

**RESOLUTION NO. 2009-35**

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 CONSTRUCTION OF ROADWAY IMPROVEMENTS ALONG WESTBOUND SHEA BOULEVARD FROM FOUNTAIN HILLS BOULEVARD TO PALISADES BOULEVARD.

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

SECTION 1. That the intergovernmental agreement with State of Arizona relating to construction of roadway improvements along westbound Shea Boulevard from Fountain Hills Boulevard to Palisades Boulevard (the "Agreement") is hereby approved substantially in the form attached hereto as Exhibit A.

SECTION 2. That 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, Arizona, September 17, 2009.

**FOR THE TOWN OF FOUNTAIN HILLS:**

**ATTESTED TO:**

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

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

**REVIEWED BY:**

**APPROVED AS TO FORM:**

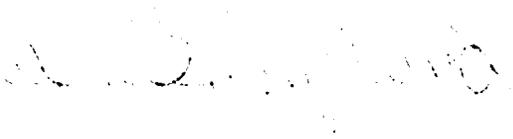
  
\_\_\_\_\_  
Richard L. Davis, Town Manager

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

EXHIBIT A  
TO  
RESOLUTION NO. 2009-35

[Intergovernmental Agreement]

See following pages.

A handwritten signature in dark ink, appearing to be a name with a surname and a first name, possibly "D. ...".A handwritten signature in dark ink, appearing to be a name with a surname and a first name, possibly "J. ...".A handwritten signature in dark ink, appearing to be a name with a surname and a first name, possibly "M. ...".A handwritten signature in dark ink, appearing to be a name with a surname and a first name, possibly "D. ...".

<p>TERRY GODDARD Attorney General</p>	<p> <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION 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. P0012009003346 (IGA/JPA 09-052-I), an Agreement between public agencies, i.e., The State of Arizona and The 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: November 17, 2009

TERRY GODDARD  
Attorney General



SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:621021  
Attachment

ADOT File No.: IGA/JPA 09-0521  
AG Contract No.: P001-2009-003346  
Project No.:ARRA-FTH-0(203)A  
Project: Roadway Widening  
Section: Shea Blvd.-Palisades Blvd  
TRACS No.: SS64601C  
Budget Source Item No.: N/A

**INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE TOWN OF FOUNTAIN HILLS

THIS AGREEMENT is entered into this date November 20, 2009, 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 §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 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 roadway construction which shall consist of rubberized asphalt overlay, and road widening of Shea Blvd. from Palisades Blvd, to Fountain Hills Blvd., 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 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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No. 31255  
Filed with the Secretary of  
Date Filed 11/20/09  
Kelin Blumeth  
Secretary  
By: KBenz

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

The current Project costs are as follows:

<b><u>TRACS No. SS64601C</u></b>	
Estimated Project Cost	<b>\$3,376,614.00</b>
ARRA/Recovery Act Funds	\$1,081,614.00
Other Federal Funds (MAGTIP)	\$2,164,000.00
LOCAL Funds	<u>\$ 131,000.00</u>
 *TOTAL Project Costs	 <b>\$3,376,614.00</b>
*(Includes CE and project contingencies)	

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

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

## **II. SCOPE OF WORK**

### 1. The State will:

a. Review the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project and incorporate comments from 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 the 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 the 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 contract(s) for the Project and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by the Project delays attributable to the State.

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

e. Upon Execution of this Agreement and prior to Award of the Project, invoice for the Town for the Town's share of the Project costs.

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. Provide the design documents required for construction of the Project and provide comments to the State as appropriate.
  - c. Upon Execution of this Agreement and receipt of an invoice from the State, the Town will remit the Town's share of the Project costs.
  - d. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid. Hereby also certifies 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. Annually provide for the cost and proper maintenance of the Project, including all of the Project components.
  - i. Except for penalties, assessments or sanctions of any kind that arise out of acts errors or omissions by the State, any of its departments, agencies, officers and employees, or its independent contractors, pay the State full compensation for all penalties, assessments or sanctions of any kind resulting from the Town's failure to comply with any ARRA/Recovery Act requirement, including but not limited to, auditing, reporting and monitoring the project and its costs.
  - j. Enter into an agreement with the design consultant which states that the design consultant shall provide professional services as required and requested throughout the construction phase of the Project.
  - k. 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.
  - l. Upon completion of the Project, provide a Letter of Approval and Acceptance to ADOT assuming full ownership of the Project.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect for a period of (5) five-years from the effective date, unless this Agreement violates any Arizona law, rule or regulation, either now enacted or which may be enacted in the future. Further, this Agreement may be cancelled at any time prior to advertisement of the project construction contract, upon thirty-day (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 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 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 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 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 be filed with the Arizona Secretary of State and shall not become effective until the date of said filing.

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 this 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 termination of this Agreement. Such records shall be available for inspection upon five business days' notice at the offices of the Party in possession of the records.

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 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.

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. 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, PE, L.S  
16705 E. Avenue of the Fountains  
Fountain Hills, Arizona 85268  
(480) 816-1404  
(480) 837-3145 Fax

12. 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 by the non-breaching Party. Each Party retains the legal right to 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.

13. Pursuant to A.R.S. Sections 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 A.R.S. Section 35-391 or and 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.

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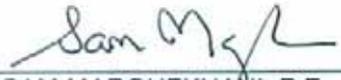
IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

TOWN OF FOUNTAIN HILLS

STATE OF ARIZONA

Department of Transportation

By   
\_\_\_\_\_  
JAY T. SCHLUM  
Mayor

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

ATTEST:

By   
\_\_\_\_\_  
BEV BENDER  
Town Clerk

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, acting by and through its TOWN COUNCIL, 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 OF FOUNTAIN HILLS 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 11<sup>th</sup> 5<sup>th</sup> day of NOVEMBER, 2009.

A handwritten signature in blue ink, consisting of a large initial 'O' followed by several loops and a long horizontal stroke at the end.

Town Attorney