

**RESOLUTION NO. 2014-25**

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 TRAFFIC ACCIDENT ANALYSIS SOFTWARE.

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

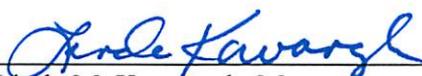
SECTION 1. The Intergovernmental Agreement with the State of Arizona Department of Transportation relating to procurement and implementation of traffic accident analysis software (the "Agreement") is hereby approved in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

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, Arizona, June 5, 2014.

**FOR THE TOWN OF FOUNTAIN HILLS:**

**ATTESTED TO:**

  
\_\_\_\_\_  
Linda M. Kavanagh, Mayor

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

**REVIEWED BY:**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kenneth W. Buchanan, Town Manager

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

EXHIBIT A  
TO  
RESOLUTION NO. 2014-25

[Agreement]

See following pages.

ADOT CAR No.: IGA /JPA 14-0004153-I  
AG Contract No.: P001 2014 001207  
Project: Crash Magic Online Software  
**Federal-aid No.: FTH-0(209)T**  
**ADOT Project No.: SH625 01D/01X**  
**TIP/STIP No.: CHN14-111**  
**CFDA No.: 20.205 - Highway Planning  
and Construction**  
**Budget Source Item No.: HSIP**

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
TOWN OF FOUNTAIN HILLS

**THIS AGREEMENT** is entered into this date June 16, 2014, 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" or "ADOT") 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. In accordance with the Moving Ahead for Progress in the 21st Century Act (MAP-21), Highway Safety Improvement Program (HSIP) funds have been approved by Federal Highway Administration (FHWA) for the statewide crash data improvement effort for Arizona.
  4. The purpose of this Agreement between the State and the Town is to allow the State to acquire federal funds to upgrade the Town's crash data analytical software. The federal funds will be used for the procurement of the license, installation and configuration of the software, data migration from the Town's existing database to the new system and State administration, hereinafter referred to as the "Project".
  5. The Parties shall perform their responsibilities consistent with this Agreement and any change or modification to the Project will only occur with the mutual written consent of both Parties.
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6. The estimated Project costs are as follows:

**SH625 01D (Scoping/Design):**

Federal-aid funds @ 94.3% (capped)	\$ 3,536.00
Town's match @ 5.7%	<u>\$ 214.00</u>
<b>Subtotal - Scoping/Design*</b>	<b>\$ 3,750.00</b>

**SH625 01X (Procurement):**

Federal-aid funds @ 94.3% (capped)	\$ 23,575.00
Town's match @ 5.7%	<u>\$ 1,425.00</u>
<b>Subtotal – Procurement</b>	<b>\$ 25,000.00</b>

**Summary:**

<b>Total Estimated Town Funds</b>	<b>\$ 1,639.00</b>
<b>Total Federal Funds</b>	<b><u>\$ 27,111.00</u></b>

<b>TOTAL Project Cost</b>	<b>\$ 28,750.00</b>
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\*(Includes the ADOT Project Management Design Review (PMDR) costs)

The Parties acknowledge that the final Project costs may exceed the initial estimate(s) shown above, and in such case, the Town is responsible for, and agrees to pay, any and all eventual, actual costs exceeding the initial estimate. If the final cost amount is less than the initial estimate, the difference between the final cost amount and the initial estimate will be de-obligated or otherwise released from the Project. The Town acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all eventual, actual costs exceeding the final bid amount.

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

**II. SCOPE OF WORK**

1. The State will:

a. Upon execution of this Agreement, be the designated agent for the Town, in order to acquire funds, as approved by.

b. Upon execution of this Agreement, and prior to performing or authorizing **any** work, invoice the Town for the Town's share of the Project design costs, currently estimated at **\$214.00**. If, during the development of the design, additional funding from the Town is required, the State will invoice the Town in increments of \$5,000.00 to cover projected costs. Once the Project costs have been finalized, the State will either invoice or reimburse the Town for the difference between estimated and actual design costs.

c. Procure the cost of the equipment and instruct the vendor to deliver equipment directly to the Town for final acceptance and to bill the Town directly. The State will reimburse the Town 94.3% of the federal funds allocated for this Project not to exceed a total of **\$23,575.00** within thirty days (30) of receipt, inspection and final approval of an invoice for equipment purchased under this Agreement.

d. Evaluate the Town's Project one (1) year after reimbursement to ensure Project development and implementation. Should the Project not be in place and/or compatible, the State will invoice the Town for all federal funds acquired for the Project.

