

06-A043

**INTERGOVERNMENTAL AGREEMENT
BETWEEN MARICOPA COUNTY, THE TOWN OF GILBERT,
AND THE CITY OF MESA
FOR IMPROVEMENTS TO POWER ROAD
FROM GUADALUPE ROAD TO BASELINE ROAD**
C-64-06-217-D-00

(OMB # T090)

This Agreement is between the County of Maricopa, a body politic, acting through the Maricopa County Department of Transportation (County), and the Town of Gilbert, a municipal corporation (Town), and the City of Mesa, a municipal corporation (City).

This Agreement shall become effective as of the date it is filed with the Maricopa County Recorder pursuant to Arizona Revised Statutes (A.R.S.) §11-952, as amended.

STATUTORY AUTHORIZATION

1. The County is empowered by A.R.S. §§11-251 and 28-6701, *et seq.*, to lay out, maintain, control and manage public roads within the County, and enter into this Agreement.
2. A.R.S. §11-951, *et seq.*, provide that public agencies may enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.
3. The Town and City are empowered by A.R.S. §§ 9-240 and 9-276 to improve and maintain roadways within their jurisdictions and to enter into this agreement.

BACKGROUND

4. Power Road from Guadalupe Road to Baseline Road is, at present, a predominantly four-lane roadway built to rural principal arterial standards. This area is rapidly developing and Power Road must be upgraded to serve both urban development and regional traffic.
5. This Project will improve Power Road from Guadalupe Road to Baseline Road to a six-lane urban principal arterial.
 - 5.1 To facilitate future continuity of traffic flow, the Project limits will extend south of Guadalupe

Road approximately 1300 feet to include the Power Road crossing of the Maricopa Floodway and the Roosevelt Water Conservation District (RWCD) canal.

- 5.2 The City and Town have each requested that additional improvements be completed east and west of Power Road on Baseline Road as part of this Project. Accordingly, along Baseline Road, the Project limits will extend approximately 1250 feet east and 1000 feet west of Power Road.
- 5.3 The Project will also include widening the bridges over the Maricopa Floodway and the RWCD canal on Guadalupe Road west of Power Road. The Project limits will extend approximately 1300 feet west of Power road along Guadalupe Road.
- 5.4 Collectively, the improvements described above are hereinafter referred to as the "Project."
6. Power Road is an unincorporated County island strip bounded on the west by the Town and on the east by the City. East of Power Road, Baseline Road lies entirely within the City and to the west it lies entirely within the Town. Guadalupe Road west of Power Road lies within the incorporated limits of the Town but when planning for the Project was initiated, this roadway was part of an unincorporated County island bounded on the north by the Town.
7. Developers have widened Power Road at various points within the limits of the Project. The parties to this agreement are also engaged in a cooperative project to improve the Power Road intersection at Monterey Road. Work that has already been completed, or will be completed in advance of this Project, has been accounted for in developing the cost-share among the parties to this agreement.
8. The County will be the lead agency for the Project. The City and the Town will be financial partners with the County on all costs including design, right-of-way acquisition, utility relocation, construction and construction management. The total cost of all roadway improvements is estimated at \$10,581,000. The final Project cost shall be determined after the completion of construction.
 - 8.1 **The County shall be responsible for:**
 - 8.1.a 50% of the costs for remaining improvements to Power Road from the southern Project limit to Baseline Road, and
 - 8.1.b 50% of the costs for improvements to Guadalupe Road west of Power Road.

The County's costs shall be limited to costs of improvements that are consistent with County design standards. Enhancements beyond the County standards shall be borne by the jurisdiction requesting the enhancements.
 - 8.2 **The Town shall be responsible for:**
 - 8.2.a 100% of the costs for improvements to Baseline Road west of Power Road,
 - 8.2.b 50% of the costs for Guadalupe Road west of Power Road, and
 - 8.2.c The Town and the City shall each be credited for the construction value of improvements already completed on their respective sides of Power Road. The Town's proportional share of construction costs for Power Road when adjusted for the value of completed construction is 28.4%.
 - 8.2.d 50% of the actual cost of right of way acquisition on the west side of Power Road.
 - 8.2.e Any additional enhancements along the west side of Power Road above standard MCDOT roadway design.

