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MEMORANDUM **Transportation & Development - Memo No. TR13-001**

DATE: AUGUST 16, 2012

TO: MAYOR & COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
 PAT MCDERMOTT, ASSISTANT CITY MANAGER *PM*
 R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *RJ*

FROM: DANIEL W. COOK, P.E., TRANSPORTATION MANAGER *DWC*

SUBJECT: RESOLUTION NO. 4634, AN INTERGOVERNMENTAL AGREEMENT
 WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT)
 FOR COST SHARING FOR DRAINAGE IMPROVEMENTS TO THUDE
 PARK DRAINAGE BASIN AT GALVESTON STREET AND THE PRICE
 FREEWAY.

RECOMMENDATION: Staff recommends approval of Resolution No. 4634, authorizing the City to enter into an Intergovernmental Agreement with the Arizona Department of Transportation (ADOT) for cost sharing for Drainage Improvements to Thude Park Drainage Basin at Galveston Street and the Price Freeway.

BACKGROUND/DISCUSSION: The City of Chandler is planning on making drainage improvements to the Thude Park Drainage Basin located at Galveston Street and the Price Freeway. The improvements will consist of a small pump station and the associated discharge piping and electrical service to be located on the west side of the basin where storm water discharges into the adjacent ADOT storm drainage system for the Price Freeway. These improvements will pump a constant, but small volume of standing storm drainage water that accumulates at the west end of the basin from nuisance discharges into the basin and from small rainfall events.

Currently the nuisance water and small rainfall event runoff accumulates at the west end of the basin because there is no low flow outfall from the basin. As a result, the water stands in a low area until the Streets staff can pump out the area. This new pump station will eliminate the need for staff to pump out the area and will eliminate any potential for spread of West Nile Virus from mosquitoes.

The Thude Park Drainage Basin is owned by ADOT and takes rainfall runoff from the adjacent Price Freeway and from approximately 2 square miles of Chandler. In accordance with a prior agreement between the City and ADOT, the City was allowed to construct Thude Park in the basin in return for the City agreeing to maintain the basin.

FINANCIAL IMPLICATIONS: The programmed funding for this project is:

\$ 219,000	City Bond funding
\$ 224,000	<u>ADOT Lump Sum Funding</u>
\$ 443,000	Total Estimated Project Cost

The ADOT share of the project is a lump sum amount. If the actual cost of the project is less than the estimated cost, the City's share will be reduced. If the actual cost of the project is greater than the estimated cost, the City's share will increase.

PROPOSED MOTION: Move to approve Resolution No. 4634, authorizing the City to enter into an Intergovernmental Agreement with the Arizona Department of Transportation (ADOT) for cost sharing for Drainage Improvements to Thude Park Drainage Basin at Galveston Street and the Price Freeway, and authorizing the Mayor to sign the Intergovernmental Agreement.

Attachments: Resolution No. 4634
Intergovernmental Agreement

RESOLUTION NO. 4634

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CHANDLER AND THE STATE OF ARIZONA, ACTING AND THROUGH THE ARIZONA DEPARTMENT OF TRANSPORTATION, REGARDING COST SHARING FOR DRAINAGE IMPROVEMENT TO THUDE PARK DRAINAGE BASIN AT GALVESTON STREET AND THE PRICE FREEWAY.

WHEREAS, the City of Chandler and the State of Arizona, by and through the Arizona Department of Transportation, desires to cost share on drainage improvements to the Thude Park Drainage Basin at Galveston Street and the Price Freeway; and

WHEREAS, ADOT is the owner of the basin and the City of Chandler has constructed and is responsible for maintenance of the park and the drainage basin; and\

WHEREAS, the drainage improvements are needed to provide low flow positive drainage to the ADOT storm drainage system to avoid health concerns and excessive maintenance by the City; and

WHEREAS, the cost sharing for this project will be in accordance with the terms of the Intergovernmental Agreement attached hereto as Exhibit "A".

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

1. An Intergovernmental Agreement between the City of Chandler and the State of Arizona, acting by and through the Arizona Department of Transportation, is approved in substantially the form attached hereto as Exhibit "A" for the purpose of undertaking the cost sharing arrangement with the State of Arizona for drainage improvements to Thude Park Drainage Basin.
2. The Mayor of the City of Chandler is authorized to execute the Intergovernmental Agreement.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2012.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY *GAB*

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4634 was duly passed and approved by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2012, and that quorum was present thereat.

