JPA File No.: JPA 06-152 I
AG Contract No.: KR07-0300TRN
Project: Advance Traffic Interchange
Section: I-17/Dove Valley Road
TRACS No.: H7197 ~~01C~~ 01D
Budget Source Item No.: City Advance

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF PHOENIX

120835..

THIS AGREEMENT is entered into this date June 25th, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PHOENIX, acting by and through its CITY MANAGER (the "City").

I. DEFINITIONS

"Accelerated Schedule" means accelerating the 30% design elements of a new traffic interchange located at Dove Valley Road and Interstate 17 (I-17), Exhibit A depicts the acceleration schedule of the project, attached hereto and made a part hereof.

"Agreement" means this intergovernmental agreement for the Project, as the same may be amended or supplemented from time to time.

"City" means the City of Phoenix, Arizona.

"City Advance" means those funds to be advanced by the City to the State, for the sole purpose of accelerating the 30% design elements of the RTPFP portion of the Project from Phase IV of the Regional Transportation Plan to FY 2007, in an estimated amount of $151,430.00, as shown on Exhibit B, attached hereto and made a part hereof.

"City Contribution" means those funds to be provided by the City to the State, for the sole purpose of providing 30% design plans for Dove Valley Road from Interstate 17 (I-17) east to North Valley Parkway, and the Northbound frontage road between Dove Valley Road and Carefree Highway, in a combined estimated amount of $311,441.00 as shown on Exhibit B.

"City LGIP Account" means the interest bearing account established by the City with the State Treasurer's Local Government Investment Pool, containing monies funded by the City for the City Advance and City Contribution, Investment Interest, and any other funds provided by the City for the Project.

"Consultant" means the State's engineering consultant.

"Department" means the Arizona Department of Transportation.

NO. 29000
Filed with the Secretary of State
Date Filed: 6-25-07
Secretary of State
By: Bricelo Montano

"Investment Interest" means interest earnings resulting from the investment of the unused portion of the City Advance and City Contribution while such funds are held in the City LGIP Account. All such Investment Interest shall remain in the City LGIP Account and shall be applied to the construction costs of the Project or repaid to the City and for the benefit of the City, as set forth in this Agreement. Only interest to be paid is in accordance with said City LGIP Account.

"LGIP" means the Local Government Investment Pool established with the State Treasurer's office on behalf of the City.

"Parties" means the State and the City collectively.

"Party" means the State or the City as the case may be.

"Project" means the acceleration of the **a)** 30% design of a new traffic interchange (TI) located at Dove Valley Road and Interstate 17 (I-17) to applicable State standards and specifications; **b)** preparation of 30% design plans for Dove Valley Road to applicable City standards and specifications; and **c)** preparation of 30% design plans for the Northbound frontage road from Dove Valley Road to Carefree Highway to applicable State standards and specifications.

"RTPFP" means the Regional Transportation Plan Freeway Program

"State" means the State of Arizona acting by and through the Department of Transportation.

"State's Fiscal Year" means the fiscal year, which begins on July 1st and ends on June 30th of the following year.

"State Program Funds" means the funding designated and approved by the Maricopa Association of Governments in the RTPFP of the projects, anticipated to be programmed in FY 2021.

"State Transportation Board" or "Board" means the Transportation Board of the State organized pursuant to Arizona Revised Statutes, Sections 28-301 et. seq.

II. RECITALS

1. The State is empowered by Arizona Revised Statutes Section §28-401 and 28-7677 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 City Charter Chapter II, Section 2.i. to enter into this Agreement and has by ordinance, 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 identified funds in Phase IV of the RTPFP, in the amount of $151,430.00 for the 30% design of a new traffic interchange at I-17 and Dove Valley Road. The City hereby requests that the State accelerate this effort and agrees to advance an estimated $151,430.00 in funds to accomplish said design. In conjunction with said work, the City desires to provide or cause to be provided to the State, funds in a combined estimated amount of $311,441.00 for the 30% design of Dove Valley Road and the 30% design of Northbound frontage road between Dove Valley Road and Carefree Highway. These three efforts are collectively and hereinafter referred to as the "Project." Any changes to these amounts will be with the written concurrence of the Parties.