- 8.3 The City shall be responsible for:**
- 8.3.a** 100% of the costs for improvements to Baseline Road east of Power Road,
 - 8.3.b** The City and the Town shall each be credited for the construction value of improvements already completed on their respective sides of Power Road. The City's proportional share of construction costs for Power Road when adjusted for the value of completed construction is 21.6%.
 - 8.3.c** 50% of the actual cost of right of way acquisition on the east side of Power Road.
 - 8.3.d** All additional enhancements along the east side of Power Road above standard MCDOT roadway design, such as enhanced landscaping and the cost of E-Street design and construction.
- 9.** The County completed design plans for the Project in 2000 at a cost of \$582,712. Subsequent changes in details of the Project, reconciliation of developer-completed improvements, and accommodation of changes in design standards required that the Project design plans be updated. The County has incurred additional costs of \$249,949 in 2005. Total design costs to date are \$832,661. Some of the 2005 costs represent special requests or enhancements above design standards. Design costs will be shared in accordance with the formula for overall cost sharing except that each jurisdiction will be responsible for the full cost of changes made at its request that represent special requests or enhancements to design standards.
- 10.** Because the majority of additional right-of-way necessary for construction of the Project lies within the City and in order to optimize flexibility in right-of-way acquisition, the County will identify right-of-way acquisition needs (i.e. legal descriptions and exhibits) and the City will perform all other right-of-way acquisition responsibilities for the entire Project.
- 11.** The Project represents the first 1.25 miles of a five-mile long arterial street project in the Regional Transportation Plan (RTP) adopted by the Maricopa Association of Governments (MAG) and approved by Maricopa County voters in November 2004. The RTP project extends an additional 3.75 miles from Guadalupe Road to Williams Field Road.
- 11.1** The County, the Town and the City will cooperate in developing an agreement with MAG, pursuant to the RTP, for the current Project as well as for the remaining 3.75 miles of the RTP project (the MAG Project Agreement). The MAG Project Agreement may develop in phases.
 - 11.2** Under the RTP, \$16.108 million in regional funds are programmed for the 5-mile RTP project. These regional funds are to be used to reimburse the agencies undertaking RTP improvements.
 - 11.3** The MAG Project Agreement will establish the total amount of RTP funds allotted to the current Project and to the rest of the 5-mile RTP project.
 - 11.4** Under the terms of the RTP, reimbursements are capped at 70% of eligible project costs. Each agency will receive reimbursements in proportion to its expenditures on the Project.
 - 11.5** The framework for RTP reimbursement for the current Project is set forth in this agreement and will be incorporated into the future MAG Project Agreement.
 - 11.6** Lead agency as well as design and construction details for the remaining 3.75 miles of the RTP project will be determined in the MAG Project Agreement.

PURPOSE OF THE AGREEMENT

12. The purpose of this Intergovernmental Agreement is to identify and define the responsibilities of the County, the Town, and the City for the cost sharing, design, construction, and construction management for the Project.

TERMS OF THE AGREEMENT

13. **The Cost-Share Formula** in Pars. 8.1-8.3 shall be applicable to each cost element of the Project (i.e., design, right-of-way acquisition, utility relocation, construction, construction management).
 - 13.1 Wherever applicable, each jurisdiction shall be responsible for the total cost of enhancements above design standards.
 - 13.2 Staff time of the parties to this agreement shall not be counted toward cost-share obligations, except as follows: City of Mesa Real Estate Services staff time and direct costs for acquisition of properties within the Town's jurisdiction or the County's jurisdiction shall be credited toward the City's cost-share as described in Par. 16.3.
14. **The County agrees to:**
 - 14.1 Act as the lead agency for design, permitting, utility relocation, construction and construction management for the Project.
 - 14.2 Complete the Project design plans in accordance with City of Mesa design standards:
 - 14.3 Provide Project plans to the Town and the City for review to ensure conformity to the standards referenced in Par 14.2 and for purposes of securing any required municipal permits for work within the incorporated areas. If any party requests Project plan changes that do not conform to the standards in Par 14.2, or makes a request for a plan change after acceptance of 100% design plans, all costs for making such plan changes as well as all costs associated with any additional work or materials necessary to accommodate such changes, shall be borne by the requesting party.
 - 14.4 Provide all necessary construction engineering, interim and final inspection and testing required for quality control and adherence to the plans and specifications.
 - 14.5 Identify all necessary right-of-way for project completion and authorize the City to act on behalf of the County for right of way acquisition through purchase, dedication, donation, or eminent domain, if necessary. Provide all right-of-way legal descriptions and exhibits to the City for right-of-way acquisition.
 - 14.6 Be responsible for Project costs, consistent with County standards, as follows:
 - 14.6.a 50% of the costs for remaining improvements to Power Road from the southern project limit to Baseline Road. The total cost of these improvements is currently estimated at \$6,700,000 with the County's share estimated at \$3,350,000.
 - 14.6.b 50% of the costs for improvements to Guadalupe Road west of Power Road. The total cost of these improvements is currently estimated at \$1,322,000 with the County's share estimated at \$661,000.
 - 14.6.c The County's costs shall be limited to costs of improvements that are consistent with County design standards. Enhancements beyond the County standards shall be borne by the jurisdiction requesting the enhancements.

