AG Contract No.: KR06-0774TRN
ADOT ECS File No.: JPA 06-094
Project No.: CM-GIL-0(018)A
Project: Western-Powerline Phase 2
TRACS No.: SS609 01C
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF GILBERT

THIS AGREEMENT is entered into 29th September, 2006, pursuant to 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 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 § 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 § 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 lies within the boundary of the Town and has been selected by the Town; 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 Town, in order to obtain Federal funds for the construction 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, including actual construction engineering and administration costs (CE).

6. The interest of the State for this project is in the acquisition of Federal funds for the use and benefit of the Town, and is the designated agent for the Town. Funds expended for the project, are authorized by reason of Federal law and regulations.

NO. 28471
Filed with the Secretary of State
Date Filed: 9/29/06
Secretary of State
By:

7. The work embraced in this Agreement is the construction of a multi-use path along the Western-Powerline Canal (Phase 2) from Gilbert Road to Lindsay Road, hereinafter referred to as the "Project". The State shall advertise, bid and award the Project. The estimated construction costs are as follows:

TRACS No. SS 01C

Estimated Project Costs*	$958,429.00
Federal Aid Funds @ 94.3% (capped)	$614,405.00
Town Funds @ 5.7%	$ 37,138.00
Estimated Town Funds @ 100%	$ 306,886.00
**** Total Estimated Town Funds***	***$ 344,024.00***

***(Includes 15% CE and 5% project contingencies)**

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

II. SCOPE OF WORK

1. The State Shall:

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, Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.

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

c. Enter into a Project Agreement with FHWA on behalf of the Town 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 Town will be responsible for any overage.

d. Upon execution of this Agreement, invoice the Town for reimbursement to the State for the Town's estimated share of the Project, currently estimated at ***$344,024.00***. Once the Project costs have been finalized, the State will either invoice or reimburse the Town for the difference between estimated and actual costs.

e. Not be obligated to maintain said Project, should the Town fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The Town Shall:

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

b. Deposit funds with the State in an amount equal to the difference between and the total cost of the work provided for in this Agreement and the amount of Federal aid (capped) received.

c. Consent to any inspections performed by the State, provide records or audit any books of the Town in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

d. The Town is 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.

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

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The Town, in regard to the Town'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 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 to the extent permitted by law, 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, misrepresentation, directives, instruction 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 and attorneys' fees.

2. The cost of the construction and construction engineering 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 terms, conditions and provisions of this Agreement shall remain in 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 canceled at any time prior to the award of the project construction contract, upon thirty day (30) written notice to the other party. It is understood and agreed that, in the event the Town terminates this Agreement, the State shall in no way be obligated to maintain said project.

4. This Intergovernmental Agreement shall be filed with the Arizona Secretary of State and shall not become effective until the date of said filing.

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

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

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 99-4 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 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 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 or for any damages as a result of termination under this paragraph.

9. 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.

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 Mail Drop 616E Phoenix, AZ 85007 FAX: (602) 712 7424	Town of Gilbert Attention: Deputy Manager 50 E. Civic Center Drive Gilbert, Arizona 85296-3401 Phone: 480-503-6765

11. Pursuant to 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.

TOWN OFGILBERT

By _____
STEVEN M. BERMAN
Mayor

Date 8/29/06

STATE OF ARIZONA
Department of Transportation

By _____
DALE BUSKIRK, DIVISION DIRECTOR
Transportation Planning Division

Date 9/20/06

ATTEST

By _____
CATHY TEMPLETON
Town Clerk

Date 8/29/06

G:06-94-Gilbert SS project
Western-Powerline Phase 2
August 10, 2006 -ly

MINUTES OF THE GILBERT TOWN COUNCIL IN REGULAR MEETING, TUESDAY, AUGUST 29, 2006 AT 7:00 P.M., 50 EAST CIVIC CENTER DRIVE, GILBERT, ARIZONA

COUNCIL PRESENT: Mayor Berman, Vice Mayor Crozier, Councilmembers Krueger, Morrison, Presmyk, Skousen, and Urie. Councilmember Morrison participated by phone.

