RESOLUTION 2011-830

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAMP VERDE, YAVAPAI COUNTY, ARIZONA, ADOPTING AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION.

WHEREAS, the State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and the Town is empowered by Arizona Revised Statutes § 9-240 to enter into this Agreement.

WHEREAS, in 2005 The Town received a Round 13 Transportation Enhancement Grant through the Federal Highway Administration for the construction of approximately 2,660 linear feet of concrete sidewalks along the north side of Finnie Flat Road from the west end of the Outpost Mall to the northwest corner of Montezuma Castle Highway and Main Street (Project).

WHEREAS, upon acceptable completion of the Finnie Flat Sidewalk design by the Town, the State, acting as Agent for the Town, will advertise, bid and award the construction contract for the Project and carry out the construction administration in coordination with the State's project along SR 260.

WHEREAS, the Mayor and Common Council has reviewed the proposed Intergovernmental Agreement for the Project. ***NOW THEREFORE,*** **the Mayor and Common Council of the Town of Camp Verde resolve, pursuant to ARS §11-951 through § 11-954 to execute Intergovernmental Agreement/Joint Project Agreement 09-1521 with Arizona Department of Transportation services. Passed and approved by a majority voted of the Common Council at the Regular Session of January 19, 2011.**

PASSED AND ADOPTED:

Bob Burnside, Mayor

Attest:

Deborah Barber, Town Clerk

Approved as to form:

William J. Sims III, Town Attorney

ADOT File No.: IGA/JPA 09-152I
AG Contract No.: P001 2010 004308
Project No.: TEA CMV-0 (201) A
Project: Sidewalks & Landscaping
Section: Finnie Flat Road, Main Street to Outpost Mall
TRACS No.: SL633 02D / 01C
TIP/STIP No: Page 70 FY 10-13 STIP
Budget Source Item No.: Local TEA

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF CAMP VERDE

THIS AGREEMENT is entered into this date **February 3**, 2011, 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 CAMP VERDE, 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, 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 have been selected by the Town; the survey for 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 Transportation Enhancement Federal funds for the design and construction of the Finnie Flat Road project, is willing to provide Town funds to match Transportation Enhancement 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 the Projects is the acquisition of Transportation Enhancement Federal funds for the use and benefit of the Town and to authorize such Transportation Enhancement Federal funds for the Projects pursuant to Federal law and regulations. The State shall be the designated agent for the Town.

7. This agreement pertains to the following work on Finnie Flat Road: design and construction of approximately 2,660 liner feet of portland cement concrete sidewalks five (5) to six (6) feet in width along the north side of the road from the west end of the Outpost Mall then east to the northwest corner of Montezuma Castle Highway and Main Street. Other improvements include concrete curb-and-gutter, a retaining wall with handrail, ADA accessible curb ramps, chain-link fencing, improvements to an existing guardrail and storm drainage improvements, hereinafter referred to as the 'Project'.

8. The Town will design the Project. Upon **acceptable** completion of design **of this project and the State's completion of design of the sidewalk project along SR 260 that will be advertised with it (TRACS# H7171 01C)**, the State will advertise, bid and award the construction contract for the Project and carry out construction administration on behalf of the Town. The estimated design and construction costs, are as follows:

Amount of Federal Funds approved for Project SL633	**$ 500,000.00**
TRACS No. SL633 02D (Design)	
Total Estimated Design Costs	$ 74,231.00
Federal Aid Funds @ 94.3%	$ 70,000.00
Town Funds @ 5.7%	$ 4,231.00
TRACS No. SL633 01C (Construction)	
Total Estimated Construction Costs	$ 526,387.00
Balance of Federal Aid Funds Available for Construction	$ 430,000.00
Town Funds @ 5.7%	$ 25,992.00
Estimated Town Funds @ 100%	$ 70,395.00
***Total Estimated Town Funds for Design & Construction**	**$ 100,618.00**
***Total Estimated Cost for Design & Construction**	**$ 600,618.00**

*(Includes 15% CE and 5% project contingencies)

