

#13

AUG 13 2009



Chandler • Arizona
Where Values Make The Difference

MEMORANDUM

Public Works Department – Memo No. CA10-019

DATE: July 30, 2009

TO: MAYOR & COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER 
MARK M. EYNATTEN, COMMUNITY SERVICES DIRECTOR 
MICKEY OHLAND, PARK DEVELOPMENT AND OPERATIONS
MANAGER 

FROM: CHRIS LAMM, ENGINEERING PROJECT MANAGER 

SUBJECT: RESOLUTION NO. 4325 - APPROVING AN AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) FOR THE FUNDING OF THE DEVELOPMENT OF PHASE THREE CONSTRUCTION FOR THE PASEO TRAIL ALONG THE CONSOLIDATED CANAL AT AN ESTIMATED COST OF \$411,610.00

RECOMMENDATION: Staff recommends that Council adopt Resolution No. 4325 authorizing the Mayor to execute an Intergovernmental Agreement (IGA) between the City of Chandler and the Arizona Department of Transportation (ADOT) for the development of phase three construction of the Paseo Trail along the Consolidated Canal at an estimated cost of \$411,610.00.

BACKGROUND AND DISCUSSION: In 2002, Council approved an agreement for the development of phase three construction of the Paseo Trail along the Consolidated Canal.

The new agreement includes \$750,000 in American Recovery and Reinvestment Act (ARRA) funds to supplement City funds for the construction of the project. The agreement also refunds the City for previously paid match funds received by the State for said project in the amount of \$234,218.00.

The use of canal right-of-ways for recreational purposes has been a goal of the City for many years. The Parks and Recreation Master Plan addresses the use of the canals, specifically the Consolidated and the Western Canals for use as paseos. Paseos function as a linear pathway system for hiking, biking, jogging, and equestrian activity. The use of SRP facilities for these

types of uses is common throughout the Valley. The resultant open space system will accommodate both passive and active recreational uses while serving as a complementary linkage to the parks along the corridor. The section of the Consolidated Canal running through Chandler is unique to the Valley. Unlike the majority of the canals, no power line easements run along its banks and it is primarily bordered with agricultural lands and residential development.

FINANCIAL IMPLICATIONS: The ARRA/Recovery Act funds will be used for the construction of the project, including the construction engineering and administration costs (CE)

The current project costs are estimated as follows:

| | |
|--------------------------|----------------|
| ARRA/Recovery Acts Funds | \$ 750,000.00 |
| LOCAL funds | \$ 411,610.00 |
| Project Costs | \$1,161,610.00 |

PROPOSED MOTION: Move that Council pass and adopt Resolution No. 4325 authorizing the Mayor to execute and Intergovernmental Agreement (IGA) between the City of Chandler and the Arizona Department of Transportation (ADOT) for the development of phase three construction of the Paseo Trail along the Consolidated Canal at an estimated cost of \$411,610.00.

Attachments: Resolution No. 4325
Amendment Intergovernmental Agreement

RESOLUTION NO. 4325

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING THE CITY OF CHANDLER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION.

WHEREAS, the City of Chandler's Consolidated Canal/Paseo Multi-Use Path, Galveston-Pecos Roads Project will provide a substantial benefit to the City of Chandler; and

WHEREAS, the State of Arizona, acting by and through its Department of Transportation (the "State") is authorized to acquire American Recovery and Reinvestment Act ("ARRA") funds for projects such as the Consolidated Canal/Paseo Multi-Use Path, Galveston-Pecos Roads Project; and

WHEREAS, it is in the best interests of the City of Chandler to enter into this Intergovernmental Agreement with the State.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, that it hereby authorizes the City to enter into an Intergovernmental Agreement with the State of Arizona and authorizes the Mayor to execute this Agreement on behalf of the City of Chandler.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this 13th day of August, 2009.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4325 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 13th day of August, 2009, and that a quorum was present thereat.

