



Legislation Text

File #: 16-170, **Version:** 1

TO: Mayor Collins and Town Council Members

FROM: Kevin Burke, Town Manager
Dawn Marie Buckland, Director of Administration & Govt Affairs

DATE: May 26, 2016

DEPARTMENT: Administration and Government Affairs Department

AGENDA TITLE:

Reconciliation and Final Payment to ADOT for Tatum Curve at Mockingbird

Council Goals or Statutory Requirements:

RECOMMENDATION:

Authorize a budget transfer from contingency and final payment to ADOT in the amount of \$349,047.36 for ADOT project #SS484

SUMMARY STATEMENT:

On January 19, 2016, Town staff was notified by the Arizona Department of Transportation (ADOT) of an outstanding invoice in the amount of \$349,047.36 for the Tatum Blvd and McDonald Dr curve, a project that had been closed out in 2007. Staff and ADOT undertook an extensive review to understand the basis for the invoice.

On September 25, 2000, ADOT Director, Mary Peters, directed ADOT staff to draft an Intergovernmental Agreement (IGA), also known as a Joint Powers Agreement (JPA) with the Town of Paradise Valley to allow for the use of federal funds for the design of the Tatum Blvd and McDonald Drive intersection. The Town of Paradise Valley Council (Town Council) subsequently approved Resolution 1012 with the corresponding IGA defining responsibilities on March 22, 2001, and JPA 00-162 with its estimated design costs on August 14, 2002. This agreement explicitly states that "should some unforeseen conditions or circumstances increase the cost of said work required, by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in the project." It also provides that "the State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims." The agreement was approved by then Secretary of State, Betsey Bayless on September 17, 2002.

The same language was subsequently included in JPA 03-094, an agreement for the reconstruction and realignment of Tatum Boulevard and McDonald Drive which was signed into effect by then Secretary of State Jan Brewer on April 6, 2004.

As the project progressed, several change orders, including those addressing utilities conflicts, change in wall heights, and the addition of CCTV and fiber optic communications system were approved by both parties. Complicating the review, however, was the bankruptcy of the original contractor, Archon, and the subsequent involvement of the bonding company to resolve.

In 2007 and again in 2012, ADOT contacted the Town requesting payment. On both of these occasions staff believed the additional amount requested to pertain to the bankruptcy, and therefore to be the responsibility of ADOT to coordinate with the bonding company. However, in the course of the most recent review, ADOT shared the following:

- 1) Each ADOT contractor has 2 bonds. One is Performance Bond; one is Payment Bond.
 - a. When a contractor doesn't finish the project the bonding company is held liable.
 - i. The bonding company (surety) hires a new contractor and finishes the project. The surety company is paid at the original contractor's original bid price.
 - ii. So, Contractor A bids the project at \$1,000,000 and leaves the project after \$400,000 has been completed and paid - ADOT is going to pay the surety \$600,000 to complete on a monthly basis as each work item is completed by the new contractor (completing contractor).
 - iii. Then the surety hires Contractor B (completing contractor) to complete but Contractor B bids the project at \$750,000. ADOT doesn't care. ADOT will pay the surety \$600,000 and the surety has to pay the Contractor \$750,000.
- 2) ADOT does not make bond payments. We make monthly estimate payments. Under the original contract we would have paid the awarded contractor. In the case of a default we make the payments to the surety.
- 3) The project looks exactly like the original project except there is a new contractor and the payments are made to the surety.

ADOT was also able to demonstrate that the increased costs were attributable to increased quantities and construction engineering. Staff advised that the Town would be seeking additional involvement and protective language in future agreements, but believes that the requested invoice is consistent with the terms of the JPAs.

BUDGETARY IMPACT:

The requested amount of \$349,047.36 was not anticipated nor budgeted. A contingency adjustment and the use of reserves is necessary for this transaction.

ATTACHMENT(S):

Design Contract JPA 00-162
Construction Contract JPA 03-094
ADOT Contract Card for Project SS484
Supplemental Change Orders and Corresponding Documentation