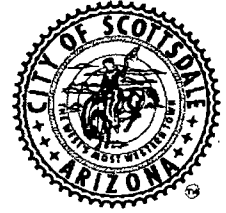


CITY COUNCIL REPORT



Meeting Date: June 17 2014
 General Plan Element: *Community Mobility*
 General Plan Goal: *Safely, effectively and efficiently move people, goods and information*

ACTION

Amended and Restated Intergovernmental Agreement with the Salt River Pima - Maricopa Indian Community for cooperation on Pima Road Roadway and Granite Reef Wash Flood Control Improvements. Adopt Resolution 9767, authorizing Intergovernmental Agreement 2009-148-COS-A1 to amend and restate a master agreement covering joint participation and funding of construction and maintenance work to be performed on Pima Road and on the Granite Reef watershed drainage projects.

BACKGROUND

The purpose of this action is to modify and extend an Intergovernmental Agreement (IGA) with the Salt River Pima Maricopa Indian Community (SRPMIC). The original master agreement was approved by Council in November of 2009 with an expiration date of June 30, 2014. That agreement detailed a cost sharing responsibility for two capital projects affecting both SRPMIC and the City of Scottsdale. Those projects are the widening of Pima Road from the McDowell Road intersection north to the jurisdictional boundary between the communities on 90th Street just south of Via Linda and the other is the construction of improvements to mitigate flooding in the Granite Reef wash corridor. The original agreement anticipated a cost sharing allocation of 60% to SRPMIC and 40% to the city for the portions of the two capital projects that are not funded by other agencies. It is anticipated that the Maricopa Association of Governments (MAG) will fund portions of the Pima Road expansion and that the Flood Control District of Maricopa County (FCDMC) will participate in funding of the Granite Reef Watershed drainage project.

The modifications to the agreement serve to confirm and clarify actions that have taken place since the original agreement was approved. Those updates include

- Update estimated cost amounts for the roadway and drainage projects.
- Confirm reliance on original Design Concept report for both roadway and drainage projects.
- Confirm that SRPMIC continues to study the southern drainage outfall location.
- Updated proposed timing of funding and construction of segments to reflect current project status.
- Extend agreement duration by ten years through November of 2024.

The original agreement anticipated that multiple, additional, detailed agreements would be signed for each phase of both capital projects. Since the original master agreement was approved in 2009, only two supplemental contracts have been issued as contemplated under the master agreement. The first contract was between the city and MAG for the reimbursement of the initial phase of eligible construction of Pima Road from Via de Ventura to Krail Drive in the amount of \$7,466,000. The second agreement provided for maintenance responsibilities for that new section of roadway and reimbursed SRPMIC for its cost from the MAG proceeds.

ANALYSIS & ASSESSMENT

Recent Staff Action

City staff has been working with SRPMIC to review the capital plans for both agencies to better line up proposed funding and construction schedules for the major components of the capital projects. This has included working with MAG, FCDMC and other agencies to properly program contributed funds to match plans of the two communities. The amended and restated IGA brings the programs of both communities in closer alignment and reconfirms the original cost sharing breakdown of the unfunded portions of the projects.

Policy Implications

The roadway improvements will promote mobility along the Pima Road corridor by improving access to both sides of the roadway, acting as an alternative to Loop 101 and facilitating access to the spring training facility constructed by SRPMIC in 2010. The flood control project will eliminate an existing FEMA floodplain affecting property owners in the southern portion of Scottsdale and promote development of the east side of Pima Road.

Significant Issues to be Addressed

Staff of both the City and SRP-MIC will continue to work on additional agreements to cover the specific design, construction and long term maintenance of these projects. As discussions with potential project funding partners continues, additional Intergovernmental Agreements will be drafted for Council consideration.

Traffic Impacts

No direct impacts are anticipated as a result of approval of this agreement, although the resulting future capital projects will improve mobility in the corridor.

Community Involvement

Community involvement will occur as each segment of roadway or drainage is brought to design. It is expected that the city will follow its normal protocol for public outreach. SRPMIC will conduct outreach for its community members and the city will support that effort where necessary.

RESOURCE IMPACTS

Available funding

Funding for the two capital projects is currently in place in the city’s Capital Improvement Program. Pima Road improvements are covered under CIP Project S1101, Pima Road – McDowell to 90th Street/Via Linda. The city’s share of the roadway project is funded with 0.2% Transportation Sales Tax. The drainage project is covered under CIP Project F0201, Granite Reef Watershed with the city’s share funded by both Bond 2000 proceeds and General Fund capital.