The Parties acknowledge that the final bid amount 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, and any excess Town funds returned to the Town at Project close-out. 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. On behalf of the Town, perform work and approve documents required by Federal Highway Administration to qualify certain projects for and to receive Federal funds. 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. Provide comments to the Town as appropriate.

b. Submit all documentation required to the FHWA pertaining to the above-mentioned Project with the recommendation that funding be approved for design and construction. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the construction contract documents prepared for the Project.

c. Request the programmed Federal funds for the design and construction of this Project. Should costs exceed the maximum Federal funds available, it is understood and agreed that the Town will be responsible for any overage.

d. Upon execution of this agreement, receipt and approval of invoices submitted by the Town for reimbursement of costs incurred for design and with all necessary documentation, no more than monthly, reimburse the Town with Transportation Enhancement Federal funds, in an amount not to exceed **$70,000.00**.

e. Upon completion of design and a final Engineer's Estimate acceptable to the State and prior to bid advertisement, invoice the Town for the Town's estimated matching and additional funds for ADOT to construct the Finnie Flat Road project and administer its construction, currently estimated at **$96,387.00**. Once the Project costs have been finalized for the Finnie Flat Road project, the State will either invoice or reimburse the Town for the difference between estimated and actual costs. The State will prepare a final reconciliation upon completion of the Project and return any excess Town funds if applicable.

f. Upon **acceptable** completion of design **of this project and the State's completion of design of the related sidewalk project along SR 260 that will be advertised with it (TRACS# H7171 01C)**, approval by FHWA, receipt of all of the Town's funds for construction, and with the aid and consent of the Town and the FHWA, 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 firms(s) for the construction of the project.

g. Not be obligated to maintain any improvements cited in Recital 7 of this Agreement, 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 design plans, specifications and other such documents and services required for the construction bidding and construction of the Project and incorporate comments from the State as appropriate.

c. Upon execution of this agreement and within thirty (30) days of costs being incurred by the Town for design, no more than monthly, submit payment requests to the State for reimbursement of approved costs covered by federal Transportation Enhancement funds not to exceed **$70,000.00**.

d. Upon completion of design and a final Engineer's Estimate acceptable to State, and prior to bid advertisement within thirty (30) days of receipt of an invoice from the State remit to the State the amount equal to the difference between the total cost for ADOT to construct the project and administer its construction, as provided for in this Agreement and the amount of Federal Aid received, currently estimated at **$96,387.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the Town for the difference between estimated and actual costs. Final adjustments to the Town's funds for construction of the project may be required based on the final contract award amount.

e. Grant the State, without charge, cost or additional documents and agreements, permission to enter Town right-of-way to construct the improvements.

f. Be entirely responsible for all costs incurred over and above the federal funding shown herein in performing and accomplishing the work as set forth in this agreement, subject to budget appropriation. Payment for these costs shall be paid within thirty (30) days of receipt of an invoice from the State.

g. Provide for cost and, as an annual item in the Town's budget, proper maintenance of the Project including all components, cited in Recital 7 of this Agreement, including, but not limited to, keeping sidewalks and ramps reasonably clean and clear of debris and maintaining and repairing landscape surfaces and related swales and embankments. Be responsible for any repairs necessary to keep the sidewalks and ramps compliant with the American with Disabilities Act Accessibility Guidelines.

h. Upon completion of the Project, agree to accept and assume full responsibility of said Projects, and request refund from the State of any amount remaining from the Town's funds deposited for the construction of the Project.

i. Obtain, per established procedures of the State's Prescott Engineering District Permit Office, a valid annual blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance work provided by the Town within the State's rights-of-way. Agree to obtain separate permits for any new construction or installations in accordance with the Prescott District established procedures. The Town agrees all activities performed by the Town under this Agreement shall be set forth in and covered by the appropriate Encroachment Permit.

j. 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.

k. 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.

l. Be responsible for all costs attributable to any engineering change orders costing in excess of the available funds deposited for the project. The Town will also be responsible for contractor claims for additional compensation caused by project delays attributable solely to the Town.

m. 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 Projects and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, subject to budget appropriation, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the project construction contract for the Projects, 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 Projects.