- 14.7 Provide cost-share accounting for each jurisdiction's share of total Project costs and cost of each major cost element of the Project including design, right-of-way acquisition, utility relocation, construction and construction management. Upon completion of the Project, provide a full cost-share accounting for final reconciliation of costs among the parties to this agreement. Attachment 1 provides estimated costs by project segment and cost elements.
- 14.8 Obtain approval of both the City and the Town for construction change orders that will increase costs to the City or the Town.
- 14.9 Invoice the Town and the City for their applicable cost-share, as agreed herein, as follows:
 - 14.9.a Upon award of the construction contract, invoice the Town for 50% of the Town's total Project cost-share including costs for design, right-of-way, utility relocation, construction and construction management and enhancements. The Town's total share is estimated at \$3,179,074, with 50% estimated at \$1,589,538.
 - 14.9.b Upon award of the construction contract, invoice the City for 50% of the City's total Project cost-share, including costs for design, right-of-way, utility relocation, construction and construction management and enhancements. The City's total share is estimated at \$2,605,544, with 50% estimated at \$1,302,772.
 - 14.9.c Upon Project completion, final acceptance of all improvements (excluding warranty period), and preparation of a final cost-share accounting, invoice the Town and the City for the remaining cost-share in accordance with the cost share principles described in Pars. 8.1-8.3, as expressed in 15.1 and 16.1. For the Town, the remaining cost-share is currently estimated at \$1,589,538 while for the City it is currently estimated at \$1,302,772.
 - 14.9.d The City's right of way purchase costs shall be credited to the City's total share for the Project with the amounts in Pars. 14.9.b and 14.9.c adjusted accordingly.
- 14.10 Upon completion and final acceptance of the project, provide final as-built plans in English units to the Town for Guadalupe Road and Baseline road west of Power Road and to the City for Power Road and Baseline Road east of Power Road.

15. The Town Agrees to:

- 15.1 Be responsible for Project costs, as follows:
 - 15.1.a 100% of the costs for improvements to Baseline Road west of Power Road. The total cost of these improvements is currently estimated at \$194,000.
 - 15.1.b 50% of the costs for Guadalupe Road west of Power Road. The total cost of these improvements is currently estimated at \$1,322,000 with the Town's share estimated at \$661,000, and
 - 15.1.c The Town shall be credited for the construction value of improvements already completed on the west side of Power Road. For the remaining construction costs, the Town's proportional share is 28.4%. Right of way costs will be based on the Town's 50% share of actual costs on the west side of Power Road. The total cost of remaining improvements to Power Road is currently estimated at \$6,700,000. The Town's total share for Power Road when adjusted for the value of completed construction is estimated at \$1,860,608.
 - 15.1.d 100% of the costs for any additional enhancements along the west side of Power Road above standard MCDOT roadway design.

