

ADOT File No.: **IGA/JPA 11-147-I**  
AG Contract No.: P00120114004  
ADOT Project No.: SL 694 02D & 01C  
Federal Project No:  
CYMPO Round 17  
Project: Multi Use Path  
Phase 3 along Lakeshore Drive,  
Between Navajo Drive and  
Serpentine Drive

## **INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
PRESCOTT VALLEY, TOWN OF

**THIS AGREEMENT** is entered into this date \_\_\_\_\_ 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 PRESCOTT VALLEY, acting by and through its Town Mayor and Town Council (the "Town"). The State and the County 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 and has authorized the undersigned to execute this Agreement on behalf of the Town.
3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of Transportation Enhancement activities.
4. The Town has selected such project within the boundary of the Town. The survey of the project has been completed and the plans, estimates and specifications will be prepared and as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
5. The Town, in order to obtain Federal funds for the design and 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 design and actual construction engineering (CE) and contingency costs. The interest of the State in this project is the acquisition of Federal funds for the use and benefit of the Town. The State is requesting the Federal funds to be authorized for the project by reason of Federal law and regulations.
6. The plans, estimates and specification shall be prepared as required and submitted to the State and FHWA for their approval. The Town has been approved by FHWA and the State to bid and administer the construction of the Project, using Arizona Procurement Procedures.
7. The project consists of designing and constructing a 10-foot wide concrete multi-use pathway along the south side of Lakeshore Drive in Prescott Valley, Arizona. The path will connect to the existing Central Core MUP Phases 2 and 3. The State shall be the designated agent for the Town, hereinafter referred to as the "Project".



construction, including construction engineering, at a rate not to exceed 94.3% of actual incurred and eligible costs. The sum of all payments to the Town will not exceed the federal amounts shown above unless changed by amendment to this Agreement.

f. Not be obligated to maintain said Project, should the Town fail to budget or provide for proper and perpetual maintenance for the Project.

2. The Town will:

a. Upon execution of this Agreement designate the State as authorized agent for the Town to secure the federal aid.

b. Upon notification of federal authorization for design **from the State, enter into an Agreement with the Design Consultant(s), solicited and selected in** compliance with Arizona Procurement Procedures, which defines a specific scope of services and approved contract price.

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

d. 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.

e. Prior to advertising the Project for bids, and per FHWA's conditions, provide the State required copies of the construction contract documents and engineer's estimates, and other such documents and services required for bidding and construction of the Project. Additionally, incorporate or resolve State review comments as appropriate.

f. Under direct supervision of a registered professional, administer design development of the Project, bidding, contract award and construction and make all payments to the consultant(s) and contractor(s). Upon notification of authorization from the State advertise for, receive and open bids, enter into contract(s) with a firm(s) to whom the award is made for the construction of the Project using State of Arizona Procurement Procedures. The Project shall be performed, completed, inspected, accepted and paid for in accordance with the requirements of the approved construction contract documents.

g. Within thirty (30) days of payment to a contractor or consultant invoice the State for reimbursement of eligible design costs incurred by the Town up to the capped federal amount of \$89,585.00 and provide all necessary backup documentation with said invoice. Upon notice to proceed from the State the Town will invoice the State for eligible construction costs incurred by the Town up to the capped federal amount of \$484,654.85.

h. Provide personnel to administer and supervise construction. Copy ADOT on any addendums issued during bidding, and change orders and supplemental agreements 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 and clearances are subject to prior ADOT/FHWA approval.

i. Coordinate with the Contractor for collecting federal labor compliance documentation (DBE, EEO, Davis-Bacon, and OJT 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, performs DBE compliance reporting to ADOT Civil Right Office.

j. Be entirely responsible for all costs incurred by the Town in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not and be obligated to pay for all cost overruns above the amount of federal funds authorized and available for the Project.

k. Complete the Project in accordance with approved construction contract documents and the requirements of the relevant State and Federal Statutes, Rules or Regulations. In the event the Town fails to comply with the approved construction contract documents or any relevant State or Federal Statutes, Rules or Regulations, the Town shall hold the State harmless from any claims or costs incurred by the State as a result of the Town's failure to comply.

l. Provide a set of the electronic version of the as-built plans upon completion of the construction phase of the Project and forwarded to Arizona Department of Transportation.

m. Upon completion of construction, the Town shall provide for, at its own cost, perpetual and proper maintenance of a 10 foot wide multi use pathway for approximately .75 miles. Maintenance of all landscaping and performing repairs as required to keeping the path compliant with the Americans with Disabilities Act Accessibility Guidelines.

### **III. MISCELLANEOUS PROVISIONS**

1. 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 **The Town shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The Town shall also require its contractors to name the State as an additional indemnitee in the Town contracts with its contractors.** It is understood and agreed that the State's participation is confined to securing federal aid on behalf of the Town and requirements contained in this Agreement; 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 defend, 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.

2. 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.

3. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance, shall be perpetual. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty days (30) 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.

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

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

6. The Town and the State (Arizona Department of Transportation) (ADOT warrants compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments. Additionally, in a timely manner, the Town will provide information that is requested by the State (ADOT) to enable the State (ADOT) to comply with the requirements as may be applicable.

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

8. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

9. 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.

10. 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 616E  
Phoenix, Arizona 85007  
(602) 712-7124  
(602) 712-3132

Town of Prescott Valley  
Attn: Ray Smith P.E. RLS  
7501 E. Civic Circle  
Prescott Valley, Arizona 86314  
(928) 759-3075  
(928) 759-5514 (Fax)

Management Services Director  
William Kauppi  
928-759-3127  
Bkauppi@pvaz.net

11. 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".

12. 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.

13. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The Town, Contractor 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, Contractor or subcontractor is complying with the warranty under paragraph (a).

14. 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.

15. 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.

**PRESCOTT VALLEY, TOWN OF**

**STATE OF ARIZONA**

Department of Transportation

By \_\_\_\_\_  
HARVEY SKOOG, MAYOR  
Town of Prescott Valley

By \_\_\_\_\_  
DALLAS HAMMIT, P.E.  
Deputy State Engineer, Development

ATTEST:

By \_\_\_\_\_  
DIANE RUSSELL, CLERK  
Town of Prescott Valley

November 14<sup>th</sup>, 2011-ly

**ATTORNEY APPROVAL FORM FOR 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 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 \_\_\_\_\_

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