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 to securing federal aid on behalf of the Town and requirements contained in this Agreement; 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 reasonable attorneys' fees.

3. This agreement shall remain in force and effect until completion of the work and related deposits and reimbursements.

4. The cost of design, construction and construction engineering work related to the Finnie Flat Road project 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 and to pay these cost within thirty (30) days of receipt of an invoice from the State.

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

6. The Town warrants compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 amendments and with Arizona Revised Statutes § 41.725.

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

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

9. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

10. 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 09-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

11. 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 non-appropriating party at the end of the period for which the funds are available. No liability shall accrue to the non-appropriating party in the event this provision is exercised, and the non-appropriating party shall not be obligated or liable for any future payments as a result of termination under this paragraph.

12. 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.

13. 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

ADOT Transportation Enhancement & Scenic Roads Section
1615 W. Jackson St. MD EM10
Phoenix, AZ 85007
(602) 712-6258
(602) 712-3347 Fax

Town of Camp Verde
Attn: Deborah Ranney
395 S. Main Street
Camp Verde, Arizona 86322
(928) 567-0534
(928) 567-1540 Fax

For Town Financial Matters:

Lisa Elliott, Sr. Accountant
395 S. Main Street
Camp Verde, Arizona 86322
Phone # 928-567-6631 ext. 109
Fax # 928-567-5607

14. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The Town warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes § 23-214(A).

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the Town may be subject to penalties up to and including termination of the Agreement.

c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the Town or subcontractor is complying with the warranty under paragraph (a).

15. Pursuant 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.

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.

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

TOWN OF CAMP VERDE

By _____
BOB BURNSIDE
Mayor

ATTEST:

By _____
DEBORAH BARBER
Town Clerk

STATE OF ARIZONA
Department of Transportation

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

JPA 09-152I

ATTORNEY APPROVAL FORM FOR THE TOWN OF CAMP VERDE

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 CAMP VERDE, 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 8 day of January, 2011.

Town Attorney

RESOLUTION 2011-830

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAMP VERDE, YAVAPAI COUNTY, ARIZONA, ADOPTING AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION.

WHEREAS, the State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and the Town is empowered by Arizona Revised Statutes § 9-240 to enter into this Agreement.

WHEREAS, in 2005 The Town received a Round 13 Transportation Enhancement Grant through the Federal Highway Administration for the construction of approximately 2,660 linear feet of concrete sidewalks along the north side of Finnie Flat Road from the west end of the Outpost Mall to the northwest corner of Montezuma Castle Highway and Main Street (Project).

WHEREAS, upon acceptable completion of the Finnie Flat Sidewalk design by the Town, the State, acting as Agent for the Town, will advertise, bid and award the construction contract for the Project and carry out the construction administration in coordination with the State's project along SR 260.

WHEREAS, the Mayor and Common Council has reviewed the proposed Intergovernmental Agreement for the Project. ***NOW THEREFORE,*** **the Mayor and Common Council of the Town of Camp Verde resolve, pursuant to ARS §11-951 through § 11-954 to execute Intergovernmental Agreement/Joint Project Agreement 09-1521 with Arizona Department of Transportation services. Passed and approved by a majority voted of the Common Council at the Regular Session of January 19, 2011.**

PASSED AND ADOPTED:

Bob Burnside, Mayor

Attest:

Deborah Barber, Town Clerk

Approved as to form:

William J. Sims III, Town Attorney

TOM HORNE
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION / TRANSPORTATION SECTION

SUSAN E. DAVIS
ASSISTANT ATTORNEY GENERAL
DIRECT LINE: 602-542-8855
E-MAIL: SUSAN.DAVIS@AZAG.GOV

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. P0012010004308 **(IGA/JPA 09-152-I)**, an Agreement between public agencies, i.e., The State of Arizona and Town of Camp Verde, 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: February 3, 2011

TOM HORNE
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:ln:#1599977
Attachment