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

ADOT File No.: IGA/JPA 01-086-I
AMENDMENT ONE
AG Contract No.: KR02-0588TRN
Project No.: Paseo Multiuse Pathway
Section: Consolidated Canal, Galveston
– Pecos Roads
TRACS No.: SL456 01C
Budget Source Item No.:
ARRA/Recovery Act Funds

INTERGOVERNMENTAL AGREEMENT

AMENDMENT ONE

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF CHANDLER

THIS AGREEMENT is entered into this date _____, 2009, (to **AMEND JPA 01-086 I in its entirety, executed 23 July 2002, and filed with Arizona Secretary of State under No. 25391, the "Agreement"**) 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" or "ADOT") and the CITY OF CHANDLER, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties".

Due to the change in funding and changes in the Project, the Agreement shall be amended and represents the entire agreement between the Parties. The Agreement is hereby amended as follows:

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 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. Congress has authorized appropriations for the American Recovery and Reinvestment Act of 2009 (ARRA 2009) for the disbursement of funds for investment in certain projects, including but not limited to, roads, bridges, mass transit, energy efficient buildings, flood control, clean water and other infrastructure projects to save and create jobs for long term growth and stability.

4. The City has the authority to design, advertise, award and administer construction of local projects according to ADOT's Local Government Certification Acceptance Program procedures. Under this Agreement, the City will construct, landscape and maintain a multiuse pathway (MUP) on the City's Consolidated Canal, from Galveston to Pecos Roads, hereinafter referred to as the "Project." The State will review and approve the Project's scope of work, review the environmental determination, provide environmental clearances and process ARRA/Recovery Act Funds authorization.

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 and, as required, submitted by the State to the Federal Highway Administration (FHWA) for its approval.

6. The interest of the State in this project is the acquisition, distribution and tracking of Federal funds for the use and benefit of the City and to authorize such ARRA/Recovery Act Funds for the project pursuant to Federal law and regulations. The State shall be the designated agent for the City.

7. The ARRA/Recovery Act Funds will be used for the design (if applicable) and construction of the project, including the construction engineering and administration cost (CE).

The current Project costs are estimated as follows:

TRACS No.

| | |
|-------------------------|----------------|
| ARRA/Recovery Act Funds | \$ 750,000.00 |
| LOCAL Funds | \$ 411,610.00 |
| *Project Costs | \$1,161,610.00 |

*(Includes CE and project contingencies)

8. The Parties acknowledge that the eventual actual cost may exceed the estimate, and such case the City is responsible for any and all costs exceeding the estimate.

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

II. SCOPE OF WORK

1. The State will:

a. On behalf of the City, review and approve the Project(s) Scope of Work and prepare documents required by the FHWA to qualify certain projects for and to receive ARRA/Recovery Act Funds. Such review may consist of, but is not specifically limited to, the review and approval of the 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 and such other related tasks essential to the achievement of the objectives of this Agreement.

c. Upon review and approval of the Scope of Work, authorize the City to proceed to advertise, for, receive and open bids subject to the concurrence of the FHWA. Authorize the Local Agency to enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project.

d. Enter into a Project Agreement with FHWA on behalf of the City covering the work encompassed in said construction contract and will request the maximum ARRA/Recovery Act Funds available, including construction engineering and administration costs. Should costs exceed the maximum ARRA/Recovery Act Funds available, it is understood and agreed that the City will be responsible for any excess cost not covered by ARRA/Recovery Act Funds. Upon receipt of City's invoice for payment to the contractor, and within thirty (30) days from the date received, reimburse City for approved costs covered by the ARRA/Recovery Act Funds.

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

f. Refund the City for previously-paid match funds received by the State for said Project in the amount of \$234,218.00.

g. Provide any and all Supplemental Agreements to FHWA upon receipt from the City, including but not limited to, change orders, force accounts, time extensions, etc..

