

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATIONS**

CC: 10C  
Amend No. \_\_\_\_\_

Date prepared: September 4, 2009

Council Meeting Date: October 20, 2009

TO: Carl Swenson, City Manager  
THROUGH: Susan J. Daluddung, Deputy City Manager  
FROM: Andrew Granger, P. E., Engineering Director  
THROUGH: Dan Nissen, P. E., Assistant City Engineer  
PREPARED BY: Chris Kmetty, P. E., Senior Civil Engineer

*Handwritten initials: SJA, AG*

**SUBJECT:** Adoption of the Resolution approving the Intergovernmental Agreement between Maricopa County and the City of Peoria for construction, operation and maintenance of the Vistancia Extension (Engineering Project No. P-0808, EN00242)

**RECOMMENDATION:**

Discussion and possible action to adopt the resolution approving the Intergovernmental Agreement (IGA) with Maricopa County for the construction, operation and maintenance of the Vistancia Extension.

**SUMMARY:**

As part of the construction of SR303L between Happy Valley Parkway and the Lake Pleasant Parkway, the State is eliminating the existing access to the Arizona Public Service (APS) Westwing Substation and the State is responsible to replace the access.

In July 2008, the Arizona Department of Transportation (ADOT) and the City of Peoria entered into an Intergovernmental Agreement (IGA) for the construction of the Vistancia Extension. Under the terms of the IGA the City will build the road at ADOT's expense and would own and maintain the road after construction.

Although the Westwing Access/Vistancia Extension is currently located within Maricopa County jurisdiction, the City has an interest related to the annexation and development

**CITY CLERK USE ONLY:**

- Consent Agenda
- Carry Over to Date: \_\_\_\_\_
- Approved
- Unfinished Business (Date heard previous: \_\_\_\_\_)
- New Business
- Public Hearing: No Action Taken

ORD. # \_\_\_\_\_ RES. # 09-115  
LCON# 09209 LIC. # \_\_\_\_\_  
Action Date: \_\_\_\_\_

of the Westwing Access/Vistancia Extension as a future access to development in the area. As such, the State requests the City to acquire the necessary rights of way and construct the access road connection from Happy Valley Parkway known as the Westwing Access/Vistancia Extension up to APS right of way.

The purpose of this IGA with Maricopa County Department of Transportation (MCDOT) is to identify and define the responsibilities of the County and the City with respect to the design, right of way acquisition, construction management, permitting, inspections, operation, maintenance and ultimately annexation of the roadway.

The County agrees to:

- Act as the permitting agency and provide No-Fee permitting of the construction that will occur within the agency's jurisdiction.
- Renegotiate this IGA when the City or County decides to further develop the intersection of Happy Valley Road/Vistancia Boulevard/Vistancia Extension or the City or County desires to widen or extend the Vistancia Extension.

The City agrees to:

- Have the County act as the Permitting Agency for construction of the Vistancia Extension.
- Ensure that all the applicable requirements of all statutes, acts, ordinances, regulations, codes, and standards of all legally constituted authorities (and the County) are complied with.
- Acquire the right of way for the Vistancia Extension from Arizona State Land Department.
- Provide all design review in accordance with the applicable City standards.
- Procure and construct the Vistancia Extension as a half street minor collector roadway in accordance with the City design standards, including all construction management and inspection of the roadway.
- Operate and maintain the newly constructed Vistancia Extension extending south from Happy Valley Parkway to the northeast corner of the Westwing Substation's property (approximately 1540 feet, as shown in Exhibit B) until such time that the City or County further develops the future intersection of Happy Valley Road and Vistancia Boulevard, or the City or County widens the half street, or extends the Vistancia Extension beyond the current southern termination.

Council Communication  
Vistancia Extension  
Intergovernmental Agreement - ADOT  
October 20, 2009  
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**FISCAL NOTE:**

The State, by previous 2008 IGA, is responsible for all costs relative to the construction of the project so there is no capital cost to the City of Peoria.

**ATTACHMENT:**

1. Resolution
2. Intergovernmental Agreement
3. Vicinity Map

RESOLUTION NO. 09-115

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA ADOPTING A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT WITH THE MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION AND THE CITY OF PEORIA FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF THE VISTANCIA EXTENSION

WHEREAS, the City of Peoria Mayor and City Council are authorized by Title 9, Chapter 2, Article 4, Section 9-276 (1) to lay out and establish or otherwise improve streets, alleys, avenues, sidewalks, etc. and by Title 11, Chapter 7, Section 11-951 *et seq.* to enter into intergovernmental agreements with other governing bodies for services or joint exercise of powers; and

WHEREAS, the City desires to enter into an Intergovernmental Agreement with the Maricopa County Department of Transportation (County) for construction, operation and maintenance of the Vistancia Extension, as part of the construction of SR303L between Happy Valley Parkway and Lake Pleasant Parkway;

WHEREAS, by the City entering into the Intergovernmental Agreement with the County the public interest will best be served.