- 15.2 Remit payment to the County within 30 days of receiving proper invoice pursuant to Par. 14.9 as follows:
 - 15.2.a Upon award by the County of the construction contract and upon receipt of invoice from the County, remit payment of 50% of the Town's share of estimated total Project costs including costs for design, right-of-way, utility relocation, construction and construction management and enhancements. The first 50% payment is estimated at \$1,589,538.
 - 15.2.b Upon Project completion, final acceptance (excluding warranty period), and preparation of a final cost-share accounting by the County, the Town's remaining share of total Project costs estimated at \$1,589,538.
- 15.3 Review Project plans and change order requests promptly and provide a response to the County within 10 working days.
- 15.4 Issue no-cost permits, as needed, to the County's contractor for any necessary Project-related work performed in accordance with the Project plans prepared pursuant to Par. 14.2 or 14.3.
- 15.5 Annex any remaining unincorporated portions of Guadalupe Road or Baseline Road within the limits of the Project upon completion of the Project.
- 15.6 Authorize the City to act on behalf of the Town for right of way acquisition through purchase, dedication, donation, or eminent domain, if necessary.

16. The City Agrees to:

- 16.1 Be responsible for Project costs, as follows:
 - 16.1.a 100% of the costs for improvements to Baseline Road east of Power Road. The total cost of these improvements is currently estimated at \$645,000.
 - 16.1.b The City and Town shall each be credited for the construction value of improvements already completed on Power Road. For remaining construction costs, the City's proportional share is 21.6%. Right of way costs will be based on the City's 50% share of actual costs on the east side of Power Road. The total cost of remaining improvements to Power Road is currently estimated at \$6,700,000. The City's total share for Power Road when adjusted for the value of completed construction is estimated at \$1,489,335.
 - 16.1.c 100% of the costs for special design requests and enhancements. This includes \$7,000 for removal of the right turn lane at Power and Baseline and \$58,500 for design of E-Street (signal interconnectivity infrastructure) along Power Road.
 - 16.1.d 100% of the costs for any additional enhancements along Power Road above standard MCDOT roadway design.
- 16.2 Remit payment to the County within 30 days of receiving proper invoice pursuant to Par. 14.9 as follows:
 - 16.2.a Upon award by the County of the construction contract and upon receipt of invoice from the County, remit payment of 50% of the City's share of estimated total Project costs including costs for design, right-of-way, utility relocation, construction and construction management and enhancements. The first 50% payment is estimated at \$1,302,772.

- 16.2.b Upon Project completion, final acceptance (excluding warranty period), and preparation of a final cost-share accounting by the County, the City's remaining share of total Project costs estimated at \$1,302,772.
- 16.3 Act on behalf of the partners to this agreement to acquire all necessary right-of-way for the project based on legal descriptions and exhibits provided by the County pursuant to Par. 14.5.
- 16.3.a The City shall acquire right of way by purchase, dedication, donation, or through eminent domain, if necessary.
- 16.3.b All right of way shall be acquired by one year from the execution date of this agreement.
- 16.3.c The City's Real Estate Services staff time and direct costs for right of way purchase shall be credited against the City's total cost for the Project and the amounts in Pars. 16.2.a and 16.2.b shall be adjusted accordingly.
- 16.4 Issue no-cost permits, as needed, to the County's contractor for any necessary Project-related work performed in accordance with the Project plans prepared pursuant to Par 14.2 or 14.3.
- 16.5 Annex any remaining unincorporated portions of Power Road or Baseline Road within the limits of the Project upon completion of the Project.
- 16.6 Review Project plans and change order requests promptly and provide a response to the County within 10 working days.

17. RTP Reimbursements

- 17.1 The County, the Town and the City will cooperate in developing a MAG Project Agreement for the five-mile RTP project. The MAG Project Agreement may develop in phases. At minimum, the first phase will address the current Project. The remaining 3.75 miles of the RTP project may be addressed in future phases of the MAG Project Agreement. The MAG Project Agreement will establish the total amount of regional funds available for this Project and when those regional funds will become available to reimburse funding partners in this agreement.
- 17.2 Reimbursements from the RTP are capped at 70% of eligible project costs. Total eligible costs for the Project are currently estimated at \$10.0 million. Accordingly, it is estimated that regional funds allotted to this Project will be approximately \$7.0 million. The precise amounts will be determined in the MAG Project Agreement. The County, the Town and the City will each receive reimbursements from the RTP in proportion to its expenditures on eligible Project costs. At present, reimbursements are projected as follows:

	County	Mesa	Gilbert	Total
Projected Share Percent	45.3%	24.8%	30.1%	100%
Projected Share Dollars	\$3,171,000	\$1,722,000	\$2,107,000	\$7,000,000

Precise reimbursements will be determined pursuant to the terms of the MAG Project Agreement and final accounting of actual Project costs.

