

ADOT File No.: IGA/JPA 10-131-I  
AG Contract No.: P001 2010 00xxxx  
Project: Multiuse Path, Phase III  
Project No.: TEA-069-A(204)A  
Section: SR 69, MP 289.44 – MP  
290.22 Starlight – Great Western Drives  
CYMPO TIP ID No.: 3, pg. 55  
**TRACS No.:** H7476 01C  
**Budget Source Item No.:** 12011  
**TEA & FFY10 TE Closeout funds**

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
TOWN OF PRESCOTT VALLEY

**THIS AGREEMENT** is entered into this date \_\_\_\_\_, 2010, pursuant to the Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the “State”) and the TOWN OF PRESCOTT VALLEY, acting by and through its MAYOR and TOWN COUNCIL (the “Town”). The State and the Town are collectively referred to as “Parties”.

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes § 9-240 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement on behalf of the Town.

3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities under the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21). The Parties have identified enhancements for the State’s project within the Town as eligible for this funding.

4. The State will design and construct a ten (10) foot wide, multiuse pathway with two (2) foot shoulders and a three (3) foot lateral clearance along the north side of SR 69 between MP 289.44 – MP 290.22. These improvements, plus related enhancements, will use federal fiscal year 2010 TEA closeout funding. Related enhancements include, but are not limited to, relocation of a crosswalk, landscaping, benches and waste baskets, rip rap, and culvert extensions/replacement. The State will take in appropriate right-of-way from the Town for project construction, and abandon it back to the Town upon completion of improvements. Upon completion of the project improvements and enhancements, the Town will provide maintenance, collectively hereinafter referred to as the “Project.”

5. The interest of the State in this project is the acquisition of federal funds for the Project. The State Board of Transportation has approved \$1,017,950.00, and the State is requesting the FFY10 TE Closeout and TEA federal funds to be authorized for the Project pursuant to Federal law and regulations.

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6. The Parties hereby agree to and acknowledge the following conditions: **a)** any estimated monetary amounts referenced in this Agreement are subject to change and can change significantly before completion of the Project. Additionally, actual costs may be less than the estimate and not needed for the Project, at which time any excess federal funding will be de-obligated from the Project; **b)** the Parties shall perform their responsibilities consistent with this Agreement; and **c)** any change or modification to the Project will only occur with the mutual written consent of both Parties.

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

## **II. SCOPE OF WORK**

### 1. The State will:

a. Submit a program to the FHWA containing the above-mentioned Project with the recommendation that it be approved for design and construction funding. Request the maximum TEA funds programmed for this Project, including construction engineering and contingency costs.

b. Prepare and provide design plans, specifications and other such documents and services required for the construction bidding and construction of the Project, and submit same to the Town for comments as appropriate.

c. Advertise for bids and award one or more construction contract(s) for the Project. Administer contract(s) for the Project and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by the Project delays attributable to the State.

d. Invoice the Town for costs attributable to any engineering change orders requested by the Town and upon acceptance by the State. Funding from the Town for such costs must be received by the State prior to the execution of any work indicated in the engineering change orders.

e. Not be obligated to maintain the Project, should the Town fail to budget or provide for perpetual maintenance as set forth in this Agreement.

f. Upon completion of the Project, perform the final inspection and notify the Town in writing that the Project has been constructed in accordance with the project documents and the Project has been satisfactorily completed.

g. Upon completion of the Project and final acceptance, submit a resolution to the State Transportation Board abandoning ownership, jurisdiction and maintenance responsibilities to the Town.

### 2. The Town will:

a. Review design plans, specifications (PS&E's) and other such documents and services required for the construction bidding and construction of the Project and provide comments to the State as appropriate.

b. Agree any costs attributable to any engineering change orders requested by the Town shall be the sole responsibility of the Town for payment, which the Town will remit to the State within thirty (30) days upon receipt of any invoice. Said payments shall be received by the State prior to the execution of any work indicated in the engineering change orders. Be responsible for any contractor claims for additional compensation caused by Project delays attributable to the Town.

c. Upon completion of construction, the Town shall provide for at its own cost, perpetual maintenance of improvements of all Project improvements within Project limits.

d. Agree that maintenance shall include care of all landscaping within the Project in accordance with accepted horticultural practices. This includes keeping all areas free of weeds, undesirable grasses

and litter, furnishing irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed and established at the completion of the Project. Be responsible for all testing, adjusting, repairing and operation of the irrigation system, including the electricity to power the irrigation controller.

e. Provide perpetual maintenance and emergency repairs, including, but not limited to, keeping the pathway surface and surrounding areas free of all debris and doing any repairs that might be necessary to keep the pathway, any safety railing and retaining walls compliant with the Americans with Disabilities Act Accessibility Guidelines.

f. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through-traffic. All traffic control will meet the requirements of the most recent Arizona Department of Transportation's "Uniform Traffic Control Manual".

g. Obtain, per established procedures of the State's Prescott District Permit Office, a valid blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance work provided by the Town within the State's rights of way. Agree, any new construction or installation shall require a separate permit as per the Prescott District's established procedures.

h. Upon completion of the Project, final acceptance and approval of resolution by the State Transportation Board, waive the four-year advance notification requirements of Arizona Revised Statutes Section 28-7209 and accept ownership, jurisdiction and maintenance responsibilities of Project improvements.

### **III. MISCELLANEOUS PROVISIONS**

1. This Agreement shall remain in full force and effect until completion of the work; provided, however, that any provisions in this Agreement for electricity, water and maintenance shall be perpetual, unless assumed by another governmental entity. It is understood and agreed that, in the event the Town fails to budget or provide for electricity, water and maintenance as set forth in this Agreement, the State shall in no way be responsible to provide such maintenance.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The Town, in regard to the Town's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid on behalf of the Town and the fulfillment of any other responsibilities of the State as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the Town, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

4. The cost of the Project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (FHWA).

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
6. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.
7. In the event of any controversy which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.
8. 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:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, Arizona 85007  
(602) 712-7124  
(602) 712-3132 Fax

Town of Prescott Valley  
Attn: Public Works Director  
7501 East Civic Circle  
Prescott Valley, Arizona 86314  
(928) 759-3071  
(928) 759-5514 Fax

9. 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”.
10. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.
11. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:
  - a. The Town warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes § 23-214, Subsection A.
  - b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the Town may be subject to penalties up to and including termination of the Agreement.
  - c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the Town or subcontractor is complying with the warranty under paragraph (a).
12. Pursuant to Arizona Revised Statutes § 35-391.06 and § 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term “scrutinized business operations” shall have the meanings set forth in Arizona Revised Statutes § 35-391 and/or § 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

13. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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

**TOWN OF PRESCOTT VALLEY**

**STATE OF ARIZONA**

Department of Transportation

By \_\_\_\_\_  
HARVEY SKOOG  
Mayor

By \_\_\_\_\_  
SAM MAROUFKHANI, P.E.  
Deputy State Engineer, Development

ATTEST:

Initial Draft 7/21/10 ghc  
Draft 2 8/24/10 ghc District comments  
Draft 3 indemnification change per AG 8/30/10

By \_\_\_\_\_  
DIANE RUSSELL  
Town Clerk

**JPA 10-131-I**

**ATTORNEY APPROVAL FORM FOR THE TOWN OF PRESCOTT VALLEY**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the TOWN OF PRESCOTT VALLEY, an Agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Town Attorney