THEREFORE, it is resolved by the Mayor and Council of the City of Peoria, Maricopa County, Arizona approves and adopts this Resolution to enter into an intergovernmental Agreement with the County for the construction, operation and maintenance of the Vistancia Extension.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Maricopa County, Arizona, this 20<sup>th</sup> day of October, 2009.

\_\_\_\_\_  
Bob Barrett, Mayor

ATTEST:

\_\_\_\_\_  
Mary Jo Kief, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephen M. Kemp, City Attorney

**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN MARICOPA COUNTY AND THE CITY OF PEORIA**  
**FOR CONSTRUCTION, OPERATION & MAINTENANCE**  
**OF VISTANCIA EXTENSION**

This Intergovernmental Agreement (**Agreement**) is between the County of Maricopa, a body politic, acting through the Maricopa County Department of Transportation (**County**), and the City of Peoria, a municipal corporation, (**City**). The County and City are collectively referred to as the **Parties** or individually as a **Party**.

**STATUTORY AUTHORIZATION**

1. The County is empowered by Arizona Revised Statute §11-251 and §§28-6701 to lay out, maintain, control and manage public roads within the County, and enter into this IGA.
2. Arizona Revised Statutes §11-951, et seq., provide that public agencies may enter into IGA's for the provision of services or for joint or cooperative action.
3. Arizona Revised Statute §9-276 (1) authorizes the City to regulate streets and public grounds within the City.

**BACKGROUND**

4. **Project Description** – This project agreement is to facilitate the construction of the half street, referred to as the Vistancia extension, south of Happy Valley Road to the northeast corner of the Westwing Substation property. This half street is to serve the Westwing Substation and shall connect to the existing access easement that extends south to the Hatfield Road alignment to serve additional Properties south of the substation.

4.1 The Westwing Substation is located in Maricopa County immediately west of SR 303 Loop and south of the Happy Valley Parkway/Vistancia Boulevard intersection (see Exhibit A). It is a regionally significant electrical facility. It is owned and operated by several participants including Arizona Public Service Company (APS), Salt River Project (SRP), Western Area Power Administration (WAPA) and Tucson Electric Power (TEP). By participant agreement, APS is the managing partner.

4.2 Currently, all vehicular access to the facility arrives from the SR 303L at the intersection of Hatfield Road, within SRP's easement. The Arizona Department of Transportation (ADOT) is currently reconstructing SR 303L into an access controlled freeway at Hatfield Road. This

reconstruction will no longer provide legal access from SR 303L to the Westwing Substation at Hatfield Road. During the design development of ADOT's project, an alternate access route was designed that extends south from the Happy Valley Road/Vistancia Boulevard intersection to the northeast corner of the Westwing Substation property. This alternate access road is known as the Vistancia Extension.

- 4.3 An Intergovernmental Agreement (IGA/JPA 08-087) was executed on September 9, 2008 between ADOT and the City of Peoria. By this agreement, ADOT will provide the City of Peoria with the necessary design plans, right of way plans, environmental clearances and funds to be used by the City of Peoria to acquire the right of way from the Arizona State Land Department (ASLD), and to procure and construct the Vistancia Extension.
- 4.4 This IGA is required because the ASLD is conveying right of way for the Vistancia Extension, currently located within the jurisdiction of Maricopa County, to the City of Peoria. The City of Peoria will be responsible for the construction, maintenance and operation of the Vistancia Extension until annexation by the City occurs.
5. **Ownership**- The alignment for the Vistancia Extension from the northeast corner of the Westwing Substation property to Happy Valley Road is currently owned by the Arizona State Land Department. The south portion of the alignment extending from Hatfield Road to the northeast corner of the Westwing Substation property is controlled by Maricopa County through legal access easement (as recorded at Docket 10379 pages 730-732, Maricopa County Recorder records). The City of Peoria is in the process of acquiring the portion of ROW owned by the Arizona State Land Department for this Project.
6. **Annexation** – The City will annex the entire roadway into its corporate boundary at such time that the surrounding parcels are annexed.
7. **Schedule** – It is anticipated that the improvements to the Roadway will commence as soon as possible after completion of the ROW acquisition or Right of Entry from the ASLD.
8. **Lead Agency** – The City will act as Lead Agency for the Project.
9. **Design Standards** – Project improvements will be made consistent with the City's applicable design and construction standards.
10. **Project Costs** – 100% of project costs incurred are the responsibility of the City.

## **PURPOSE OF THE AGREEMENT**

11. The purpose of this IGA is to identify and define the responsibilities of the County and the City with respect to the design, right of way acquisition, construction management, permitting, inspections, operation, maintenance and ultimately annexation of the roadway.