Staffing, Workload Impact

Existing Transportation, Stormwater Management and Capital Project Management staff resources are available to provide the requisite services for this contract. The contract administrator responsible for enforcement of all provisions of this agreement is Elaine Mercado, Senior Project Manager, Capital Project Management.

Maintenance Requirements

The City currently maintains the pavement, drainage structures and traffic signals along Pima Road under an agreement with ADOT established at the time that the Loop 101 freeway was constructed. With the exception of the northbound lanes of Pima Road, which fall under the older ADOT agreement, it is anticipated that each agency will maintain the portions of the projects that fall within each jurisdiction.

Future Budget Implications

Project operation and maintenance costs will be evaluated and funded as each phase of the projects is designed.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution 9767, authorizing Intergovernmental Agreement 2009-148-COS-A1 to amend and restate a master agreement covering joint participation and funding of construction and maintenance work to be performed on Pima Road and on the Granite Reef watershed drainage projects.

Proposed Next Steps:

If this action is approved, coordination will continue with SRPMIC for the next phase of construction of both the roadway and drainage projects will continue.

RESPONSIBLE DEPARTMENT(S)

Public Works Division, Capital Project Management

STAFF CONTACTS (S)

City Council Report | Pima Road IGA for Roadway and Flood Control Improvements

Derek Earle, City Engineer, dearle@Scottsdaleaz.gov

APPROVED BY



Daniel J. Worth, Executive Director, Public Works

(480) 312-5555, dworth@scottsdaleaz.gov

6-3-14

Date

ATTACHMENTS

1. Resolution 9767
2. Location Map
3. Contract 2009-148-COS-A1

RESOLUTION NO. 9767

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY TO ENTER INTERGOVERNMENTAL AGREEMENT AMENDMENT 2009-148-COS-A1 WITH THE SALT RIVER PIMA MARICOPA INDIAN COMMUNITY FOR JOINT PARTICIPATION AND FUNDING OF IMPROVEMENT WORK ON PIMA ROAD FROM MCDOWELL ROAD TO NORTH OF THE 90TH STREET/PIMA FREEWAY INTERCHANGE AND DESIGN, CONSTRUCTION AND MAINTENANCE OF FLOOD CONTROL CONVEYANCE IMPROVEMENTS WITHIN THE GRANITE REEF WATERSHED

WHEREAS, Arizona Revised Statutes §11-951, et seq., provides that public agencies may enter into intergovernmental agreements for joint operation or cooperative action with other governments, including tribal governments; and

WHEREAS, Article 1, Section 3-1 of the Charter of the City of Scottsdale authorizes the City to enter into intergovernmental agreements with various public agencies; and

WHEREAS, the City of Scottsdale wishes to enter into an intergovernmental agreement with the Salt River Pima Maricopa Indian Community for the design, construction and maintenance of improvements to Pima Road from McDowell Road to north of the 90th Street/Pima Freeway Interchange and design, construction and maintenance of flood control conveyance improvements within the Granite Reef Watershed;

NOW, THEREFORE, LET IT BE RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The Mayor is hereby authorized and directed to execute on behalf of the City of Scottsdale contract number 2009-148-COS-A1 with the Salt River Pima Maricopa Indian Community.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona, this ____ day of _____, 2014.

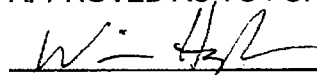
CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:

Carolyn Jagger, City Clerk

W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:



Bruce Washburn, City Attorney

By: William Hylen, Assistant City Attorney



PIMA ROAD IMPROVEMENTS

GRANITE REEF WASH IMPROVEMENTS

90TH ST



VIA LINDA

VIA DE VENTURA

INDIAN BEND RD

McDONALD DR

CHAPARRAL RD

INDIAN SCHOOL RD

THOMAS RD

McDOWELL RD

McKELLIPS RD

SCOTTSDALE RD

HAYDEN RD

PIMA RD

ATTACHMENT 2

PROJECT TITLE
LOCATION MAP

DEPT. OF	DRAWN	DATE	SCALE	SHT.
CPM	RAH	05/14	NTS	1 of 1



WHEN RECORDED, RETURN TO:
City of Scottsdale
City Clerk's Office
3939 N. Drinkwater Boulevard
Scottsdale, AZ 85251

FIRST AMENDED AND RESTATED
INTERGOVERNMENTAL
AGREEMENT BETWEEN
THE SALT RIVER PIMA MARICOPA INDIAN COMMUNITY
AND
CITY OF SCOTTSDALE