CITY CLERK

ADOT File No.: IGA/JPA 12-068 I
AG Contract No.: P001-2012-002040
Project No.: 101-C(201)A
Project: SR 101L Price Freeway @
Galveston Drainage Basin G
Section: (Thude Park)
ADOT Project No.: H8488 01C / H8488 01D
Budget Source Item No.: 73313 / 19999

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF CHANDLER

THIS AGREEMENT is entered into this date _____, 2012, pursuant to the 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/or "ADOT") and the CITY OF CHANDLER, an Arizona municipal corporation (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 and City Charter Article I, Section 1.03 to enter into this Agreement and has by resolution or 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 work embraced in this Agreement will include the construction of drainage improvements at Basin "G" (also known as Thude Park) located at State Route (SR) 101L /Price Freeway and Galveston Street, consisting of a storm water lift/pump station and the related appurtenances and improvements as shown on the Project Plans, herein referred to as the "Project". The State is the fee owner of the Basin and agrees to participate in a lump sum amount of \$216,000.00 of the Project costs plus \$8,000.00 for the cost of the Federal Environmental Documents, for a total lump sum of **\$224,000.00**. The City will be responsible for the remaining Project costs.

4. The City has the authority to design, advertise, award and administer construction of local projects according to Arizona Department of Transportation (ADOT) Local Government Certification Acceptance Program procedures. The State will review and approve the Project's scope of work, review the environmental determination, provide environmental clearances and process federal funding authorization. The State's design review fee is a lump sum amount of **\$3,000.00**; however, it is understood by the Parties, the actual costs for the State's design review fees may be more or less than this amount.

5. Such Project lies within the boundary of the City and has been selected by the City; the survey of the Project has been completed; and the plans, estimates and specifications will be prepared, as required, and submitted by the State to the Federal Highway Administration (FHWA) for its approval.

6. The work embraced in this Agreement is to be administered by the City and consists of the design and construction of drainage improvements at Basin "G" ("Thude Park") located at State Route (SR) 101L/Price Freeway and Galveston Road.

7. Federal funds will be used for the construction of the Project, including the construction engineering and administration (CE) cost.

The Estimated Total Project Cost breakdown is as follows:

ADOT PROJECT TRACS No. H8488 01C/01D

Total Estimated Construction Cost of the Project	\$440,000.00
State's Participation of Federal Funds (Lump Sum) - Budget #73313	\$224,000.00
Estimated City Funds for the Project – Budget #19999	\$216,000.00
State's Estimated Design Review Fee (lump sum City Cost) Budget #19999	\$ 3,000.00
Estimated City Funds @ 100%	\$219,000.00
*TOTAL Project Costs	\$443,000.00

*(Includes CE and project contingencies)

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

The Parties acknowledge that the final actual cost (including State design review fees) may exceed the initial estimate(s) shown above, and in such case the City is responsible for and agrees to pay any and all costs exceeding the State's participation, a lump sum amount of **\$224,000.00**. Actual costs may be more or less than the estimate, in such case the State's participation is fixed at the lump sum amount.

II. SCOPE OF WORK

1. The City will:

a. Upon execution of this Agreement, designate the State as authorized agent to act on behalf of the City for the acquisition, distribution and tracking of federal funds and to authorize said funds for the Project pursuant to federal laws and regulations for the use and benefit of the City.

b. Upon execution of this Agreement, prior to performing or authorizing **any** work, and within thirty (30) days of receipt of an invoice from the State, remit to the State a lump amount of **\$3,000.00** for the State's design review fee.

c. Prepare and provide to the State, the scope of work for the Project and all documents required by the FHWA to qualify said Project for and to receive federal funds. Such documents may consist of, but are not specifically limited to, 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 and such other related tasks essential to the achievement of the objectives of this Agreement.

d. If necessary, enter into an agreement with the design consultant which states that the design consultant "shall provide post design services as required and requested throughout the construction phase of the Project."

e. Obtain from the State, per established procedures of the State's Phoenix Maintenance District Permit Office and without cost, the right to enter State's rights of way, as required, to conduct any and all construction and preconstruction related activities.

f. Certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed rights of way, or will be removed prior to the start of construction.

g. Not permit or allow any encroachments or private use of the rights of way, except those authorized by permit. In the event of any unauthorized encroachment or improper use of the rights of way, the City shall take all necessary steps to remove or prevent any such encroachment or use.

h. Administer the construction of the Project and make all payments to the contractor(s) following the Certification Acceptance Process outlined by the State/ADOT Local Government Section.

i. Upon payment to the contractor, invoice the State for reimbursement of approved costs covered by federal funds and all detailed back up documentation.

j. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work. Such changes require the prior approval of the State and FHWA.

k. Be responsible for any excess cost not covered by federal funds, should costs be deemed ineligible or exceed the maximum federal funds available.

l. Except for penalties, assessments or sanctions of any kind that arise out of acts, errors or omissions by the State, any of its departments, agencies, officers and employees, or its independent contractors, pay the State full compensation for all penalties, assessments or sanctions of any kind resulting from any failure to comply with any federal funding requirement, including but not limited to, auditing, reporting and monitoring the Project and its costs.

m. Be responsible for all costs attributable to any change orders requested by the City not covered by the approved scope of work for this Project. City will also be responsible for contractor claims for additional compensation caused by Project delays. Should costs exceed the State's lump sum federal funds available for construction of the Project, it is understood and agreed that the City will be responsible for any excess cost not covered.

n. Upon completion of the Project and prior to closeout of the construction Encroachment Permit, coordinate with the State (Phoenix Maintenance District Engineer or its designee) a final walk through of the Project area for final acceptance of the Project by both the State and the City.

o. Upon completion of the Project, provide for cost and proper maintenance of the Project, in accordance with the terms of the SR101L, (Price Freeway) Galveston to Frye Landscape Maintenance Agreement, **IGA/JPA 95-098**, attached hereto by reference, **and the Roadway Master Maintenance Agreement, IGA/JPA 08-111 upon execution**, including all Project components constructed under this Agreement.

p. Obtain, per established procedures of the State's Phoenix Maintenance District Permit Office, a valid five (5) year citywide Blanket Permit for the routine maintenance and emergency maintenance

work provided by the City within the State's rights of way. This permit will be provided at no cost or at a cost established by the Governor or State Legislature in accordance with State Law. Any new construction or installation shall require a separate permit as per the Phoenix Maintenance District's established procedures, which may be obtained through the Phoenix Maintenance District Permit Office referenced herein. The City will re-apply for a blanket permit every 5-year term, upon a 30-day notice from the State.

q. Provide a set of as-built plans to the State upon completion of the construction of the Project. An electronic version of the as-built plans shall be forwarded to State/ADOT Local Government Section.

r. Comply with the 2009 Manual on Uniform Traffic Control Devices (MUTCD) (latest edition as published by the Federal Highway Administration (FHWA)) and the current Arizona Supplement, as per Arizona Revised Statutes § 28-641, during all maintenance operations conducted by the City on State highway rights of way. Traffic Control plans will be reviewed and/or approved by and through the Arizona Department of Transportation (ADOT), Phoenix Maintenance District Permits Office.

2. The State will:

a. Upon execution of this Agreement, act as the City's agent for the acquisition, distribution and tracking of federal funds for the use and benefit of the City and to authorize such federal funds for the Project pursuant to federal laws and regulations.

b. Prior to performing or authorizing any work, invoice the City a lump amount of **\$3,000.00** for the State's design review fee. The State will be responsible for design review fees over and above the City's lump sum amount referenced herein.

c. On behalf of the City, upon receipt of the design review fee and receipt of the scope of work for the Project, review and approve documents required by FHWA to qualify said Project for and to receive federal funds. Provide comments to the City as appropriate. Such documents may consist of, but are not specifically limited to, 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 and such other related tasks essential to the achievement of the objectives of this Agreement.

d. Submit all required documentation to FHWA on behalf of the City containing the above mentioned Project with the recommendation that funding be approved for construction. Request the maximum federal funds available, including construction engineering and administration costs.

e. Upon FHWA authorization, notify the City to proceed to advertise for, receive and open bids (subject to the concurrence of the FHWA). Authorize the City to enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project.