## **TERMS OF THE AGREEMENT**

12. The County agrees to:

- 12.1 Act as the permitting agency and provide No-Fee permitting of the construction of roadways that will occur upon properties herein described, within the Department of Transportation's jurisdiction.
- 12.2 Consider future amendments to this IGA when the City or County decides to further develop the intersection of Happy Valley Road/Vistancia Boulevard/Vistancia Extension or the City or County desires to widen or extend the Vistancia Extension.

13. The City agrees to:

- 13.1 Have the County act as the Permitting Agency for construction of the Vistancia Extension.
- 13.2 Ensure that all the applicable requirements of all statutes, acts, ordinances, regulations, codes, and standards of all legally constituted authorities (and the County) are complied with in the performance of the City's obligations under this IGA.
- 13.3 Acquire the right of way for the Vistancia Extension from ASLD.
- 13.4 Provide all design review in accordance with the applicable City standards.
- 13.5 Procure and construct the Vistancia Extension as a half street minor collector roadway in accordance with the City design standards, including all construction management and inspection of the roadway.
- 13.6 Operate and maintain the newly constructed Vistancia Extension extending south from Happy Valley Parkway to the northeast corner of the Westwing Substation's property (approximately 1540 feet, as shown in Exhibit B) until such time that the City or County further develops the future intersection of Happy Valley Road and Vistancia Boulevard, or the City or County widens the half street, or extends the Vistancia Extension beyond the current southern termination.

13.7 Operate and maintain Happy Valley Road and the reconfigured median from the west right of way line for the Vistancia Extension to the intersection with Vistancia Boulevard (approximately 250 feet, as shown in Exhibit B) until such time that the City or County further develops the future intersection of Happy Valley Road and Vistancia Boulevard or the City or County widens the half street or extends the Vistancia Extension beyond the current southern termination.

13.8 Consider future amendments to this IGA when the City or County decides to further develop the intersection of Happy Valley Road/Vistancia Boulevard/Vistancia Extension or the City or County desires to widen or extend the Vistancia Extension

### **GENERAL TERMS AND CONDITIONS**

14. The Partners hereby agree that to the extent permitted by law, each Partner will indemnify and save the other Partners harmless, including any of the Partners' departments, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or nonperformance by the indemnifying Partner of any of the provisions of this Agreement. Each Partner hereby indemnifies the other against all liability, losses and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement, except such injury or damage as shall have been occasioned by the negligence of that other Partner. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Partner, its departments, agencies, officers, employees, elected officials or agents. In the event of an action, the damages which are the subject of this indemnity shall include costs, expenses of litigation and reasonable attorney's fees.

15. This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors and shall be filed with the Maricopa County Recorder pursuant to A.R.S. §11-952, and remain in full force and effect until all stipulations previously indicated have been satisfied except that it may be amended upon written Agreement by all Partners. Any Partner may terminate this Agreement upon furnishing the other Partners with a written notice at least thirty (30) days prior to the effective termination date.

16. This Agreement shall be subject to the provisions of A.R.S. §38-511.

17. The Partners warrant that they are in compliance with A.R.S. § 41-4401 and further acknowledge that:

17.1 Any contractor or subcontractor who is contracted by a Partner to

perform work on the Project shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A):

- 17.2 That any breach of the warranty, shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract;
- 17.3 The Partners retain the legal right to inspect the papers of any contractor or subcontractor employee who works on the Project to ensure that the contractor or subcontractor is complying with the warranty above and that the contractor agrees to make all papers and employment records of said employee available during normal working hours in order to facilitate such an inspection;
- 17.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Partners to this Agreement.
18. The Partners warrant that they do not have scrutinized business operations in Sudan or Iran, as prohibited by ARS sections 35-391.06 and 35-393.06, and further acknowledge that any contractor or subcontractor who is contracted by a party to perform work on the Project shall warrant that they do not have scrutinized business operations in Sudan or Iran.
19. This Agreement shall not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein.
20. This Agreement shall be strictly constructed against the creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein.
21. This Agreement shall not be modified or extended except by written instrument adopted in accordance with the requirements for adopting a new agreement.
22. This Agreement does not grant authority to control the subject roadway, except to the extent necessary to perform the tasks expressly undertaken pursuant to this Agreement.
23. This Agreement has been arrived at by negotiation and shall not be construed against any Partner or against the Partner who prepared the last draft.

