A. G. Contract No. KR89-2873-TRD
ECS File: JPA-89-154
Project No.: M-847-4(1)P
TRACS No.: 8474 PM ORV SS024 01C
Project: Desert Sky Road
Section: Valle Del Oro - Oracle

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF ORO VALLEY

THIS AGREEMENT is entered into 9 February, 1990, pursuant to Arizona Revised Statutes, Sections 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 ORO VALLEY, acting by and through its TOWN COUNCIL (Local Agency).

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 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 delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. Local Agency is empowered by Arizona Revised Statutes Section 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 Local Agency.

3. Congress has authorized appropriations for, but not limited to, 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 within the boundary of Local Agency has been selected by Local Agency; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

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FILED WITH SECRETARY OF STATE
Date Filed 2-9-90
Jim Shumway
Secretary of State
By Patrice Hunter

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of Local Agency by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. Local Agency, in order to obtain federal funds for the construction of the project, is willing to provide the State with Local Agency funds to match federal funds in the ratio required or as finally fixed and determined by FHWA.

7. The work embraced in this agreement and the estimated cost are as follows: AC OVERLAY

Estimated Project Cost		$64,853.00
Federal Funds @ 92.77 % of	=	60,164.00
2% Surcharge of the total estimated project cost	=	1,297.00*
Town of Oro Valley Funds	=	4,689.00
TOTAL LOCAL FUNDS	=	$ 5,986.00

* 2% surcharge on the total cost as per Chief Deputy State Engineer memo of February 2, 1982.

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

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the Local Agency, award the contract, enter into a contract with a firm to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Standard Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation. Further, the State will enter into a Project Agreement with FHWA covering the work embraced in said construction contract and will request the maximum federal funds available.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the

State shall not be obligated to incur any expenditure in excess of the amount of Local Agency's deposit unless and until so authorized in writing by the Local Agency.

2. Prior to the solicitation of bids, the Local Agency shall deposit funds with the State in the amount determined by the State to be necessary to match federal funds in the ratio required.

Upon completion of the construction contract, the State shall return to the Local Agency any part of the funds deposited by Local AGency remaining after Local Agency's pro rata share of the cost, as finally fixed and determined by FHWA, has been paid.

3. The Local Agency shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

4. The Local Agency shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom, prior to the start of construction.

5. The Local Agency shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the Local Agency shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the Local Agency.

6. Upon completion of construction, the Local Agency shall provide for, at its own cost and as an annual item in its budget, proper maintenance, including, but not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

7. The Local Agency shall mark and sign school crossings and railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

8. By such regulation as it may by ordinance provide, the Local Agency shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel

with the curb and to restrict parking so as to prevent conflicts with moving traffic at intersections and at such other locations as necessary.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. Local Agency 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; 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 Local Agency and that Local Agency 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 cost 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, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, Local Agency, any of its agents, officers and employees, or any of 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, expenses of litigation and attorneys' fees.

2. The cost of the work covered by this Agreement is to be borne by FHWA and Local Agency, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, Local Agency agrees to furnish and provide State with Local Agency funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement shall be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this agreement.

7. 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 Section 12-1518 (B) and (C).

8. 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:

Department of Transportation
Engineering Consultant Services
205 S. 17th Avenue - 118E
Phoenix, Arizona 85007

Town of Oro Valley
Town Manager
10900 Stallard Place
Oro Valley, Arizona 85737

9. Attached hereto and incorporated herein is a copy of the written determination of each party's legal counsel 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 ORO VALLEY

By_____

Title Mayor

STATE OF ARIZONA
Department of Transportation

By_____
ROBERT P. MICKELSON
Deputy State Engineer

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28DEC

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RESOLUTION

BE IT RESOLVED on this 5th day of December 1989, that I, CHARLES L. MILLER, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the Town of Oro Valley for the purpose of constructing a AC Overlay on Desert Sky Road from Valle Del Oro to Oracle Road.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.

CHARLES L. MILLER, Director
Arizona Department of
Transportation

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WHEREAS, it is necessary for the preservation of peace, health and safety of the Town of Oro Valley that this resolution become immediately effective and an emergency is hereby declared to exist, and this resolution shall be effective immediately upon its passage and adoption.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Oro Valley, Arizona, this 24 day of January, 1990.

TOWN OF ORO VALLEY

E. S. "Steve" Engle, Mayor

ATTEST:

Kathryn Cuvelier, Town Clerk

APPROVED AS TO FORM:

Gary D. Kidd, Town Attorney

WHEREAS, it is necessary for the preservation of peace, health and safety of the Town of Oro Valley that this resolution become immediately effective and an emergency is hereby declared to exist, and this resolution shall be effective immediately upon its passage and adoption.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Oro Valley, Arizona, this 24 day of January, 1990.

TOWN OF ORO VALLEY

E. S. "Steve" Engle, Mayor

ATTEST:

Kathryn Cuvelier, Town Clerk

APPROVED AS TO FORM:

Gary D. Kidd, Town Attorney

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APPROVAL OF THE TOWN ATTORNEY

I have reviewed the proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the TOWN OF ORO VALLEY and declare this agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona.

DATED this 24 day of January 1990.

Town Attorney

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Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007
Robert K. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. KR89-2873-TRD, an agreement between public agencies, 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 this 7 day of February, 1990.

ROBERT K. CORBIN
Attorney General

Assistant Attorney General
Transportation Division

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