- 17.3 Regional funds for the current Project are programmed in Phase II of the RTP (2011-2015).

As lead agency for the current Project, MCDOT will provide final cost accounting by project component and by partner upon completion of the project and provide this information to the Town, the City and MAG. Specific provisions for reimbursements will be provided for in the MAG Project Agreement.

GENERAL TERMS AND CONDITIONS

18. The parties hereby agree that to the extent permitted by law, each party will indemnify and save the other parties harmless, including any of the parties 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 party of any of the provisions of this agreement. Each party 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 party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any party, their departments, agencies, officers, employees, elected officials or agents shall include in the event of an action, court costs, expenses for litigation and reasonable attorney's fees.
19. This Agreement shall be effective as of the date it is 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 both parties. Either party may terminate this Agreement upon furnishing the other party with a written notice at least thirty (30) days prior to the effective date of the desired termination date.
20. Pursuant to A.R.S. §11-952, as amended, attached to this Agreement are copies of appropriate action by ordinance, resolution or otherwise authorizing the respective parties to enter into this Agreement.
21. This Agreement shall be subject to the provisions of A.R.S. §38-511.
22. This Agreement shall not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein.
23. This Agreement shall be strictly constructed against creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein.
24. This Agreement shall not be modified or extended except by written instrument adopted in accordance with the requirements for adopting a new agreement.
25. 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.
26. Any funding provided for herein, other than in the current fiscal year, is contingent upon being budgeted and appropriated
27. This Agreement has been arrived at by negotiation and shall not be construed against either Party or against the party who prepared the last draft.

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

MARICOPA COUNTY

Recommended by:

118512 3/13/06
Michael S. Ellegood, P.E. Date
Director of Public Works,
Transportation Director and County Engineer

Approved and Accepted:

By: Don Staley APR 05 2006
Date
Chairman, Board of Supervisors

Attest:

By: [Signature] APR 05 2006
Clerk of the Board Date

APPROVAL OF COUNTY COUNSEL

I hereby state that I have reviewed the proposed Intergovernmental Agreement, between the County of Maricopa and the Town of Gilbert and the City of Mesa pursuant to A.R.S. § 11-952, 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.

Michelle O'Andrew 3/24/06
Deputy County Counsel Date

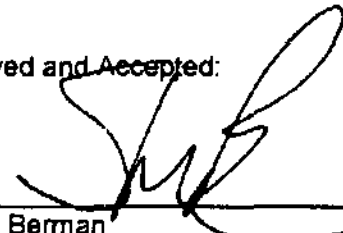
IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

TOWN OF GILBERT

Recommended by:

 2-28-06
Rick Allred Date
Town Engineer

Approved and Accepted:

 2/28/06
By: Steven Berman Date
Mayor, Town of Gilbert

Attest:

 2/28/06
By: Catherine Temple Date
Town Clerk

APPROVAL OF TOWN ATTORNEY

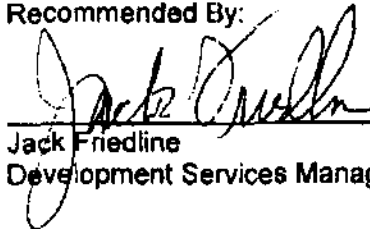
I hereby state that I have reviewed the proposed Intergovernmental Agreement, between the County of Maricopa and the Town of Gilbert and the City of Mesa pursuant to A.R.S. § 11-952, and declare the Agreement to be in proper form and within the powers and authority granted to their respective governing bodies under the laws of the State of Arizona.

