

MEMORANDUM

DATE: July 26, 2016

TO: Public Works

FROM: County Attorney

RE: Resolution No. 16-07-04 to sign IGA/JPA 16-0005917-I with the Arizona Department of Transportation

The Gila County Attorney's office cannot approve this proposed IGA as to form.

Paragraph 1 of the Recitals section cites A.R.S. § 28-401 as authority for the state to enter into this IGA. However, we do not see any authority in that section for the state to enter into this IGA.

The Information section of the agenda item provides that Gila County has offered to provide \$50,000 in addition to the required 5.7% match. But the proposed IGA states the county will pay \$30,000 for the initial project management and design review estimated costs, the county's project design costs, estimated at \$7,556.00, and, after completion of the design, pay an estimated \$40,000 for the county's project construction costs. This adds up to an estimated \$70,000.00 plus the 5.7% match.

The proposed IGA references A.R.S. § 41-4401: "The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401." However, that statute expressly requires that three provisions be "included" in every governmental entity contract: "Every governmental entity *shall*

require that every governmental entity contract *include all* of the following provisions.” (Emphasis added.) Below is a paragraph which complies with that binding directive:

Each party hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. §23-214(A). If either party uses any subcontractors in performance of this contract, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A breach of this warranty shall be deemed a material breach of the contract subject to penalties up to and including termination of this contract. Each party retains the legal right to inspect the papers of the other party and its subcontractors who work on the contract to ensure that the other or subcontractors are complying with this warranty.

A.R.S. § 11.952(B)(4) requires that every IGA make provision for “disposing of property on partial or complete termination.” Here is a suggested contractual provision:

Upon termination of this agreement, each party shall retain its respective property and property belonging to one which was furnished to the other shall be returned to the furnishing party.

The proposed IGA makes clear in many places that the county will be responsible for any costs that exceed the estimates. A.R.S. § 11.952(B)(3) specifies that an IGA must set out: “The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget for the undertaking. Although the IGA makes clear the source of funding, it says nothing about “establishing and maintaining a budget” as required. Below is a suggested provision:

Each party is responsible to provide for financing and to establish and maintain a budget for its respective obligations under this agreement.