

RESOLUTION NO. 2727

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO SIGN AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA FOR DESIGN OF THE EAST BONITA STREET PROJECT.

WHEREAS, the Town of Payson desires to reconstruct East Bonita Street from Highway 87 to S. Bentley Street; and

WHEREAS, over the past several years, the Town has taken preliminary steps including the purchase of some needed right of way; and

WHEREAS, the State of Arizona has obtained federal funds that may be used for projects such as the Bonita Street reconstruction; and

WHEREAS, the State of Arizona has approximately \$540,000 available for the design portion of the Bonita Street reconstruction; and

WHEREAS, the State of Arizona has provided the Town with an Intergovernmental Agreement to allow the use of such funds,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the Intergovernmental Agreement for Project number SZ068 01D/03D between the Town of Payson and the State of Arizona, a copy of which is attached as Exhibit A ("the Agreement"), is approved in substantially the form attached.

Section 2. That Kenny J. Evans, Mayor of the Town of Payson, is authorized to execute the Agreement in substantially the form attached.

Section 3. That the Town of Payson, acting through its Mayor and other appropriate officers, is authorized to take all actions necessary or appropriate to carrying out the terms of this Resolution and the Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this ____ day of _____, 2013, by the following vote:

AYES ____ NOES ____ ABSTENTIONS ____ ABSENT ____

Kenny J. Evans, Mayor

JUN 20 2013 J.6*

ATTEST:

Silvia Smith, Town Clerk

APPROVED AS TO FORM:



Timothy M. Wright, Town Attorney

**EXHIBIT A
TO
RESOLUTION 2727**

ADOT File No.: IGA/JPA 13-0000836-I
AG Contract No.: P001 2013 001617
Project: E Bonita St Phase II
Section: Highway 87 to S Bentley St.
Federal-aid No.: PAY-0(203)T
ADOT Project No.: SZ068 01D/03D
TIP/STIP No.: PAY 13-01D
Budget Source Item No.: n/a

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF PAYSON

THIS AGREEMENT is entered into this date _____, 2013, 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 PAYSON, 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. The work proposed under this Agreement consists of design and obtaining clearances for the pavement reconstruction, curb, gutter sidewalk and storm water pipes along East Bonita Street from Highway 87 to S Bentley Street, hereinafter referred to as the "Project". The State will advertise, bid and award the scoping/design of the Project. The plans, estimates and specifications for the Project will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.

4. The Town, in order to obtain federal funds for the design 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).

5. 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.

6. 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.

7. The federal funds will be used for the scoping/design of the Project. The estimated Project design costs are as follows:

SZ068 03D (scoping/design):

Federal-aid funds @ 94.3% (capped)	\$ 540,000.00
Town's match @ 5.7%	\$ 32,641.00
State design review fee (SZ068 01D)*	<u>\$ 10,000.00</u>
TOTAL Project Cost	\$ 582,641.00
Total Estimated Town Funds	\$ 42,641.00
Total Federal Funds	\$ 540,000.00

* (Included in the Town Estimated Funds)

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 bid amount is less than the initial estimate, the difference between the final bid 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, if the Project is approved by FHWA and funds for the Project are available.

b. Upon execution of this Agreement, and prior to performing or authorizing **any** work, invoice the **Town** for the State's design review fee, currently estimated at **\$10,000.00** and the Town's share of the Project design costs, currently estimated at **\$32,641.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the **Town** for the difference between estimated and actual design review and design costs.

c. Upon receipt of the design review fee and the Town's estimated share of the Project design costs, on behalf of the Town, prepare and provide all pertaining documents for the design of the Project; review and approve documents required by FHWA to qualify certain projects for and to receive federal funds, incorporating comments from the Town, as appropriate. 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 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.

d. Submit all documentation required to FHWA containing the above-mentioned Project with the recommendation that funding be approved for scoping/design. Request the maximum programmed federal funds for the scoping/design of this Project. Upon authorization, proceed to advertise for and enter into contract(s) with the consultant(s) for the design and post design of the Project.

e. Be granted, without cost requirements, the right to enter Town right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights-of-entry on to and over said rights-of-way of the Town.

f. 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. Upon completion of the construction phase of the Project, provide an electronic version of the as-built plans to the Town.

g. 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 of this Agreement, and prior to performing or authorizing any work, and within thirty (30) days of receipt of an invoice from the State, remit to the State the State's design review fee, currently estimated at **\$10,000.00** and the Town's Project design costs, currently estimated at **\$32,641.00**. Be responsible for any difference between the estimated and actual design review and design costs of the Project.

c. Review design plans, specifications and other such documents and services required for the construction bidding and construction of the Project, including scoping/design plans and documents required by FHWA to qualify projects for and to receive federal funds. Provide design review comments to the State as appropriate.

d. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, not covered by federal funding. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the Town is responsible for these costs, payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

e. 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 ROW Manual: 8.02 Responsibilities, 8.03 Prime Functions, 9.07 Monitoring Process and 9.08 Certification of Compliance. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the Town, if applicable.

f. 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.

g. Grant the State, its agents and/or contractors, without cost, the right to enter Town rights-of-way, as required, to conduct any and all construction and preconstruction related activities, including without limitation, temporary construction easements or temporary rights-of-entry to accomplish among other things, soil and foundation investigations.

h. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work requested by the

Town, such changes require the prior approval of the State and FHWA. Be responsible for any contractor claims for additional compensation caused by Project delays attributable to the Town, payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

i. Pursuant to 23 USC 102(b), repay all federal funds reimbursements for preliminary engineering costs on the Project if it does not advance to right of way acquisition or construction within ten (10) years after federal funds were first made available.

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 (30) days 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. If the federal funding related to this Project is terminated or reduced by the federal government, or if Congress rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for any past, current or future expenses under this Agreement.

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 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 scoping/design under this Agreement is to be covered by the federal 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 federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the Town agrees to furnish and provide the difference between actual Project costs and the federal funds received.

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

5. The Parties 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.

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

7. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
8. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.
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 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".
10. **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.
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. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.
13. 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.
14. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
15. 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 Payson

Attn: Curtis Ward
303 N Beeline Hwy
Payson, Arizona 85541
(928) 474-5242

For Financial Matters:

Hope Cribb
303 N Beeline Hwy
Payson, Arizona 85541
(928) 472-5242 x231

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

TOWN OF PAYSON

STATE OF ARIZONA

Department of Transportation

By _____
KENNY EVANS
Mayor

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

ATTEST:

By _____
SILVIA SMITH
Town Clerk

ATTORNEY APPROVAL FORM FOR THE TOWN OF PAYSON

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 PAYSON, 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 _____ day of _____, 2013.

Town Attorney