f. Grant the City, its agents and/or contractors, per established procedures of the State's Phoenix Maintenance District Permit Office and without cost, an Encroachment Permit to construct within the Project area.

g. Upon receipt of City's invoice for payment to the contractor, process federal funding authorization and within thirty (30) days from the date received, reimburse the City for approved costs covered by federal funds.

h. Upon notification by the City that the Project is complete, attend a walk through of the Project for final acceptance by both the State and the City.

i. Grant or confirm per established procedures of the State's Phoenix Maintenance District Permit Office, that the City has a valid five (5) year citywide Blanket Permit on file for only routine maintenance and emergency maintenance work provided by the City within the State's rights of way. This permit will be provided at no cost or at a cost established by the Governor or State Legislature in accordance with State Law. The State will provide the City with a renewal notice 30-days prior to the end of each 5-year permit term granted to the City. Any new construction or installation shall require a separate permit through the State's Phoenix Maintenance District Permit Supervisor, as per the Phoenix Maintenance District's established procedures.

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 and all related reimbursement, except any provisions for maintenance which shall be perpetual by the City in accordance with the terms of the SR101L, (Price Freeway) Galveston to Frye Landscape Maintenance Agreement, **IGA/JPA 05-098, and the Roadway Master Maintenance Agreement, IGA/JPA 08-111 upon execution**, including all Project components constructed under this Agreement. Further, this Agreement may be cancelled at any time prior to advertisement of the Project construction contract, upon thirty days (30) written notice to the other Party. Wherein, the maintenance of the Basin "G" will be in accordance with the terms of **IGA/JPA 05-098**.

3. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project, except in accordance with the financial terms herein. The City, in regard to the City'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. **The City shall require its contractors to name the State as an additional insured in the contractors' insurance policies. The City shall require its contractors to indemnify the State to the same extent to which the contractors indemnify the City.** It is understood and agreed that the State's participation is confined solely to securing federal aid on behalf of the City and the fulfillment of any other responsibilities of the State as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be the liability of the City and that to the extent permitted by law, the City 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 costs 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 non-performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City any of its agents, officers and employees, or 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.

4. The cost borne by each agency in proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement is to be covered by the federal funds set aside for this Project, up to the maximum available.

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

6. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to both Parties and both Parties shall be afforded the same rights and interest as set forth in this Agreement.

7. The Parties warrant compliance with the "Buy America" requirements as set forth in Section 106.15 of the ADOT Standard Specifications for Road and Bridge Construction.

8. 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".

9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of the Project, this Agreement 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 as a result of termination under this paragraph.

10. Both Parties agree to comply with Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. Both Parties warrant 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 Agreement.

c. Both Parties retain the legal right to inspect the papers of any employee who works on the Project to ensure that the party or subcontractor is complying with the warranty under paragraph (a).

11. 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.

12. 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.

13. 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, as applicable.

14. 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 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 FAX

City of Chandler
Attn: City Manager
PO Box 4008 Mailstop 605
Chandler, AZ 85244-4008
(480) 782- 2210
(480) 782- 2209 - FAX

State Finance - Receivable: Contact
Arizona Department of Transportation
Attn: Accounts Receivable
206 S. 17th Avenue, MD 204B
Phoenix, AZ 85007

City – Finance Contact
City of Chandler
Transportation & Development Director
PO Box 4008 Mailstop 403
Chandler AZ 85244-4008
480-782- 3400
480-782-3415 FAX

State Finance – Payable: Contact
Arizona Department of Transportation
Attn: Accounts Payable
206 S. 17th Avenue, MD 203B
Phoenix, AZ 85007

15. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and 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 CHANDLER

STATE OF ARIZONA

Department of Transportation

By _____
JAY W. TIBSHRAENY
Mayor

By _____
ROBERT SAMOUR, P.E.
Senior Deputy State Engineer
Operations / Valley Transportation

ATTEST:

By _____
MARLA PADDOCK
City Clerk

IGA/JPA 12-068 I

ATTORNEY APPROVAL FORM FOR THE CITY OF CHANDLER

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 CHANDLER, an Agreement between 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 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 _____, 2012.

City Attorney *GAB*