CITY OF SCOTTSDALE CONTRACT NO. 2009-148-COS-A1
PROJECT: PIMA ROAD IMPROVEMENTS AND GRANITE REEF
WATERSHED FLOOD CONTROL
SECTION: MCDOWELL ROAD-90TH STREET

DO NOT REMOVE
THIS IS PART OF AN OFFICIAL DOCUMENT

12367685v1

ATTACHMENT 3

City of Scottsdale Contract No. 2009-148-COS-A1
Project: Pima Road Improvements and Granite
Reef Watershed Flood Control
Section: McDowell Road-90th Street

FIRST AMENDED AND RESTATED
INTERGOVERNMENTAL
AGREEMENT BETWEEN
THE SALT RIVER PIMA MARICOPA INDIAN COMMUNITY
AND
CITY OF SCOTTSDALE

THIS FIRST AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this ___ day of _____ pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the SALT RIVER PIMA MARICOPA INDIAN COMMUNITY (the "SRPMIC") and the CITY OF SCOTTSDALE (the "City"), known collectively as the Parties.

I. RECITALS RELATING TO AMENDMENT

The City and SRPMIC entered into the Original Intergovernmental Agreement ("the Original IGA") 2009-148-COS on November 17, 2009, ("Original IGA") related to joint participation and funding of improvement work to be performed on Pima Road from the McDowell Road intersection to the North boundary of the SRPMIC and Scottsdale, just north of the 90th Street/Pima Freeway traffic interchange ("Roadway Project") and design, construction and maintenance of flood control conveyance improvements within the Granite Reef Watershed ("Flood Control Project"). This Amended and Restated Intergovernmental Agreement ("this Agreement") amends, supersedes and replaces the Original Agreement.

Pursuant to the terms of the Original IGA, the City entered into an agreement dated July 7, 2010 (2010-099-COS) with the Maricopa Association of Governments ("MAG") for reimbursement of eligible costs for design and construction of improvements to Pima Road between Via de Ventura and Krail Street and by agreement dated March 7, 2012 (2012-005-COS) with SRPMIC the City forwarded to SRPMIC the funds it received from MAG.

Since the Original IGA was signed there have been certain changes to the stages in which the Roadway Project and Flood Control Project (collectively "the Projects") are anticipated to be completed and potential changes to the funding of the Roadway and Flood Control Projects.

The Original IGA is effective until the earlier of June 30, 2014 or until completion of the Roadway and Flood Control Projects.

The Projects have not yet been completed and the Parties wish to maintain certain terms of the Original IGA beyond June 30, 2014 and amend and revise other terms of the original IGA.

The City of Scottsdale is authorized to enter into this Agreement pursuant to A.R.S. § 11-952, et seq., and Article 3, § 3-1 of the City Charter and SRPMIC is authorized to enter into this Agreement pursuant to Article VII § 1(h) of the SRPMIC Constitution.

II. GENERAL RECITALS

1. The SRPMIC and City desire to participate in the preparation of final design, construction and long term maintenance of improvements to Pima Road, herein referred to as the "Roadway Project", which includes but is not limited to widening the roadway to four through travel lanes; additional turn lanes at major intersections, landscaping, bicycle/pedestrian and traffic/access management improvements on existing Pima Road from the McDowell Road intersection to the north boundary of the SRPMIC and Scottsdale, just north of the 90th Street/Pima Freeway traffic interchange.

2. The Parties agree the final design alternative for the Roadway Project will be in accordance with the 30% design plans for the recommended roadway improvements determined by the Final Design Concept Report ("FDC") dated October 9, 2009, prepared by PB America, including a recommended phasing and implementation process, except that the Final Design Concept ("FDC") may be modified by agreement of the Parties, including but not limited to modification of the FDC to incorporate value engineering changes. The total estimated cost of these improvements in current dollars is \$48,464,056 and includes design, right of way and construction.

3. The MAG has programmed funds from the Regional Transportation Plan to the City over a period of 3 years beginning in fiscal year 2014 of up to \$27,665,860 for the design, right of way and construction of the Roadway Project, dependent on the provision of a minimum 30% local match.

4. The SRPMIC and City desire to participate in the preliminary and final design, right of way acquisition, construction and long term maintenance of flood control conveyance improvements within the Granite Reef Watershed (GRW), herein referred to as the "Flood Control Project", which includes but is not limited to the construction of stormwater conveyance facilities, catch basins and other collection facilities and an outfall structure to the Salt River.