 2/28/06
Town Attorney Date

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

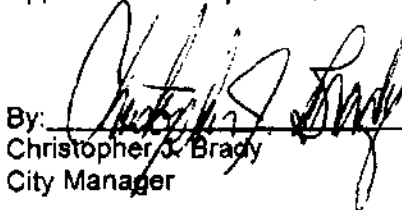
CITY OF MESA

Recommended By:

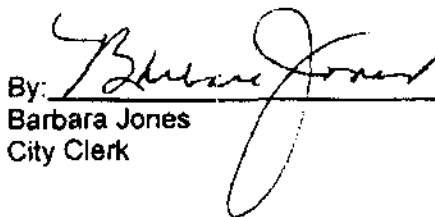


Jack Friedline
Development Services Manager Date

Approved & Accepted:


By: _____ 2/23/06
Christopher J. Brady
City Manager Date

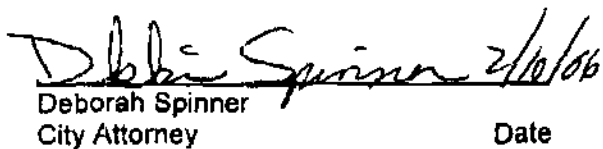
Attest:


By: _____ 2/23/06
Barbara Jones
City Clerk Date



APPROVAL OF CITY ATTORNEY

I hereby state that I have reviewed the proposed Intergovernmental Agreement, between the County of Maricopa and the Town of Gilbert and the City of Mesa pursuant to A.R.S. § 11-952, 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.



Deborah Spinner
City Attorney Date

Attachment 1

Power Road, Guadalupe to Baseline
Estimated Cost Breakdown By Project Segment

Power Rd		Estimated Costs			
		Total	County (60% Less Improvements Already Completed)	Mesa (25% Less Improvements Already Completed)	Gilbert (25% Less Improvements Already Completed)
Construction		\$3,811,086	\$1,905,543	\$823,185	\$1,082,348
Construction % (Adjusted for work completed)			(50.0%)	(21.6%)	(28.4%)
Utility Costs		\$1,240,000	\$620,000	\$310,000	\$310,000
R/W Costs (Adjusted for R/W already acquired)		\$1,648,800	\$824,400	\$356,140	\$468,259
Total		\$6,699,886	\$3,349,943	\$1,489,335	\$1,860,608

Baseline East		Estimated Costs			
		Total	County - 0%	Mesa - 100%	Gilbert - 0%
Construction		\$362,840		\$362,840	
Utility Costs		\$150,000		\$150,000	
R/W Costs		\$132,600		\$132,600	
Total		\$645,440		\$645,440	

Baseline West		Estimated Costs			
		Total	County - 0%	Mesa - 0%	Gilbert - 100%
Construction		\$99,397			\$99,397
Utility Costs		\$0			\$0
R/W Costs		\$94,320			\$94,320
Total		\$193,717			\$193,717

Guadalupe Rd		Estimated Costs		
	Total	County 50%	Mesa 0%	Gilbert 50%
Construction	\$678,378	\$339,189		\$339,189
Utility Costs	\$50,000	\$30,000		\$30,000
ROW Costs	\$584,400	\$292,200		\$292,200
Total	\$1,322,778	\$661,389		\$661,389

Total Project		Estimated Costs		
	Total	County	Mesa	Gilbert
Construction	\$4,951,701	\$2,244,732	\$1,186,035	\$1,520,934
Utility Costs	\$1,450,000	\$650,000	\$460,000	\$340,000
ROW Costs	\$2,460,120	\$1,116,600	\$488,741	\$854,779
Total	\$8,861,821	\$4,011,332	\$2,134,776	\$2,715,713
Construction Mgmt	\$886,182	\$401,153	\$273,478	\$271,551
Subtotal	\$9,748,003	\$4,412,485	\$2,348,254	\$2,987,264
Design	\$767,161	\$383,581	\$181,790	\$181,790
Design Enhancements	\$657,661	\$383,581	\$65,500	\$181,790
Design Total	\$1,424,822	\$767,162	\$247,290	\$413,370
Grand Total	\$11,172,825	\$5,179,647	\$2,595,544	\$3,397,634
Estimated Share		45.3%	24.6%	20.1%
Pre-RTP Design Costs	\$52,712	0	0	0
Less Pre-RTP Design Costs	\$9,997,952	\$4,213,334	\$2,805,544	\$3,179,074
Estimated RTP Eligible Costs	\$9,997,952			
Projected RTP Reimbursements	7,000,000	3,171,000	1,722,000	\$2,107,000