COUNCIL ABSENT: None

STAFF PRESENT: Manager Pettit, Assistant Manager Skocypec, Clerk Templeton, Attorney Goodwin, Acting Planning & Development Services Manager Edwards, Engineer Allred, Public Works Director Frost.

CALL TO ORDER OF REGULAR MEETING

Mayor Berman called the meeting to order at 7:15 p.m.

INVOCATION AND PLEDGE OF ALLEGIANC

Item #14

Pastor Marshall of East Valley Bible Church gave [illegible] ne Pledge of Allegiance and introduced themselves.

ADOT

ROLL CALL

Clerk Templeton called roll and declared a quorum pr[illegible]n participated by phone.

PRESENTATIONS; PROCLAMATIONS

1. Oath of Office administered to Mark Bennett for the Community Activities Board.

Mayor Berman administered the Oath of Office to Mark Bennett for the Community Activities Board.

2. Presentation by the Southeast Diamondbacks Little League for Council assistance and support in finding play facilities.

Richard Howell presented a plaque to Council in appreciation for the Town's support and willingness to communicate with the Southeast Diamondbacks Little League. Mr. Howell said they looking forward to a successful 2007 season.

2A. Recognition of the Gilbert National East Little League 10/11 All Stars.

Mayor Berman recognized the Gilbert National East Little League 10/11 All Stars and shared their accomplishments. Mayor Berman congratulated the team members of the Gilbert National

This is Certified to be a true and correct copy of this original document

Catherine M Templeton 9/14/06

Town Clerk Date

East Little League 10/11 All Stars. Coach Pete Salaya said that the team is a great group. He commented on the Little League World Series and said that the team hopes to go to Williamsport next year.

3. Presentation on the Public Safety Memorial.

Training Captain Duggan explained the formation of the committee that will lead the fund raising efforts to place a Public Safety Memorial at the Gilbert Public Safety Building honoring men and women who serve and protect the public, and Officer Targosz, the Town's first officer to die in the line of duty. Captain Dugan recognized key community residents and employees as members of the committee, and Artist Steve Schneider, who was commissioned to create the Public Safety Memorial.

Linda Abbott, committee member, outlined the committee's plan to raise $200,000 to complete the contract with Artist Steve Schneider to create the memorial. The plan is to dedicate the statue to the Town on behalf of the committee and the community and place it at the Gilbert Public Safety Building in April 2007. Ms. Abbott expressed confidence in gaining support from the community and explained that letters will go out soon seeking donations.

Brigitte Targosz, wife of Officer Targosz, thanked the Town staff and community for their support of the memorial. Mrs. Targosz said that her husband would have been very proud of the memorial.

Gene Targosz, father of Officer Targosz, expressed his appreciation for the community's demonstration of love and affection for his son. He said that Officer Targosz loved the Town and his position as police officer.

Linda Abbott asked that the Town provide free meeting space and support to the committee in their efforts to raise funds for the Public Safety Memorial.

Lacy Cox, Police Counseling Department, provided name and address information for those who wished to send donations.

A MOTION was made by Vice Mayor Crozier, seconded by Councilmember Presmyk, to find it serves a governmental purpose and is in the public interest for Gilbert to provide free meeting space and support to the public Committee seeking to raise funds for a Public Safety Memorial and to authorize the Manager to administer the requests. *Motion carried 7-0.*

Mayor Berman thanked the Committee for its work and said Councilmember Presmyk would serve as the Council representative.

4. Presentation by Maricopa County Environmental Services on the West Nile Virus.

Julie Somafalis, Agency Director for Maricopa County Development Agency and John Townsend, Environmental Services Manager, gave a presentation on the West Nile Virus. Ms.