5. The Parties agree the final design alternative for the Flood Control Project will be in accordance with the 30% design plans for the flood control facilities determined by the Design Concept Report ("DC") prepared by Psomas, except that the final design alternative may be modified by written agreement of the Parties modifying the DC, including but not limited to incorporating value engineering changes. The parties further agree the final design alternative is subject to additional alignment modifications of the flood control facilities south of McKellips Road to be determined by additional study by SRPMIC; such modifications subject to written agreement of the parties modifying the DC. The estimated cost of these flood control improvements in current dollars is \$52,400,848 and includes design, right of way and construction.

6. The Parties anticipate that the Flood Control District of Maricopa County ("FCDMC") will recommend funds from its Capital Improvement Plan to the City for the design, right of way and construction of flood control improvements within Granite Reef Watershed.

7. The SRPMIC and City desire to work cooperatively in the efforts to complete these projects. The Parties intend to actively seek out other potential funding sources to cover the additional monies needed to complete these projects and to apply those additional funds for these projects. The Parties will work cooperatively in all aspects of the design, construction and long term maintenance of the proposed projects and will set forth these understandings in future intergovernmental agreements.

8. The purpose of this agreement is to identify and define the general responsibilities of the City and SRPMIC, hereinafter called "the parties," for the remaining work and unfunded costs to implement the Roadway Project and the Flood Control Project.

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

III. SCOPE OF WORK

1. The City will:

a. Serve as the lead agency for the design and construction of the Roadway Project and the Flood Control Project ("Projects"). In joint consultation with the SRPMIC, the City will direct the decisions on these projects.

b. Enter into one or more intergovernmental agreements, as necessary, with SRPMIC along with the the Arizona Department of Transportation covering the Roadway Project, the FCDMC covering the Flood Control Project, and with SRPMIC for disbursement of funds for the Flood Control Project.

c. Enter into one or more intergovernmental agreements, as necessary, with the MAG governing the reimbursement of regional transportation funds designated for the Roadway Project and with SRPMIC, for disbursement of funds received from MAG.

d. Serve as the lead agency for coordinating public outreach activities.

e. Coordinate regular project meetings and work with the SRPMIC and the funding agencies to resolve all planning and design issues during the development and construction of the Roadway Project and the Flood Control Project.

f. Provide 40% of the unfunded costs of the combined Roadway Project and Flood Control Project. Such unfunded costs may be financed or paid in lieu by the City through the use of federal grants, State/County contributions, bond sales, development agreements, revenue sharing agreements or other similar mechanisms.

2. The SRPMIC will:

a. The SRPMIC and the City will jointly select the most qualified independent engineering firms to undertake the two projects, jointly participate in negotiation of the consultant contracts, and jointly negotiate any contract change orders in accordance with SRPMIC Procurement Policy and the City's Purchasing Ordinance.

b. Enter into one or more intergovernmental agreements, as necessary, with the City for disbursement of funds received from FCDMC and MAG for costs of the Flood Control and Roadway Projects.

c. Assist the City in coordinating public outreach activities for both the Roadway Project and the Flood Control Project.

d. Attend regular project meetings and work with the City to resolve all planning

and design issues during the development of the Roadway Project and the Flood Control project.

e. Provide 60% of the unfunded costs of the combined Roadway Project and Flood Control Project. Such unfunded costs may be financed or paid in lieu by SRPMIC through the use of federal grants, State/County contributions, bond sales, development agreements, revenue sharing agreements or other similar mechanisms.

IV. MISCELLANEOUS PROVISIONS

1. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses, including reasonable attorney's 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.

2. This Agreement supersedes and replaces the Original IGA and shall remain in full force and effect until completion of said Projects, or until November 1, 2024, whichever occurs sooner; provided, however, that this Agreement may be cancelled at any time prior to the award of a consultant contract upon thirty-days (30) written notice to the other parties.

3. This Agreement shall become effective upon signing by authorized representatives of both parties.

4. The Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. 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" subject to 42 USC Sec 2000e-2 as applicable.

6. 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:

City of Scottsdale
Attn: Elaine Mercado
Contract Administrator
3939 N. Drinkwater Boulevard
Scottsdale, AZ 85251

Salt River Pima Maricopa Indian Community
Attn: Community Manager
10005 E. Osborn Road
Scottsdale, AZ 85256
(480) 850-8001

7. Dispute Resolution; Arbitration

a. Any controversy which shall arise among the parties to this Agreement regarding their rights, duties or liabilities hereunder shall be settled by binding arbitration under the Federal Arbitration Act, 9 U.S.C. §§ 1-14 ("Title 9"), pursuant to the authority of 25 U.S.C. §

