

**RESOLUTION NO. 2010-29**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA RELATING TO THE BIKE LANES/PAVEMENT PRESERVATION.

**BE IT RESOLVED** BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The Intergovernmental Agreement between the Town of Fountain Hills and the State of Arizona relating to the Bike Lanes/Pavement Preservation Program along Shea Boulevard, west of Technology Drive to east of Fountain Hills Boulevard, (the "Agreement") is hereby approved in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED BY** the Mayor and Council of the Town of Fountain Hills, August 19, 2010.

**FOR THE TOWN OF FOUNTAIN HILLS:**

**ATTESTED TO:**

  
\_\_\_\_\_  
Jay T. Schlum, Mayor

  
\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Richard L. Davis, Town Manager

  
\_\_\_\_\_  
Andrew J. McGuire, Town Attorney

ADOT File No.: IGA/JPA 10-169-I  
AG Contract No.: P001 2010 002643  
Project No.: ARRA-CM-FTH-0(006)A  
Project: Bike Lanes/Pavement  
Preservation  
Section: Shea Blvd., from Fountain Hills  
Blvd to Saguaro Blvd.  
TRACS No.: SS451 02C  
COG/MPO TIP ID No.: FTH11-101ABS  
Budget Source Item No.: ARRA/  
Recovery Act Funds, \$1,081,614; STP  
funds, \$440k; Town contributions  
\$115,095.72

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
TOWN OF FOUNTAIN HILLS

THIS AGREEMENT is entered into this date August 31st, 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 FOUNTAIN HILLS, 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 and has authorized the undersigned to execute this Agreement on behalf of the Town.
  3. Congress has authorized appropriations for the American Recovery and Reinvestment Act of 2009 (ARRA 2009) for the disbursement of funds and investment in certain projects, including but not limited to, roads, bridges, mass transit, energy efficient buildings, flood control, clean water and other infrastructure projects to save and create jobs for long term growth and stability
  4. The work contemplated under this Agreement is for the State to construct, and the Town to maintain, bicycle lanes, median curbs, install landscaping and pavement preservation, including pavements marking and signing, hereinafter referred to as the "Project". The State shall advertise, bid and award the Project.
  5. Such Project lies within the boundary of the Town and has been selected by the Town; the survey of the Project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted by the State to the Federal Highway Administration (FHWA) for its approval.
  6. The interest of the State in this project is the acquisition and distribution of ARRA/Recovery Act Funds and STP funds for the use and benefit of the Town and to authorize such ARRA/Recovery Act Funds for the project pursuant to Federal law and regulations. The State shall be the designated agent for the Town.
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7. Pursuant to a prior agreement, JPA 02-191 and filed with the Secretary of State on June 13, 2003 under No. 26075 ("JPA 02-191"), the Parties agree the Town's remaining funds (\$115,095.72) deposited under that prior agreement are to be transferred by the State to this Project for use by the Town as its contribution under this new Agreement.

8. The ARRA/Recovery Act Funds and STP funds will be used for the construction of the project, including the construction engineering, administration cost (CE), and contingencies.

The current Project costs are as follows:

**TRACS No. SS451 02C:**

ARRA/Recovery Act Funds	\$1,081,614.00
Federal STP Funds @ 94.3%	\$ 440,000.00
Estimated Town funds (match to STP) @ 5.7% **	\$ 26,596.00
Estimated Town funds (other) @100% (source **)	\$ 88,499.72
 Total Estimated Town funds (5.7% and 100%)	 \$ 115,095.72
 *TOTAL Estimated Project Costs	 \$1,636,709.72
*(Includes CE and project contingencies)	
** (Source is remaining Town funds deposited with the State under Agreement JPA 02-191)	

The Parties acknowledge that the eventual 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 Agreements expressed herein, it is agreed as follows:

**II. SCOPE OF WORK**

1. The State will:

a. Review design plans, specifications and other such documents and services required for the construction bidding and construction of the Project and provide comments to the Town as appropriate.

b. On behalf of the Town, perform work and prepare documents required by the FHWA to qualify certain projects for and to receive ARRA/Recovery Act Funds. Such work may consist of, but is not specifically limited to, the review and approval of the prepared 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.

c. Upon approval by FHWA, and with the aid and consent of the Town and FHWA, proceed to advertise for, receive and open bids subject to the concurrence of FHWA and the Town. 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).

d. Enter into a Project Agreement with FHWA on behalf of the Town covering the work encompassed in said construction contract and will request the maximum ARRA/Recovery Act Funds available, including construction engineering and administration costs. Should costs exceed the maximum

ARRA/Recovery Act Funds and STP funds available, it is understood and agreed that the Town will be responsible for any excess cost not covered by federal funds.

e. Upon Execution of this Agreement and prior to Advertisement of the Project, transfer the Town's remaining funds of \$115,095.72 from the prior project related to JPA 02-191 into this Project for the Town's current share of the Project costs for use by ADOT for Project construction. Also terminate said prior JPA 02-191 per a separate termination letter. Invoice the Town for any excess costs not covered by ARRA/Recovery Act or STP funds or reimburse the Town for its excess funds on deposit with the State upon Project completion.

f. 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.

b. Prepare and provide to the State the design plans and documents required for construction bidding and construction of the Project, incorporating comments from the State as appropriate.

c. Upon execution of this Agreement and prior to bid advertising authorize the State to transfer remaining Town funds of \$115,095.72 from the prior project into the Town's share of the current Project costs. Remit any costs exceeding the maximum ARRA/Recovery Act and STP funds allocated for this Project within thirty (30) days of receipt of invoice from the State.