Somafalis presented slides and described symptoms of the West Nile Virus. Ms. explained Maricopa County's efforts in educating the public about the disease and expressed appreciation to Mark Horn, Gilbert Wastewater Superintendent, who was dedicated in assisting in doing positive things for the community. Ms. Somafalis provided information about personal protection and symptoms of the virus, explaining that the primary carrier is the mosquito. Ms. Somafalis stated that 80 percent of the population never realizes it has been exposed to the virus, and 20 percent will develop West Nile Fever with symptoms similar to severe flu. Ms. Somafalis presented slides showing symptoms and explained the most susceptible to the most severe type of the virus were the elderly, the very young, or those with compromised immune systems. She explained that mosquitoes often feed on birds; horses are susceptible, and the disease can become epidemic among the human population. Ms. Somafalis explained that primary breeding sites for mosquitoes are unattended swimming pools, standing water, retention basins, irrigation areas, culverts, and drains. While describing Maricopa County's Integrated Management System, which includes education, prevention, surveillance, and mitigation, she explained the primary recommendation for prevention of the disease is risk reduction and personal protection.

Councilmember Crozier asked if the agency treated school grounds. Mr. Townsend explained they do not but they meet with school staff, walk the grounds, identify problem areas and work with their contractors to mitigate the problem. Mr. Townsend described prevention efforts for areas like the Roosevelt Water Conservation District Canal and similar areas within the County.

5. Presentation on the Gilbert Emergency Operations Plan, Annex N Pandemic Influenza/Public Health Emergency.

Emergency Management Coordinator Gibbons gave a presentation on the Gilbert Emergency Operations Plan, Annex N Pandemic Influenza/Public Health Emergency.

6. Proclamation declaring September 2006 as *Save a Life Month.*

Mayor Berman read a proclamation declaring September 2006 as *Save a Life Month.*

7. COMMUNICATIONS FROM CITIZENS

Elizabeth Cress-Sweet, Chair of Arts Advisory Board and the Global Village Festival, 135 North Sandstone, Gilbert, explained the Global Village Festival was in the planning stages and scheduled for late April. The committee is asking for volunteers and can access the website or write to Ms. Cress-Sweet with contact information. Sponsorship packets will be mailed providing a variety of ways to sponsor the event. Calls for talent will go out soon and those interested should apply early.

Sandra Landeen, 4073 East Lafayette, Gilbert, expressed her gratitude to Mayor Berman and the Town for the compassion extended to her in response to the death of her son. She shared that Mayor Berman consoled her in her loss and invited her to church and prayed with her. Ms. Landeen expressed her deep appreciation for Mayor Berman's kindness and wanted the Town to realize the Mayor was special. She stated that she will never get her son back and the loss was

monumental but appreciated the help of the Mayor and the police in attempting to apprehend person(s) responsible for his death. Ms. Landeen explained she was considering a substantial reward and did hire a private medical examiner to provide answers as to the method of his death. She presented slides showing pictures of her son and the scene of a previous incident involving her son.

CONSENT CALENDAR

A MOTION was made by Vice Mayor Crozier, seconded by Councilmember Presmyk, to approve Consent Items 8, 8A, 8B, 8C, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 50, 51, 52, 53, and 54; remove Items 20, 27, 31, 47, and 49 from the Consent Calendar; and add Item 74 appointing Philip Barlow and Eugene Valentine to the Redevelopment Commission with terms ending October 1, 2010 and Items 77 and 78 reinstating Menyon Abraham-Scott to the Human Relations Commission as regular member with a term ending on November 1, 2006 and reinstating P.J. Sessoms to the Human Relations Commission as a Gilbert School District Representative. *Motion carried 7-0.*

8. ANNEXATION A06-73 – consider adoption of an Ordinance approving the annexation of approximately 4.55 acres located south and west of the southwest corner of Queen Creek and Greenfield Roads. *A Public Hearing was held on July 18, 2006.*

This item was approved with the Consent Calendar. Ordinance No. 1809 was adopted.

8A. ANNEXATION A06-58 – consider adoption of an Ordinance approving the annexation of approximately 5 acres located east of Higley and north of Mews Road. *A Public Hearing was held on June 20, 2006.*

This item was approved with the Consent Calendar. Ordinance No. 1810 was adopted.

8B. ANNEXATION A06-62 - consider adoption of an Ordinance approving the annexation of approximately 34.71 acres located at the southwest corner of Lindsay and Pecos Roads. *A Public Hearing was held on June 20, 2006.*

This item was approved with the Consent Calendar. Ordinance No. 1811 was adopted.