2. The Town will:

a. Upon execution of this Agreement, designate the State as the authorized agent for the Town, in order to be eligible for federal funds, as approved by FHWA.

b. Upon execution of this Agreement and prior to performing or authorizing any work, and within thirty (30) days of receipt of an invoice from the State pay the Town's Project design costs, currently estimated at **\$214.00**. If, during the development of the design, additional funding to cover the design costs is required, pay the invoiced amount to the State within thirty (30) days of receipt. Be responsible for any difference between the estimated and actual design costs of the Project.

c. Invoice the State within thirty (30) days of making payment for equipment, for reimbursement of eligible costs incurred by the Town, and provide all necessary backup documentation with said invoice. Be entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement not covered by federal funding.

d. Within one (1) year ensure Project development and implementation. Should the Project not be in place and/or compatible within one (1) year after federal funds were made available, the Town will repay all federal funds received for the Project.

e. Establish and maintain a data inventory of before and after crashes for this safety improvement project in order for an analysis and evaluation to be carried out as requested by ADOT.

f. Purchase and install the equipment acquired under this Agreement and maintain all improvements provided by this Project for the entire design life of the equipment.

g. Notify the State when all equipment has been installed and is ready for inspection.

### **III. MISCELLANEOUS PROVISIONS**

1. This Agreement may be terminated at any time prior to the implementation of the Project, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event the Town terminates this Agreement, the Town will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that in the event the Town terminates this Agreement, the State shall in no way be obligated to maintain said Project.

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 and related matters; 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 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 Town warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the Town will provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.

4. The Town acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend \$500,000 or more (prior to 12/26/14) and (\$750,000 or more on or after 12/26/14) of Federal assistance (Federal funds, Federal grants, or Federal awards) are required to comply by having an independent audit. A copy (paper or electronic) of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine (9) months of the sub recipient fiscal year end.

ADOT – FMS  
Cost Accounting Administrator  
206 S 17th Ave. Mail Drop 204B  
Phoenix, AZ 85007  
[Singleaudit@azdot.gov](mailto:Singleaudit@azdot.gov)

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. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply 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 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment 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.

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

For Administrative Notice:  
Town of Fountain Hills  
Attn: Ken Valverde  
16705 East Avenue of the Fountains  
Fountain Hills, AZ 85268  
(480) 816-5126

Intermodal Transportation Division  
Traffic Records Section  
206 S. 17<sup>th</sup> Ave, Mail Drop 064R  
Phoenix, AZ 85007-3233

For Legal Notices:  
Town of Fountain Hills  
Attn: Kenneth W. Buchanan, Town  
Manager  
16705 East Avenue of the Fountains  
Fountain Hills, AZ 85268

With Copy to:  
Gust Rosenfeld, PLC  
Attn: Andrew J. McGuire  
One East Washington Street  
Suite 1600  
Phoenix, Arizona 85004

12. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.

13. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

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   
**LINDA M KAVANAGH**  
Mayor

By   
**DALLAS HAMMIT, P.E.**  
Senior Deputy State Engineer, Development

ATTEST:

By   
**BEVELYN J 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, 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 5<sup>th</sup> day of June, 2014.



Andrew J McGuire  
Town Attorney



THOMAS C. HORNE  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
TRANSPORTATION SECTION

SUSAN E. DAVIS  
ASSISTANT ATTORNEY GENERAL  
DIRECT LINE: 602-542-8855  
E-MAIL: [SUSAN.DAVIS@AZAG.GOV](mailto:SUSAN.DAVIS@AZAG.GOV)

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. P0012014001207 (**ADOT IGA/JPA 14-0004153-I**), an Agreement between public agencies, 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: June 16, 2014

THOMAS C. HORNE  
Attorney General

A handwritten signature in cursive script that reads "Susan Davis". The signature is written in black ink and is positioned above a horizontal line.

SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:rl:#3851612  
Attachment