2. The City will:

- a. Upon execution of this Agreement, designate the State as authorized agent for the City.
- b. **Follow reporting requirements in accordance with Section 1201 and Section 1512 of the American Recovery and Reinvestment Act of 2009. Make appropriate arrangements with the Contractor for the purpose of such reporting. Upon authorization of the Project, be responsible for providing all reports, including the Contractor's reports, to the State promptly on the fourth day (FHWA Form 1585) and the fourteenth day (FHWA Form 1589) of every month. Should all reports for the preceding month not be submitted to the State by the fourth day (FHWA Form 1585) and the fourteenth day (FHWA Form 1589) of every month, the City will be subject to an assessment of \$1,000.00 as liquidated damages for each delinquent report.**
- c. Provide the Project(s) Scope of Work to the State and FHWA for review to qualify certain projects for and to receive ARRA/Recovery Act Funds.
- d. Administer contracts(s) for the Project(s) following the Certification Acceptance Process outlined by ADOT's Local Government Section (Exhibit C). Make all payments to the contractor(s).
- e. Upon payment to the contractor, invoice the State for reimbursement of approved costs covered by ARRA/Recovery Act Funds.
- f. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid. Hereby also certifies 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 right-of-way, or will be removed prior to the start of construction.
- g. Not permit or allow any encroachments upon or private use of the right-of-way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.
- h. Grant the State, without charge, cost, or additional documents and agreements, permission to enter the Project area as required to inspect the progress of work for federal-aid compliance.
- i. All costs attributable to any engineering change orders requested by the City not covered by ARRA/Recovery Act Funds will be the sole responsibility of the City. The City will also be responsible for contractor claims for additional compensation caused by Project delays attributable to the City.
- j. Provide for cost and, as an annual item in the City's budget, proper maintenance and emergency repairs of the Project, including all of the Project components. Provide perpetual and proper maintenance for Project, including, but not limited to, keeping pathway and pedestrian bridge surface clear of debris. Be responsible for any repairs necessary to keep the pathway, safety railing and any retaining wall compliant with the Americans with Disabilities Act Accessibility Guidelines.
- k. Upon completion of construction, provide for at its own cost, perpetual and proper maintenance of all landscape and other improvements, including, but not limited to, lighting and signing for the pathway and pedestrian bridge. Also be responsible for the ongoing maintenance of all landscaping in accordance with accepted horticultural practices.
- l. Be responsible for the electrical power for the pathway lighting.
- m. Pay the State full compensation for all penalties, assessments or sanctions of any kind resulting from any failure to comply with any ARRA requirement, including but not limited to, auditing, reporting and monitoring the project and its costs.
- n. Provide any and all Supplemental Agreements to the State, including but not limited to, change orders, force accounts, time extensions, etc., in a timely manner.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project, except any provisions for maintenance/electrical power and/or landscaping maintenance shall be perpetual by the City. 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. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. 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.

3. The cost of construction and construction engineering work under this Agreement is to be covered by the ARRA/Recovery Act Funds set aside for this Project, up to the maximum available. The City acknowledges that the eventual actual costs may exceed the maximum available amount of ARRA/Recovery Act funds, or that certain costs may not be accepted by the federal government as eligible for ARRA/Recovery Act funds. Therefore, the City agrees to furnish and provide the difference between the estimated and actual costs not covered under the ARRA/Recovery Act Funds received.

4. The State will follow reporting requirements in accordance with Section 1201 and Section 1512 of the American Recovery and Reinvestment Act of 2009.

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

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

7. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

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 this Agreement, 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. 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.

11. 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
55 North Arizona Place, #301
Chandler, Arizona 85225-5540
(480) 782-2210
(480) 782-2209Fax

12. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

- a. The City warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. 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 City may be subject to penalties up to and including termination of the Agreement.
- c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the City or subcontractor is complying with the warranty under paragraph (a).

13. Pursuant to A.R.S. Sections 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 A.R.S. Section 35-391 or and 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.

14. 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 _____
BOYD W. DUNN
Mayor

By _____
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

ATTEST:

Initial Draft Amendment 5/18/09 ghc
City concurrence 6/29/09

By _____
MARLA PADDOCK
City Clerk

IGA/JPA 01-086-I Amendment One

ATTORNEY APPROVAL FORM FOR THE CITY OF CHANDLER

I have reviewed the above referenced amended Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF CHANDLER, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Amendment 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 July 16 day of 2009, 2009.

Sandra K. [Signature]
for City Attorney