8C. ANNEXATION A06-64 – consider adoption of an ordinance approving the annexation of approximately 3.69 acres located west of the northwest corner of Pecos and Recker Roads. *A Public Hearing was held on June 20, 2006.*

This item was approved with the Consent Calendar. Ordinance No. 1812 was adopted.

9. AGREEMENT – consider approval of an Educational Services Agreement with the Maricopa County Community College District to allow fire personnel to receive college credit

for classes taught by Town personnel coordinated through the Fire Department Training Division and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

10. **AGREEMENT** – consider approval of the third year payment to ASAP Software in an amount not to exceed $220,721.42 for renewal of a multi-year licensing agreement with Microsoft Office off the State Bid List and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

11. **AGREEMENT** – consider approval of an agreement with the Arizona Republic for promotional support of the "Concert in the Park" series held at Freestone Park and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

12. **AGREEMENT** – consider approval of an Amended and Restated Agreement with the Central Arizona Soaring League for use of Rodeo Park and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

13. **INTERGOVERNMENTAL AGREEMENT** – consider approval of the renewal of the Urban Fishing Program Intergovernmental Agreement with the Arizona Game & Fish Commission for Water Ranch Lake and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

14. **INTERGOVERNMENTAL AGREEMENT** – consider approval of an Intergovernmental Agreement with the Arizona Department of Transportation in an amount not to exceed $3,797,434 for construction of the Western Powerline Trail Phases II and III, Projects PR072 and PR073, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

15. **LEASE AGREEMENT** – consider approval of a Lease Agreement with Crown Communication Inc. for use of Town property for a 125 foot Monopole for public and commercial communications and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

16. **LICENSE AGREEMENT** – consider approval of Replacement Housing Cost and License Agreement in an amount not to exceed $348,600 to rebuild a home located at 16441 East Queen

82. Report from the TOWN MANAGER on current events.

Manager Pettit reminded Council of the September 11 memorial ceremony at the Public Safety Plaza at 8:00 a.m., the Community Excellence Awards on September 16, and the dedication of Fire Station #8 on September 23. On September 22, because of the sponsorship of the Urban Land and Institute Study, 16 reservations are available for the presentation of the final report. Contact Vicky in the Mayor's Office for confirmation of reservations. Finalized information will be provided later.

RECESS REGULAR MEETING AND RECONVENE IN EXECUTIVE SESSION

A MOTION was made by Councilmember Presmyk, seconded by Councilmember Krueger, to recess the Regular Meeting and reconvene in Executive Session:

a) Pursuant to A.R.S. §38-431.03, A-1 to conduct employment evaluation and discuss assignments of Town Manager Pettit; and

b) Pursuant to A.R.S. §38-431.03, A-1 to conduct employment evaluation of Presiding Judge Phares.
Motion carried 7-0.

Mayor Berman recessed the Regular Meeting at 10:10 p.m.

RECONVENE REGULAR MEETING AND ADJOURN

Mayor Berman reconvened the meeting at 11:30 p.m.

A MOTION was made by Councilmember Urie, seconded by Councilmember Krueger, to adjourn the meeting. *Motion carried 7-0.*

Mayor Berman adjourned the meeting at 11:30 p.m.

ATTEST:

Steven M. Berman, Mayor

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 29th day of August 2006. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 13th day of September 2006.

Catherine A. Templeton, CMC, Town Clerk

JPA 06-094

ATTORNEY APPROVAL FORM

FOR THE

INTERGOVERMENTAL AGREEMENT DETERMINATION

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. § 11-952, as amended, by the undersigned TOWN'S Attorney who has determined that it is in proper form and within the powers and authority granted to TOWN under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties to enter into said Agreement.

Dated August 29, 2006

Attorney

TERRY GODDARD
Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
Writer's Direct Line:
602.542.8855
Facsimile: 602.542.3646
E-mail: Susan Davis@azag.gov

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR06-0774TRN (**JPA 06-094**), an Agreement between public agencies, i.e., The State of Arizona and The Town of Gilbert, 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: September 25, 2006

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:980129
Attachment