***End of Agreement - Signature Pages Follow***

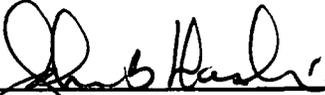
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

**MARICOPA COUNTY**

**CITY OF PEORIA**

Recommended By:

Recommended By:

  
\_\_\_\_\_  
John B. Hauskins, P.E.      8-27-09  
Transportation Director      Date

\_\_\_\_\_  
City Manager      Date

Approved and Accepted By:

Approved and Accepted By:

\_\_\_\_\_  
Max Wilson      Date  
Chairman, Board of Supervisors

\_\_\_\_\_  
Mayor      Date

Attest By:

Attest By:

\_\_\_\_\_  
Clerk of the Board      Date

\_\_\_\_\_  
City Clerk      Date

**APPROVAL OF COUNTY ATTORNEY AND CITY ATTORNEY**

I hereby state that I have reviewed the proposed Intergovernmental Agreement, between Maricopa County, and the City of Peoria, and declare the agreement to be in proper form and within the powers and authority granted to their respective governing bodies under the laws of the State of Arizona.

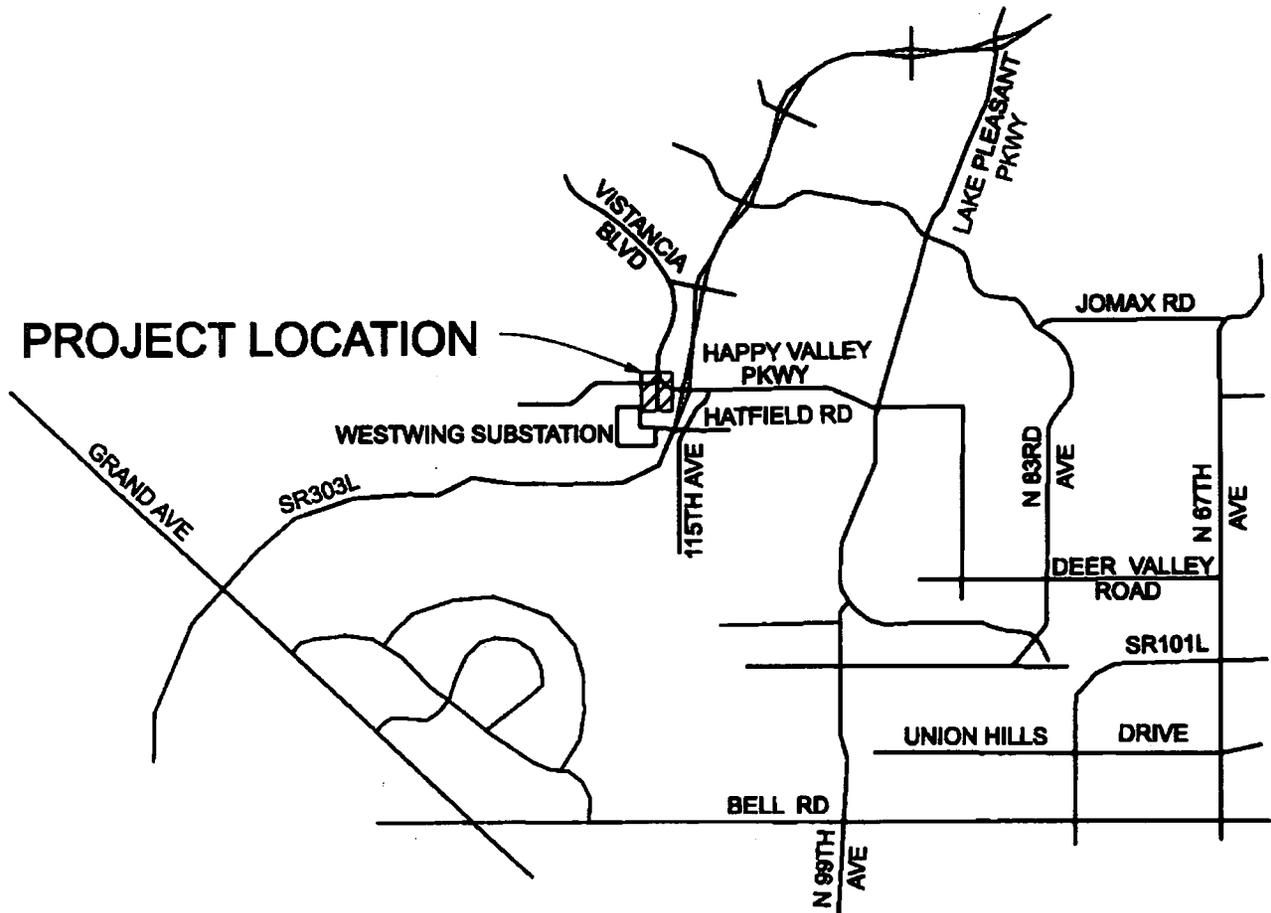
\_\_\_\_\_  
Deputy County Attorney      Date

\_\_\_\_\_  
City Attorney      Date

# Exhibit A



**PROJECT LOCATION**



## Vicinity Map

Exhibit B