4. The State agrees to recommend to the State Transportation Board that the State accelerate the 30% design of the Dove Valley TI from Phase IV of the RTPFP to FY 2007 and upon approval, will reimburse the City for any funds expended on the Project with RTPFP funds, and initially funded with a

City Advance, drawn from the City LGIP Account, Investment Interest earned and any other funds provided by the City used for accelerating the Project on or after July 1, 2020. This reimbursement amount is currently estimated at $151,430.00.

5. The Parties hereto agree and acknowledge to the following conditions: **a)** the amounts referenced in this Agreement are subject to change; **b)** the estimated amounts may change substantially; and **c)** the Parties will perform their responsibilities consistent with this Agreement.

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

III. SCOPE OF WORK

1. The State shall:

a. Upon execution of this Agreement, assist the City with establishing a City LGIP Account with a deposit of $462,871.00 for the estimated costs of the Project, (that includes a 2.5% design engineering and administration for the 30% design plans for Dove Valley Road and a 5% design engineering and administration for the 30% design plans for the Northbound frontage for the non-RTPFP portion of the Project, as depicted in Exhibit B), which shall be available to the State as required to pay monthly actual consultant payments of the Project. Interest on the City LGIP Account shall be for the benefit of the City, whether available to pay for Project costs or reimbursed upon completion of the Project.

b. Coordinate with the City for accelerating the Project.

c. Upon receipt of the City's initial deposit of $462,871.00 into the City LGIP Account, contract with the Consultant to prepare design documents.

d. Design the Project to State and City standards, as applicable, and provide the City with copies of the Project plans at 15% and 30% completion for review and comment. Incorporate the City's comments, as appropriate.

e. Administer the Consultant contract and make all payments to the Consultant. Confer with the City on any design and environmental Consultant related contract modifications. Be responsible for any Consultant claims for extra compensation due to delays attributable to the State.

f. Upon acceptance of the 30% design plans and City's concurrence of the final design cost estimate, the Parties will execute an amendment to this Agreement. The State will then issue a Request for Proposal (RFP) and proceed with the design of the Project elements to 100%. Estimated construction and right-of-way costs shall be determined following submission of final design plans by the Consultant.

g. Provide all coordination as required with Federal Highway Administration (FHWA) and other agencies affected in association with the Project, including required approvals as appropriate to the Project's efforts.

h. Draw down the City LGIP Account as necessary to make monthly Consultant payments associated with the Project. Provide the City with a monthly report showing the progress of the Project draws against the City LGIP Account. Notify the City if additional funds are required as necessary for deposit into the City LGIP Account during the Project, whether it be for the City Advance or the City Contribution.

i. Agree that the amount deposited into the City LGIP Account, any Investment Interest earned on the balance in the City LGIP Account and any other funds provided by the City, will be used by the State solely to pay the costs of accelerating the Project described herein, per the estimated Accelerated

Schedule as shown on Exhibit A.

j. Upon acceptance of the Project by the State and within 30-days of final accounting of the Project, unless otherwise agreed to by the City in writing, remit to the City any remaining balance of the City LGIP Account including, but not limited to, the City LGIP funds, any Investment Interest earned and any other funds provided by the City and used for the acceleration of or contribution towards the Project. A final accounting will separately address the City Advance from the City Contribution to determine any reimbursements.

k. Recommend approval by the State Transportation Board to program the actual amount of RTPFP funds for reimbursing the City on or after July 1, 2020, for accelerating the design of the Project.

l. Upon approval by the State Transportation Board of the RPTFP funding and receipt of an invoice from the City, remit actual costs on or after July 1, 2020, currently estimated at $151,430.00.

2. The City shall:

a. Upon execution of this Agreement, coordinate with the State to accelerate the Project. Authorize the State to be the sole signatory on said City LGIP Account.

b. Within thirty (30) calendar days of the execution of this Agreement, and with assistance from the State, establish the City LGIP Account and deposit, in an amount not to exceed $462,871.00 without the prior written agreement of the City, in the City LGIP Account to accelerate the Project, (that includes a 2.5% design engineering and administration for the 30% design plans for Dove Valley Road and a 5% design engineering and administration for the 30% design plans for the Northbound frontage for the non-RTPFP portion of the Project, as depicted in Exhibit B), which shall be available to the State as required to pay monthly actual Consultant payments of the Project. Interest on the City LGIP Account shall be for the benefit of the City, whether available to pay for Project costs or reimbursed upon completion of the Project.

