

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

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
PRESCOTT VALLEY, TOWN OF

THIS AGREEMENT is entered into this date _____, 2012 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 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 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. Such project lies within the boundary of the Town and has been selected by the Town for development and construction of a project. The project has been 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 Town is in agreement to use one of the State's On-Call Design Companies to prepare necessary documents and design plans in conformance with the federal project development process. The State will administer the construction phase of the project. The State will be the Town's designated agent for obtaining Federal funds hereinafter referred to as the "Project".
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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 1 and 2, hereinafter referred to as the "Project".

The Project costs are allocated as follows:

ADOT Project No. SL 02D-DESIGN

Federal funds @ 94.3% (capped)	\$ 89,585.00
Estimated Town funds @ 5.7%	\$ 5,415.00
Estimated Town additional funds @ 100%	\$.00
Estimated Total Project Costs for Design	\$ 95,000.00

ADOT Project No. SL 01C-CONSTRUCTION

(including Construction Engineering @ 15% and Contingency @ 5%)

Approved Grant	\$ 405,000.00
Federal funds @ 94.3% (capped)	\$ 381,915.00
Estimated Town matching funds @ 5.7%	\$ 23,085.00
Estimated Town matching funds @100%	\$.00
Estimated Total Project Cost for Construction	\$ 405,000.00

ADOT Review Fee	\$ 5,000.00
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Estimated Total Project Costs for Design & Construction \$ 500,000.00

8. The Parties acknowledge that the actual cost may exceed the estimate, and in such case the Town is responsible for any and all costs exceeding the estimate. 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.

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

II. SCOPE OF WORK

1. The State will:

a. Upon receipt of the design review fee and on behalf of the Town, act as the Town's designated agent.

b. On behalf of the Town, the design consultant will prepare all pertaining documents for the project; review and approve documents required by FHWA to qualify project 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 prepared reports, design plans, maps and specification; 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. Send a review set of all design plans and project documents prepared by the design consultant to the Town. Review design plans and project documents for said Project and, provide comments to the Town within 15 days of receipt to the Town and the design consultant as appropriate.

c. Upon approval by the FHWA, and receipt of the Town's funds, proceed to advertise for, receive and open bids. The State will enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project; administer contracts(s) for the Project and make all payments to the contractor(s). Should costs exceed the maximum federal funds available, it is understood and agreed that the Town will be responsible for any overage.

d. Not be obligated to incur any expenditure on behalf of the Town in excess of the amount reference herein. Should costs exceed the maximum Federal funds available, or 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, it is understood and agreed that the Town will be responsible for any overage.

e. Upon execution of this Agreement, and prior to performing or authorizing any work, invoice the Town for the Town's **preliminary engineering cost** of \$5,000.00 and estimated **design match of \$5,415.00**. Prior to advertisement for the construction phase invoice the Town for the estimated **construction match of \$ 23,085.00**.

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. .

b. Upon receipt of an invoice from the State and within thirty (30) days, remit to the State for the Town's **preliminary engineering cost** in the amount of \$5,000.00.

c. Upon receipt of an invoice from the State and within thirty (30) days, remit to the State for the Town's **design match** of \$5,415.00.

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, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended; 49 CFR 24.102 Basic Acquisition Policies; 49 CFR 24.4 Assurances, Monitoring and Corrective Action, parts (a) & (b) and ADOT Right of Way Manual; 8.02 Responsibilities, 8.03 Prime Functions, 9.07 Monitoring Process and 9.08 Certification of Compliance.

e. Prior to advertisement for the construction phase remit to the State within thirty (30) days of receipt of an invoice for the estimated Town's **construction match** of \$ 23,085.00.

f. 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.

g. Pursuant to 23 USC 102(b), repay all Federal fund 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.

h. Upon completion of construction, the Town shall provide for, at its own cost perpetual and proper maintenance 10 foot wide multi use pathway approximately .75 miles and maintain 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

2. 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.

3. 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.

4. 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.

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

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

7. 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.

8. 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.

10. 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.

11. 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 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

Finance Director
 William Kauppi
 Bkauppi@pvaz.net

12. 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".

13. 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.

14. 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).

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 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.

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

April 3rd, 2012-ly

JPA 11-147-I

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 _____, 2012

Town Attorney