert and accepted the proclamation on behalf of the other cities and towns that were involved with the master plan

for the park. The citizens had a lot of passion for the park and that enabled him to put a little pressure on Maricopa County. Senator Tibshraeny said the hope is that someday the County funds improvements so the citizens can enjoy the park as they have other facilities in the County. He said the job is on its way but there is a long way to go. Councilmembers Urie and Crozier thanked Senator Tibshraeny for his efforts.

3. Proclamation recognizing Staff Sergeant Daniel L. Figueroa for support of the Mayor's New Year's Eve Party and the July 4th Event.

Mayor Berman read a proclamation recognizing Staff Sergeant Figueroa for support of the Mayor's New Year's Eve Party and the July 4th Event, and presented the proclamation to Staff Sergeant. Figueroa. Staff Sergeant Figueroa said the Army National Guard would like to reciprocate by offering an award usually reserved for returning soldiers and he presented Mayor Berman with a United States flag. Staff Sergeant Figueroa thanked the community.

4. Proclamations recognizing General Dynamics C4 Systems, Southwest Ambulance, Catholic Healthcare West's Mercy Gilbert Medical Center, Capital Pacific Homes, Banner Gateway Medical Center, and Arizona Public Service for sponsorship of the Mayor's New Year's Eve Party.

Mayor Berman reported there is a New Year's Eve Party every year in Gilbert and some very generous sponsors pay for the party. Mayor Berman read proclamations recognizing General Dynamics C4 Systems, Southwest Ambulance, Catholic Healthcare West's Mercy Gilbert Medical Center, Capital Pacific Homes, Banner Gateway Medical Center, and Arizona Public Service for sponsorship of the Mayor's New Year's Eve Party, and presented the proclamations.

5. Presentation of Student Citizen of the Month Awards.

Mayor Berman and Councilmember Urie presented Student Citizen of the Month Awards for November to:

Tara Thurman, Celine Nicole Johnson, Justin Webber, Emily Sussman, Tre Shamsiddeen, Jacob Bordenave, Sam Smith, Laura Gillespie, Jennifer Segerson, Emily Minks, Claire Williams, Sandra Martinez, Rachel Harper, Sean Phillips, Anthony Cionci, Alyssa Board, Shaydee Cole, Jaime Robinson, Marcus Lightner, Jordyn Grace, Rhiannon Pabich, Haley Price, Megan Burke, Sydney Sotak, Derek Slusher, Allyson Werner, Amber Booth, Devon Daniel, Amber Wittek, Nicole Webb

6. COMMUNICATIONS FROM CITIZENS

None.

CONSENT CALENDAR

Councilmember Skousen joined the meeting via telephone at 8:20 p.m.

A MOTION was made by Vice Mayor Presmyk, seconded by Councilmember Morrison, to approve Consent Items 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 23, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47 remove Items 13, 24, and 31 from the Consent Calendar; remove Item 22 from the agenda; and add Item 58 to the Consent Calendar; appointing Robert Deardorff, Wahidul Alam, and Donald Clay to the Design Review Board as regular members with terms ending December 8, 2007; and add Item 60 to the Consent Calendar. *Motion carried 7-0.*

7. ANNEXATION A05-10 – consider adoption of an Ordinance approving the annexation of approximately 4.614 acres located east of the northeast corner of Houston Avenue and Higley Road. *A public hearing was held on August 2, 2005.*

This item was approved with the Consent Calendar. Ordinance No. 1694 was adopted.

8. AGREEMENT – consider approval of the second year payment to the Microsoft Corporation in an amount not to exceed $228,596.10 for renewal of a multi-year licensing agreement with Microsoft Office off the State Bid List on all PC operating systems and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

9. AGREEMENT – consider approval of a Concessionaire Agreement with Rip City Batting Cages for the batting cages at Freestone Park for the period of January 1, 2006 until January 1, 2012 and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

10. AGREEMENT – consider waiving the bidding requirements and approve an agreement with Information Outsource through December 31, 2008 to provide printing and mailing of utility statements and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

11. INTERGOVERNMENTAL AGREEMENT – consider approval of an Intergovernmental Agreement with the Arizona Department of Transportation for the Western Powerline Trail Phases II and III and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

12. INTERGOVERNMENTAL AGREEMENT – consider approval of an Intergovernmental Agreement with the City of Phoenix to pass through funds for the installation and construction of twenty-nine bus stops and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

Manager Pettit expressed appreciation on behalf of Town staff for all Council does to make Gilbert special.

ADJOURNMENT

A MOTION was made by Vice Mayor Presmyk, seconded by Councilmember Morrison, to adjourn the meeting. *Motion carried 7-0.*

Mayor Berman adjourned the meeting at 9:50 p.m.

Steven M. Berman, Mayor

ATTEST:

Catherine A. Templeton, CMC, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the Town Council of the Town of Gilbert held on the 20th day of December 2005. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 11th day of January 2006.

Catherine A. Templeton, CMC, ~~Town Clerk~~

Office of the Attorney General
State of Arizona

Terry Goddard
Attorney General

Civil Division
transportation section
Direct 602.542.8859

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR05-1340, 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 March 14, 2006.

TERRY GODDARD
Attorney General

Susan Davis

SUSAN DAVIS
Assistant Attorney General
Transportation Section

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