c. Review and provide written comments to the State at 15% and 30% completion within 10 business days of receipt of design documents. Be responsible for any design and environmental-related Consultant claims for extra compensation due to delays attributable to the City.

d. Upon acceptance of the 30% design plans, and concurrence of the final design cost estimate by the Parties execute an amendment to this Agreement, providing funds to proceed with the design of the Project elements to 100%. Estimated construction and right-of-way costs shall be determined following submission of final design plans by the Consultant.

e. Upon approval of the RTPFP by Resolution of the State Transportation Board, on or after July 1, 2020, invoice the State for the actual amount paid by the City for the City Advance used for the Project, currently estimated at $151,430.00.

IV. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in full force and effect until completion of the work contemplated herein and all reimbursements. This Agreement may be cancelled at any time by either party prior to the advertisements for design and environmental consultants, upon 30-days written notice to the other party. Should the City fail to fulfill its obligations set forth in this Agreement or withdraw its proposed plans for whatever reason, the City shall be responsible to the State for all costs incurred up to the time of withdrawal.

2. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses including reasonable attorneys' fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

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

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

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to both Parties, who shall be afforded the same rights and interests under this Agreement.

6. 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".

7. 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 and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

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

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:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, MD 616E
Phoenix, AZ 85007
FAX: 602-712-7424

City of Phoenix
Acting Street Transportation Director
200 W. Washington - 5th floor
Phoenix, AZ 85003-1611
FAX : 602-495-2016

10. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein it 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 PHOENIX, a Municipal Corporation, Frank Fairbanks, City Manager

By_____
ROSS D. BLAKELY, JR., P. E.
Acting Street Transportation Director

STATE OF ARIZONA
Department of Transportation

By_____
DANIEL S. LANCE, P.E.
Deputy State Engineer

ATTEST:

By_____
MARIO PANIAGUA
City Clerk

G:\06-XXX-1st Draft to Phoenix-Dove Valley TI
12-01-20006 Preliminary Draft-lg
12/27/06 ghc
2/6/07 DLB, RD (City) 2/9/07
2/15/07 Draft 2 ghc
Final Draft 3/22/07 ghc

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Exhibit "A"

ACCELERATED SCHEDULE

Preliminary Engineering/30% Design	Fall 2006 - Summer 2007
Final Engineering/30% to 100% Design	Spring 2007 to Early Fall 2007
Right-of-Way	Spring 2007 - Late Summer/Fall 2007
Construction	Mid/Late Fall 2007 (Bid Award) - Summer/Fall 2008

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Exhibit "B"

CITY ADVANCE/CITY CONTRIBUTION ESTIMATED COSTS

ITEM	COST
Design of the Dove Valley Road Traffic Interchange to 30% Stage	$151,430.00
No ADOT Administration Fee for RTPFP Projects	$0.00
Subtotal City Advance	$151,430.00
Design of Dove Valley Road to 30% Stage	$202,818.00
2.5% Administrative Fee for Dove Valley Road Design	$5,070.00
Design of Northbound Frontage Road to 30% Stage	$98,622.00
5% Administrative Fee for Frontage Road Design	$4,931.00
Subtotal City Contributions	$311,441.00
TOTAL ESTIMATED COSTS	**$462,871.00**

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APPROVAL OF THE PHOENIX CITY ATTORNEY

I have reviewd the above-referenced proposed Intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF PHOENIX, 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 o fArizona. No opinion is expressed as to the authroity of the State to enter into this Agreement.

DATED this _____ day of _____2007

_____

ACTING City Attorney

CITY OF PHOENIX
REQUEST FOR COUNCIL ACTION

Complete this form per O.P. 1.906 and A.R. 4.11.
Refer to the City Council Agenda Process Reference Guide for Assistance

ACTION REQUESTED	Formal Action:	OR	Legal Document:
	Bid Award ☐		Ordinance ☒
	License Application ☐		Resolution ☐
	Public Hearing ☐		
	Other ☐		Emergency Clause? ☐ (for use only w/ord. or res. requests)

IMPACTED DISTRICT(S)	DISTRICTS 1, 2	**ADDITIONAL BACKUP MATERIAL SENT UNDER SEPARATE COVER?**	☐
SUBJECT	AGREEMENT WITH ARIZONA DEPARTMENT OF TRANSPORTATION - DOVE VALLEY ROAD INTERCHANGE		

REQUESTED AGENDA DATE	6/21/2006	**PREPARED BY**	Name	J. Donald Herp
			Department	Street Transportation
			Phone	262-4872

APPROVALS	Division Head:	J. Donald Herp	If prepared for another department: Department Name:
	Department Head:	Ross D. Blakley, Jr., P.E	Approval:

BID AWARD INFORMATION	Bid Surety Required? ☐	Performance Surety Required ☐
	Submitted by Low Bidder? ☐	Amount?
	Contract Required? ☐	Requisition No.