416(a)(c) ("Section 416(a)(c)") and in accordance with this Paragraph. Pursuant to Section 416(a)(c), any (a) refusal to submit to arbitration, (b) exercise of a right under Title 9, or (c) enforcement of an arbitration award or decision under this Paragraph is solely within the jurisdiction of the United States District Court, District of Arizona (the "District Court"). An arbitration award under this Paragraph is final unless a party files a motion to vacate or modify the award pursuant to 9 U.S.C. § 12 in the District Court within 30 days of the date of the award. Judgment upon the award under this Paragraph may be confirmed in District Court pursuant to Section 416(a)(c) and 9 U.S.C. § 9.

b. Such binding arbitration shall be conducted, upon the request of any party, before three (3) arbitrators (unless the parties to the arbitration agree to one (1) arbitrator) designated by the American Arbitration Association (AAA) and in accordance with the rules of such Association (except as such rules may contemplate state court jurisdiction) and as provided for under the Act of November 22, 1983 (97 Stat. 1016). The arbitrators designated to act under this Agreement shall make their award in strict conformity with such rules and shall have no power to depart from or change any of the provisions thereof except as provided herein.

c. Except as provided in this Paragraph, the parties agree that nothing in this Agreement or the AAA Rules is or will be construed to be (a) a waiver of the SRPMIC's sovereign immunity from suit or (b) consent by the SRPMIC to the jurisdiction of any governmental authority, including but not limited to, the State of Arizona or the United States. For the sole purposes of this Agreement, the SRPMIC hereby provides a limited waiver of immunity it may enjoy with respect to controversies, claims and/or causes of action arising out of or related to this Agreement for the limited purpose of arbitration and related federal court jurisdiction as set forth in this Paragraph. SRPMIC further acknowledges and agrees, pursuant to the express limited waiver of sovereign immunity in this Agreement, to submit to the jurisdiction of the arbitration panels described above and agrees to give full legal effect to any award or judgment resulting there from. Nothing in this Paragraph is intended or shall be interpreted to waive the SRPMIC's sovereign immunity in relation to the jurisdiction of the courts of the State of Arizona to hear and resolve disputes. The limited waiver of sovereign immunity provided in this Paragraph is the sole such waiver and nothing elsewhere in this Agreement is, or shall be construed to be, a further waiver or a modification of this waiver.

d. Except as provided in this paragraph, the parties agree that nothing in this agreement or the AAA rules is or will be construed to be a waiver of the state's immunity under the 11th amendment of the U.S. Constitution.

8. The recitals in Section I are incorporated by this reference.

9. Compliance with E-Verify Program:

A. Warrant of Compliance. Under the provisions of A.R.S. §41-4401, both Parties warrant to the other that each Party will comply with all Federal Immigration laws and regulations that relate to their employees and that each now complies with the E-Verify Program under A.R.S. §23-214(A).

B. Breach of Warranty. A breach of this warranty will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement.

C. Right to Inspect. Both Parties retain the legal right to inspect the papers of any employee who works on this Contract or subcontract to ensure compliance with the warranty given above.

D. Random Verification. Either Party may conduct a random verification of the employment records of the other to ensure compliance with this warranty.

E. Federal Employment Verification Provisions- No Material Breach. A Party will not be considered in material breach of this Agreement if it establishes that it has complied with the employment verification provisions prescribed by 8 USC §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

F. Inclusion of Article in Other Contracts: The provisions of this Article must be included in any contract either Party enters into with any and all of its contractors or subcontractors who provide services under this Agreement.

10. If any term or provision is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Agreement will remain in full force and effect and the term or provision will be considered deleted.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

SALT RIVER PIMA MARICOPA INDIAN COMMUNITY ATTEST

By: _____
Diane Enos
President

By: _____
Erica Harvier
Council Secretary

CITY OF SCOTTSDALE

ATTEST

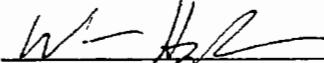
By: _____
W.J. "Jim" Lane
Mayor

By: _____
Carolyn Jagger
City Clerk

Approved as to Form

Office of the General Counsel

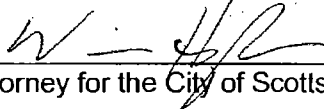
APPROVED AS TO FORM:



Bruce Washburn, City Attorney
By: William Hylen
Assistant City Attorney

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of A.R.S. Section 11-952(0), each of the undersigned attorneys acknowledge that: (1) they have reviewed the above Agreement on behalf of their respective clients; and (2) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.



Attorney for the City of Scottsdale

Attorney for the Salt River Pima Maricopa Indian Community