

RESOLUTION NO. 2010-30

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 SIDEWALKS.

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 construction of an 8 foot wide sidewalk along Fountain Hills Boulevard, from Fayette Drive to Fountain Hills Middle School, (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, September 2, 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

EXHIBIT A
TO
RESOLUTION NO. 2010-30

[Intergovernmental Agreement]

See following pages.

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-ADOT File No.: IGA/JPA 10-124-I
AG Contract No.: P0012010002931
Project No.: CM-FTH-0(202)A
Project: 8-Foot wide sidewalk
Section: Fayette Drive to Fountain
Hills Middle School on Fountain
Hills Boulevard
TRACS No.: SS 660 01C
MPO TIP No. FTH09-602

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF FOUNTAIN HILLS

THIS AGREEMENT is entered into this date September 22nd, 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 collectively are 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, 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. 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 to the State and Federal Highway Administration (FHWA) for its 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.
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7. The work contemplated under this Agreement is to construct an 8 foot wide sidewalk from Fayette Drive to Fountain Hills Middle School on Fountain Hills Boulevard, hereinafter referred to as the "Project". The State shall advertise, bid and award the Project. The estimated construction costs are as follows:

TRACS No. SS660 01C

Federal Aid Fund (CMAQ 100%)	\$354,200.00
*Total Estimated Town Funds	<u>\$151,800.00</u>
*(Includes 15% CE and 5% project contingencies)	
*Estimated Project Costs	\$506,800.00

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

II. SCOPE OF WORK

1. The State will:

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction and funding. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.

b. Upon approval by FHWA, and with the aid and consent of the Town and the FHWA, the State shall proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the Town, to whom the award is made for and enter into a contract(s) with a firm(s) for the construction of the project.

c. 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 Federal Funds available, including construction engineering and administration costs. Should costs exceed the maximum Federal funds available, it is understood and agreed that the Town will be responsible for any overage and for any costs not eligible for federal funding.

d. Upon execution of this Agreement, invoice the Town for the Town's estimated share of the Project, currently estimated at **\$151,800.00**, once the Project costs have been finalized, the State will either invoice or reimburse the Town for the difference between estimated and actual costs.

e. 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. Upon execution and prior to advertising, deposit funds within thirty (30) days of receipt of an invoice from the State in the amount equal to the difference between the total cost of the construction work, including CE provided for in this Agreement, and the amount of Federal Aid received. This amount is currently estimated at **\$151,800.00**.

c. 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.

d. Provide for cost and, as an annual item in the Town's budget, proper maintenance of the Project including all of the Project components.

e. Enter into an agreement with the Design Consultant which states that the Design Consultant shall provide services as required and requested throughout the Construction Phase of the Project.

f. 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.

g. Upon completion of the Project, agree to accept 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 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 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 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, defend 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 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 cost of the Project under this Agreement includes applicable indirect costs approved by the FHWA.

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

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

7. 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. Additionally, the

Parties will ensure that, to the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall be included in the contracts with the contractors and subcontractors to this Agreement.

8. 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".

9. 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. The Town will comply with any and all federal requirements in the event the Town does not appropriate the funds necessary for continuance of 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 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

Town of Fountain Hills
Attn: Richard Davis, Town Manager
16705 E. Avenue of the Fountains
Fountain Hills, Arizona 85268
Phone (480) 816-5100
Fax (480) 837-3145

12. To the extent applicable under Arizona Revised Statutes § 41-4401, each Party and its contractors and subcontractors warrant 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 § 23-214(A). A breach of the above-mentioned warranty by any Party or its contractors or 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 contractors' or subcontractors' employees who work on the Project to ensure that the other Party and its contractors and subcontractors are complying with the above-mentioned warranty.

Additionally, each Party will ensure that the provisions set forth in Arizona Revised Statutes § 41-4401 will be included in the contracts with the contractors and subcontractors of this Agreement.

13. Pursuant to Arizona Revised Statutes §§ 35-391.06 and 35-393.06, each Party certifies that it does not have scrutinized business operations 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 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.

14. 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

STATE OF ARIZONA
Department of Transportation

By 

JAY SCHLUM,
Mayor of Fountain Hills

By 

SAM MAROUFKHANI P.E.
Deputy State Engineer, Development

ATTEST:

By 

BEVELYN J. BENDER
Town Clerk

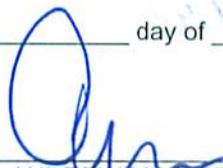
August 12th, 2010-ly

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, 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 2nd day of SEPTEMBER, 2010.



ANDREW MCGUIRE
Town Attorney
One E. Washington Ste 1600
Phoenix, Arizona 85004
(602) 257-7664

<p>TERRY GODDARD Attorney General</p>	<p style="text-align: center;"> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 802.542.8855 Facsimile: 802.542.3646 E-mail: Susan.Davis@azag.gov</p>
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INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012010002931 (IGA/JPA 10-124-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: September 22, 2010

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:ln:#1108746
Attachment