CONTRACT INFORMATION	Contract Amendment? ☐		
	If Yes, Current Contract No.		
	Approved by:	Ordinance ☐	on Date:
		Resolution ☐	
		Formal Action ☐	

BUDGET INFORMATION	$ 2,500,000.00	To Be Encumbered? ☒
	Source of Funds:	Fiscal Year? 2006/07
	AHUR Capital Reserve Fund (1393)	
	Fund Center(s) (SAP-FM): ST85100285	
	Commitment Item(s) (SAP-FM): 510130	
	Availability of Funds Approval Lauri L. Wingenroth	

CITY MANAGER'S OFFICE	**Approved by** **Thomas E. Callow, P.E. 6/12/06**	CM Control No. **126**

CITY CLERK DEPARTMENT	Council Action Taken: Adopted		
	Ordinance Number: S-33142	RCA No.	52649
	Resolution Number:	Contract No.	
	Comments:	Meeting Date	6/21/2006
		Item No.	116

ITEM	DISTRICTS 1, 2	AGREEMENT WITH ARIZONA DEPARTMENT OF TRANSPORTATION - DOVE VALLEY ROAD INTERCHANGE

Request City Council authorization for the City Manager, or his designee, to enter into an Intergovernmental Agreement with the Arizona Department of Transportation for the advance design of the Dove Valley Road interchange on I-17 and for the City Controller to disburse funds.

The advance design and eventual right-of-way and construction of this interchange will materially benefit the City by providing convenient freeway access for anticipated major new developments adjacent to I-17 and Dove Valley Road.

Under the terms of the agreement, the City will loan the regional freeway program up to $2.5 million of design project costs. The City will be reimbursed for the principal of this loan by regional freeway funds in fiscal year 2021. Regional freeway funds will also reimburse the City one-half of the interest cost of the City loan.

ADOT will design the interchange. The anticipated start of design is fall 2006.

Financial Impact
Funding for this agreement is available from Arizona Highway User Revenue (AHUR) Capital Reserve Funds.

Citizen Notification
Several public meetings have been held by ADOT to discuss the new interchanges and widening proposed for I-17 in this area. ADOT will also conduct a pubic meeting during the design phase of the project.

ORDINANCE NO. S-33142

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA THROUGH THE ARIZONA DEPARTMENT OF TRANSPORTATION TO ADVANCE THE DESIGN OF THE DOVE VALLEY ROAD INTERCHANGE AT INTERSTATE 17; AND FURTHER AUTHORIZING THE CITY CONTROLLER TO DISBURSE FUNDS FOR PURPOSES OF THIS ORDINANCE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. The City Manager is authorized to enter into an intergovernmental agreement with the State of Arizona through the Arizona Department of Transportation to advance the design of the Dove Valley Road interchange at Interstate 17.

SECTION 2. The City Controller is authorized to disburse funds in the amount of TWO MILLION FIVE HUNDRED THOUSAND DOLLARS ($2,500,000.00) for purposes of this Ordinance.

PASSED by the Council of the City of Phoenix this 21st day of June, 2006.

MAYOR

ATTEST:

City Clerk

CITY CLERK DEPT.
2006 JUN 20 PM 12:56

APPROVED AS TO FORM:

William Back MB Acting City Attorney

REVIEWED BY:

Frank Fairbanks City Manager

DLB:tml/CM 1267/6-21-06/650804v1

TERRY GODDARD
Attorney General

OFFICE OF THE ATTORNEY GENERAL

STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
Direct Line: 602.542.8837

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR07-0300-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.

Date: 6 June 2007

Terry Goddard
ATTORNEY GENERAL

James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:12041

1275 West Washington, Phoenix, Arizona 85007-2997 • Phone 602-542-1680 • Fax 602 -542-3646