ADOT File No.: IGA/JPA **11-032I**
AG Contract No.: P001 2010 00
Project: PV Pipeline MUP, Phase 1
Southern Terminus
Section: Lakeshore Dr to Manley
Project No.: TEA-PRV-0(201)A
TRACS No.: SL62201C/01D
COG/MPO TIP Item No.: CYMPO FY 11
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF PRESCOTT VALLEY

THIS AGREEMENT is entered into this date _____, 2011, 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 § 48-572 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 and has authorized the undersigned to execute this Agreement on behalf of the Town.

3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.

4. This project lies within the boundary of the Town and has been selected by the Town,. The survey of the project has been completed. The plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for their approval.

5. The Town, in order to obtain Federal funds for the construction of the project, is willing to provide Town funds to match Federal funds in the ratio required or as finally fixed and determined by the Town and FHWA, including actual construction engineering and administration costs (CE).

6. The interest of the State in this project is the acquisition of Federal funds for the use and benefit of the Town and to authorize such Federal funds for the project pursuant to Federal law and regulations. The State shall be the designated agent for the Town.

7. The work embraced in this Agreement is for the construction of 5,800 LF of ADA compliant new hard surfaced (asphalt) ten-foot-wide unlighted "multi-use" path. The proposed development also incorporates three rest areas, four striped crosswalks, gates, fencing, one bicycle rack, five signs, three benches, two trash containers, switchbacks, use of existing bollards and either extension or replacement of a series of variously sized corrugated metal pipes to collect, convey and drain water (the pipes not included in cost estimate). Path shoulders will be reseeded with a native wildflower and grass mix. The Town may also incorporate local artwork into the project, hereinafter referred to as the "Project". The proposed development will occur within portions of the Town's rights-of-way and also within El Paso Natural Gas interstate pipeline easements. The Town shall advertise, bid and award the Project. The estimated costs are as follows:

TRACS No. SL680 01D/01C

SL680 01D (design):

Federal-aid funds @ 94.3% (capped)	**$ 70,725.00**
Town's match @ 5.7%	**$ 4,275.00**
State Review Fee	**$ 3,000.00**
Subtotal – Design	**$ 78,000.00**

SL680 01C (construction):

***Estimated Project Costs**	**$**
Federal-aid funds @ 94.3% (capped)	**$ 429,275.00**
Town's match @ 5.7%	**$ 175,375.00**
Subtotal – Construction*	**$ 604,650.00**
Total Estimated Town Funds	**$ 182,650.00**
TOTAL FEDERAL FUNDS	**$ 499,550.00**
TOTAL Project Cost	**$ 682,200.00**

*(Includes 15% CE and 5% project contingencies)

The Parties acknowledge that the final bid amount may exceed the initial estimate(s) shown above, and in such case, the Town is responsible for, and agrees to pay, any and all eventual, actual costs exceeding the initial estimate. If the final bid amount is less than the initial estimate, the difference between the final bid amount and the initial estimate will be de-obligated or otherwise released from the Project. The Town acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all eventual, actual costs exceeding the final bid amount.

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

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this Agreement, and prior to performing or authorizing any work, invoice the Town for State's design review fee, currently estimated at **$3,000.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the Town for the difference between estimated and actual costs.

b. Upon receipt of the design review fee, submit all documentation required to the FHWA containing the above-mentioned Project with the recommendation that funding be approved for scoping and design. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.

c. On behalf of the Town, review and approve documents required by Federal Highway Administration FHWA to qualify certain projects for and to receive Federal funds. Such documents may consist of, but are not specifically limited to, environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement. Incorporate comments from the Town as appropriate.

d. Upon execution of this agreement, authorization for the scoping and design of this Project, notify the Town that it may proceed to advertise for, receive and open bids, enter into contracts(s) with a firm(s) to which the award is made, using federal procurement procedures for the scoping and design of the Project. Should costs exceed the maximum Federal funds available, it is understood and agreed that the Town will be responsible for any overage. Any expenditure incurred prior to the date of authorization by the FHWA is not eligible for reimbursement.

e. Within thirty (30) days of receipt of approved invoices, no more than monthly, reimburse the Town for eligible costs incurred for scoping and design with Federal TEA funds at 94.3% of actual incurred and eligible costs. Actual costs are not to exceed the federal amounts shown above in Recital 7 of this Agreement, unless changed by amendment to this Agreement.

f. Upon acceptable completion of the scoping and design of this Project, submit all documentation required to the FHWA containing the above-mentioned Project with the recommendation that funding be approved for construction. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.

g. Upon approval and authorization by FHWA, and with the aid and consent of the Town and the FHWA, notify the Town that it may proceed to advertise for, receive and open bids, enter into contracts(s) with a firm(s) to which the award is made, using federal procurement procedures for the construction of the Project. Should costs exceed the maximum Federal funds available, it is understood and agreed that the Town will be responsible for any overage. Any expenditure incurred prior to the date of authorization by the FHWA is not eligible for reimbursement.

