AG Contract No.: KR03-1071TRN
ADOT ECS File: JPA 03-077
Project No. HRF- YYV-0-787
TRACS No. HF087 01C
Section: Mingus Avenue Extension
HURF Exchange Program

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND YAVAPAI COUNTY

THIS AGREEMENT is entered into 15 October, 2003, 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 YAVAPAI COUNTY acting by and through its BOARD OF SUPERVISORS (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-6993(g) to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes Section 11-251 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 County.

3. The State has approved the exchange of $313,000.00 Highway User Revenue Funds (HURF) in Fiscal Year 2003 to the County for the construction of new roadway to Mingus Avenue, and such funds will be repaid to the State by withholding from the Northern Arizona Council of Governments (NACOG) federal funds and the obligation authority for federal funds in the amount of $333,752.00 in Fiscal Year 2003.

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

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NO. 26384
Filed with the Secretary of State
Date Filed: 10/15/03
Janice K. Brewer
Secretary of State
By: Linda D. Graenewald

II. SCOPE OF WORK

1. The County will:

a. Provide design plans, specifications and such other documents and services required for construction bidding and construction.

b. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project, and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.

c. Invoice the State for thirty percent of the Project construction cost, at the start of construction.,

d. Invoice the State for thirty percent of the Project cost at the sixty percent and ninety percent Project construction completion stages.

e. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

f. Invoice the State for the remaining ten percent of the project cost at the one hundred percent project completion stage after the County, NACOG, and the State representatives have competed final project review.

2. The State will:

a. Within 30 days after receipt and approval of an invoice, pay for the Project cost at the thirty percent project completion state, and for thirty percent of the Project cost at the sixty percent Project completion state, and for thirty percent of the Project cost at the ninety percent Project completion state, and pay 10 percent upon completion of construction.

b. Withhold from NACOG, federal funds and the obligation authority of federal funds $333,752.00 in Fiscal Year 2003 for construction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no liability under this agreement. The County assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is agreed that the State's participation is confined solely to advancing highway user revenue funds; 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 County and that the County 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, the County, 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, and expenses of litigation or attorneys' fees.

2. Non-Discrimination. The contractor shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws,

rules and regulations, including the Americans With Disabilities Act. The contractor shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.

3. Non-Availability of Funds. Every payment obligation of State and the County under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by State and the County at the end of the period for which the funds are available. No liability shall accrue to State and the County in the event this provision is exercised, and State and the County shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

4. This agreement shall remain in force and effect until completion of said project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, unless assumed by another governmental entity, may be canceled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

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

6. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

7. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

8. 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.

9. 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 616E Phoenix, AZ 85007 FAX (602) 712-7424	Yavapai County Mike Willett Transportation Planning Engineer 1100 Commerce Drive Prescott, Arizona 86305

10. Attached hereto and incorporated herein is 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.

YAVAPAI COUNTY

By_____
A.G. "CHIP" DAVIS, Chairman
Board of Supervisors

STATE OF ARIZONA
Department of Transportation

By_____
DALE BUSKIRK, Division Director
Transportation Planning Division

ATTEST

By_____
BEV STADDON
Clerk of the Board

G:03-077 Yavapai County
08-07-03-JW

JPA 03-077

APPROVAL OF THE YAVAPAI COUNTY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and YAVAPAI COUNTY and declare this agreement to be in proper form and within the powers and authority granted to the County 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 20th day of August, 2003.

County Attorney

CERTIFIED COPY OF ENTRY IN OFFICIAL MINUTES
OF THE YAVAPAI COUNTY BOARD OF SUPERVISORS

YAVAPAI COUNTY)
) ss.
ARIZONA)

Bev Staddon, having been first duly sworn, deposes and says:

I am the duly appointed, qualified and acting Clerk of the Yavapai County Board of Supervisors and in such capacity under the provisions of ARS §11-241 am charged with the responsibilities, among others, of recording all proceedings of the Board and maintaining custody of such records of the Board as are required by law to be maintained. Among the records of which I have custody is the official minute book of the Board of Supervisors which under the provisions of ARS §11-217 is required to be made and kept.

Set forth below is a copy of an entry in the aforesaid minute book of which, as aforesaid, I am the officer having the legal custody. This is my certificate under the provisions of Rule 44(A), Rules of Civil Procedure, and the Uniform Business Records Act, that the said copy is a true and correct copy thereof, to which I attest by my signature subscribed hereunto:

Date of meeting of which the minutes are a record: September 2, 2003.

The entry in the said minutes:

Consider approval of an intergovernmental agreement with the State of Arizona (ADOT) that will allow the County to receive $313,000 in fiscal year 2003 HURF funds for the Mingus Avenue Extension project. Approved by unanimous vote. Motion by Supervisor Brownlow, second by Supervisor Street. No comments from the public.

Bev Staddon, Clerk

SUBSCRIBED AND SWORN to before me September 16, 2003.

My Commission Expires:

_____

Notary Public

OFFICIAL SEAL
CAROLYN DICUS
NOTARY PUBLIC-STATE OF ARIZONA
YAVAPAI COUNTY
My Comm. Expires Feb. 23, 2005

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-1071TRN (JPA 03-077), 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 October 7, 2003.

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

/ss

att.

1275 WEST WASHINGTON, PHOENIX, ARIZONA 85007-2926 • PHONE 602.542.1680 • FAX 602.542.3646