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.

e. Not permit or allow any encroachments upon or private use of the right-of-way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use.

f. Grant the State, without charge, cost or additional documents and agreements, permission to enter Town lands as required to conduct all construction and pre-construction activities related to the Project, including and without limitation, temporary construction easements, or temporary right-of-entry.

g. Be responsible for any and all costs attributable to any engineering change orders requested by the Town not covered by ARRA/Recovery Act Funds. The Town will also be responsible for contractor claims for additional compensation caused by Project delays attributable to the Town.

h. Provide for cost and, as an annual item in the Town's budget, proper maintenance of the Project, including all of the Project components, including but not limited to bicycle lanes, median curbs, landscaping, pavement preservation with marking and signing.

i. Be required to maintain all roadway and pedestrian improvements within the Project, including keeping them free of debris and continued safe access to all pedestrians and motorists.

j. 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.

k. Pay the State full compensation for all penalties, assessments or sanctions of any kind resulting from any failure to comply with any ARRA/Recovery Act requirement, including but not limited to, auditing, reporting and monitoring the project and its costs.

l. Enter into an agreement with the design consultant which states that the design consultant shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project.

m. 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 Arizona Department of Transportation Local Government Section.

n. Upon completion of the Project, agree to accept, maintain and assume full responsibility of said Project in writing.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project, except any provisions for maintenance/electrical power and/or landscaping maintenance shall be perpetual by the Town. Further, this Agreement may be cancelled at any time prior to advertisement 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. Promptly after termination of this Agreement, the Town will return to the State all property belonging to the State which is in the Town's possession, and the State will return to the Town all property belonging to the Town which is in the State's possession.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction of the 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 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. The cost of construction and construction engineering work under this Agreement is to be covered by the ARRA/Recovery Act and STP funds set aside for this Project, up to the maximum available. The Town acknowledges that the eventual actual costs may exceed the maximum available amount of ARRA/Recovery Act and STP funds, or that certain costs may not be accepted by the federal government as eligible for ARRA/Recovery Act funds. Therefore, the Town agrees to furnish and provide the difference between actual costs and the ARRA/Recovery Act Funds and STP funds received.

4. The State will follow reporting requirements in accordance with Section 1201 and Section 1512 of the American Recovery and Reinvestment Act of 2009.

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

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

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

8. All books, accounts, reports, files and other records of any Party relating to the Agreement or the work done under this Agreement shall be subject at all reasonable times to inspection and audit by the other Party until five years after the Project is completed. Such records shall be available for inspection upon five business days' notice at the offices of the Party in possession of the records.

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 or the Town 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 or the Town at the end of the period for which the funds are available. No liability shall accrue to the State or the Town in the event this provision is exercised, and the State or the Town shall not be obligated or liable for any future payments as a result of termination under this paragraph. Each Party is responsible for funding its respective obligations under this Agreement whether from general funds or from other revenue.

11. 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.

12. 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 Fountain Hills  
Attn: Randy Harrel, Town Engineer  
16705 E. Avenue of the Fountains  
Fountain Hills, Arizona 85268  
(480) 816-5112  
(480) 837-1404 Fax

13. To the extent applicable under Arizona Revised Statutes Section 41-4401, each Party and its subcontractors warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statutes Section 23-214(A). A breach of the above-mentioned warranty by any Party or its subcontractors shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the non-breaching Party. Each Party retains the legal right to randomly inspect the papers and records of the other Party's or its subcontractors' employees who work on the Project to ensure that the other Party or its subcontractors are complying with the above-mentioned warranty.

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.

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

**TOWN OF FOUNTAIN HILLS**

By   
JAY SCHLUM  
Mayor

**STATE OF ARIZONA**

Department of Transportation

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

ATTEST:

By   
BEV BENDER  
Town

Initial Draft 7/20/10 ghc  
Town comments 7/26/10  
AG approved 7/27/10

ATTORNEY APPROVAL FORM FOR THE TOWN OF FOUNTAIN HILLS

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 FOUNTAIN HILLS, 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 19<sup>th</sup> day of AUGUST, 2010.



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Town Attorney

<p><b>TERRY GODDARD</b> Attorney General</p>	<p style="text-align: center;"> <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p><b>CIVIL DIVISION</b> <b>TRANSPORTATION SECTION</b> Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. P0012010002643 (IGA/JPA 10-169-I), an Agreement between public agencies, i.e., The State of Arizona and Town of Fountain Hills , has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 31, 2010

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:In:#1019941  
Attachment