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

2. The Town will:

a. Upon execution of this Agreement designate the State as authorized agent for the Town for scoping, design and construction of this Project.

b. Upon execution of this Agreement and prior to the State performing or authorizing any work and within thirty (30) days of receipt of an invoice, remit to the State **$3,000.00** for the State's design review fee. Once the Project costs have been finalized, the State will either invoice or reimburse the Town for the difference between estimated and actual costs.

c. Provide design plans and documents required by FHWA to qualify certain projects for and to receive Federal funds. Such documents may consist of, but are not specifically limited to, environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement. Incorporate or resolve review comments from the State as appropriate.

d. Upon approval and authorization by FHWA, and with the aid and consent of the State and FHWA, the Town shall proceed to advertise, using Federal procurement procedures, and receive and open bids subject to the concurrence of the FHWA and the State and enter into a contract(s) with a firm(s) to which the award is made for the scoping and design of the Project. Under direct supervision of a registered professional, administer contract(s) for the Project and make all payments to the consultant(s) and contractor(s). Agree the Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions and Standard Specifications. Should costs exceed the maximum Federal funds available, it is understood and agreed that the Town will be responsible for any overage. Any expenditure incurred prior to the date of authorization by the FHWA is not eligible for reimbursement.

e. Enter into an agreement with the Design Consultant(s), solicited and selected in compliance with Federal procurement procedures, which defines a specific scope of services and approved contract price. Said Design Consultant(s) shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project.

f. Within thirty (30) days of payment to a contractor or consultant, invoice the State for reimbursement of eligible, incurred costs by the Town and provide all necessary backup documentation with said invoice up to an amount of Federal funds programmed for this Project and currently estimated at $61,295.00 for design. Be entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement, whether covered by Federal funding or not.

g. Upon acceptable completion of the scoping and design of this Project, authorization by FHWA, and with the aid and consent of the State and the FHWA, proceed to advertise for, receive and open bids, enter into contracts(s) with a firm(s) to which the award is made, using federal procurement procedures for the construction of the Project. Should costs exceed the maximum Federal funds available, it is understood and agreed that the Town will be responsible for any overage. Any expenditure incurred prior to the date of authorization by the FHWA is not eligible for reimbursement.

h. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the Town. This will include review by the State of the Town's offer letter/summary statement memo of "Just Compensation," appraisal(s) and appraisal reviews, prior to presenting to the property owner.

i. Within thirty (30) days of payment to a contractor or consultant, invoice the State for reimbursement of eligible, incurred costs by the Town and provide all necessary backup documentation with said invoice up to an amount of Federal funds programmed for this Project and currently estimated at $438,984.00 for construction. Be entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement, whether covered by Federal funding or not.

j. Hereby grant the State, its agents and/or contractors, without cost, the right to enter Town Rights-of-Way, as required, to conduct any and all construction and preconstruction related activities, including without limitation, temporary construction easements or temporary Rights-of-Entry to accomplish among other things, soil and foundation investigations.

k. Copy Arizona Department of Transportation's (ADOT) Transportation Enhancements Section on any addendums issued during bidding and change orders issued during construction. Addendums and change orders unrelated to the Transportation Enhancement Project and adding new work that is beyond the originally-approved Project scope requiring amendments to clearances (utility, right-of-way, or environmental) are subject to prior ADOT/FHWA approval.

l. Coordinate with the Contractor for collecting federal labor compliance documentation (including, but not limited to, the Town, as applicable) and compliance with the Buy America Act. Ensure that documentation is being appropriately collected in accordance with the Federal Aid process and recorded and filed for potential auditing purposes. Ensure that the Contractor posts the required federal posters and performs Town compliance reporting to ADOT's Civil Rights Office.

m. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work requested by the Town. Such changes require the prior approval of the State and FHWA. Be responsible for any contractor claims for additional compensation caused by Project delays attributable to the Town. Payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

n. Upon completion of the Project, assume responsibility for maintenance of the Project, at its own expense and as an annual item in its budget. Provide perpetual and proper maintenance of the Project.

o. Provide a letter from its project manager or other responsible engineering official, along with the final billing, that the work on the Project is complete and has been considered acceptable, and the Federal project is ready to be closed. Accept and maintain full responsibility for Project improvements.

p. Provide a set of as-built plans upon completion of the construction phase of the Project. An electronic version of the as-built plans shall be forwarded to ADOT Enhancement Section.

q. Pursuant to 23 USC 102(b), repay all Federal funds reimbursements for preliminary engineering costs on the Project if it does not advance to right of way acquisition or construction within ten (10) years after Federal funds were first made available.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the Project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event the Town terminates this Agreement, the State shall in no way be obligated to maintain said Project.

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. The Town shall require its contractors to name the State and ADOT as an additional indemnitee in the Town contracts with its contractors. It is understood and agreed that the States participation is confined solely to securing federal aid, 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, defend and indemnify from loss the State, any of its departments, agencies officers or employees from any and all cost 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 nonperformance of any provisions of the Agreement by the State, any of its departments, agencies, officers and employees the Town, any of its agents, officers and employees, or any of 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, expenses of litigation and attorneys' fees.

3. This agreement shall remain in force and effect until completion of the work and related deposits and reimbursements.

4. The cost of design, construction and construction engineering work covered by this Agreement is to be borne by FHWA and the Town, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the Town agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

5. The cost of the Project under this Agreement includes applicable indirect costs approved by the FHWA.

6. The Town warrants compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 amendments and with Arizona Revised Statutes § 41.725.

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

8. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

9. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

10. 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 09-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

11. 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.

12. 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.

13. 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. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

Town of Prescott Valley
Attn: Ray Smith
7501 E. Civic Circle
Prescott Valley, Arizona 86314
(928) 759-3075
(928) 759-XXXX Fax

ADOT Transportation Enhancement & Scenic Roads Section
1615 W. Jackson St. MD EM10
Phoenix, AZ 85007
(602) 712-6258
(602) 712-3347 Fax

For Town Financial Matters:
Vendor No. 86035643501
Attn: William Kauppi, Management Services Director
7501 E. Civic Circle
Prescott Valley, Arizona 86314
(928) 759-3127
bkauppi@pvaz.net

14. 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(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).

15. 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.

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

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

TOWN OF PRESCOTT VALLEY

By _____
HARVEY SKOOG
Mayor

ATTEST:

By _____
DIANE RUSSELL
TownClerk

STATE OF ARIZONA
Department of Transportation

By _____
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

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 A.R.S. § 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 _____, 2011.

_____

Town Attorney