JPA File No.: 06-144-I
AG Contract No.: KR07-0018TRN
Project: Saint Philips Street
Section: Frontier Street E. to
Bonita Street
TRACS No.: HF149 01C
Budget Source Item No.: HURF

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF PAYSON

THIS AGREEMENT is entered into this date March 13th, 2007, 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 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 § 28-334 and § 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 § 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 the Town.

3. The State has approved the exchange of Highway User Revenue Funds (HURF) pursuant to the amounts and schedule shown in column D of the table below for a ½ mile reconstruction of Saint Philips Street, hereinafter referred to as the "Project". Such funds shall be repaid to the State by withholding from the Central Arizona Association of Governments (CAAG) Federal Apportionment and corresponding Obligation Authority as shown in column B and C in the table below. All such transactions to be made in accordance with the schedule shown in column A.

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

NO. 28770
Filed with the Secretary of State
Date Filed: 3/13/07
Secretary of State
By:

A Federal Fiscal Year to be Processed	B STP Apportionment to be Charged to CAAG	C STP Obligation Authority to be Charged to CAAG	D 90 %HURF Funds to be Transferred to Town
Construction			
FFY 2007	$476,320.00	$444,444.44	$400,000.00
Total	***$476,320.00***	***$444,444.44***	***$400,000.00***

II. SCOPE OF WORK

1. The Town shall:

a. Provide design plans, specifications and other such documents and services required for construction bidding and for the reconstruction of ½ mile of Saint Philips Street to the State prior to advertisement of the Project. The State's Local Government Section will then verify the work and location meet the requirements for HURF exchange.

b. Advertise for bids and award one or more construction contracts for the Project. Administer contracts for the project and make all payments to the contractor(s). Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the Town. Comply with all applicable State Laws, Rules and Regulations.

c. Invoice the State for thirty percent (30%) of the total programmed HURF funds found above in Column D upon award of the construction. Total payment by the State to the Town shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2007 in which the billing is made.

d. Invoice the State for an additional thirty percent (30%) of the total programmed HURF funds when the Project reaches the thirty percent (30%) completion stage. Total payments by the State to the Town shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2007 in which the billing is made, plus any carryover amounts not previously paid in prior years.

e. Invoice the State for an additional thirty percent (30%) of the total programmed HURF funds when the Project reaches the sixty percent (60%) completion stage. Total payments by the State to the Town shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2007 in which the billing is made, plus any carryover amounts not previously paid in prior years.

f. Upon satisfactory completion of construction, approve and accept the Project on behalf of the Town and at its own expense, provide for maintenance. After the final close out Field Review, provide the State with a letter documenting the notice of the approval and acceptance of the project.

g. Prior to invoicing the State for the remaining ten percent (10%) of the Project costs, coordinate with the State on a final field inspection to make certain the Project has been satisfactorily completed and accepted by the Town. Total payments by the State to the Town shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2007 in which the billing is made, plus any carryover amounts not previously paid in prior years.

2. The State shall:

a. Charge CAAG STP Apportionment in the amount of $*476,320.00* and CAAG Obligation Authority in the amount of $*444,444.44* for a ½ mile of reconstruction for Saint Philips Street.

b. Within thirty-days (30) after receipt and approval of invoices at construction award, and also the thirty (30%) and sixty percent (60%) construction completion stages, advance the Town HURF funds in the amount of 30% at each invoiced stage of construction.

c. Coordinate with the Town on a final field inspection to make certain the Project has been satisfactorily completed and accepted by the Town. Within 30 days after receipt and approval of the final invoice, remit to the Town HURF Funds or the remaining ten percent (10%) of $400,000.00 for the reconstruction of Saint Philips Street.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon 30 days written notice to the other party. It is understood and agreed that in the event the Town cancels 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 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. The Town shall require its contractors to name the State and ADOT as an additional insured in the contractor's policies. The Town shall also require its contractors to name the State and ADOT as an additional indemnitee in the Town's contracts with its contractors. It is understood and 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 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 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, misrepresentation, directives, instruction 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 Town, 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 and attorneys' fees.

3. This Agreement shall become effective upon filing with the Secretary of State.

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

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. 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.

7. This Agreement is subject to all applicable provisions of the Americans with Disability 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 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State 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 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.

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, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

Town of Payson
Attn: Laron Garrett
Public Works Engineer Department
303 N. Beeline Hwy Payson, Arizona 85541
(928) 474-5242 x283
lgarrett@ci.payson.az.us Fax

10. 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.

THE TOWN OF PAYSON

By _____
F.ROBERT EDWARDS
Mayor

ATTEST:

By _____
For SILVIA SMITH
Town Clerk
Chief Deputy Town Clerk

STATE OF ARIZONA
Department of Transportation

By _____
DALE BUSKIRK
Division Director

G:06-144-Town of Payson HURF
First Draft 12-14-06 –ly
Final 01-02-06-ly

RESOLUTION NO. 2246

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA AND THE TOWN OF PAYSON FOR A.G. CONTRACT NO. KR07-0018TRN, ADOT PROJECT (SAINT PHILLIPS STREET).

WHEREAS, the Town of Payson desires to upgrade Saint Phillips Street; and

WHEREAS, the State of Arizona, Department of Transportation desires to providing funding for such upgrade; and

WHEREAS, for such purpose, an intergovernmental agreement has been negotiated,

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

Section 1. The Intergovernmental Agreement between the State of Arizona, Department of Transportation, and the Town of Payson, a copy of which is attached hereto marked Exhibit "A" and made a part hereof by this reference as though set forth in full at this point, be and is hereby approved in substantially the form as attached.

Section 2. That F. Robert Edwards, Mayor of the Town of Payson, be and is hereby authorized to execute said Intergovernmental Agreement in substantially the form as attached.

Section 3. That the Town of Payson is hereby authorized to sign such other documents and to take such other and further actions as may be necessary or appropriate to carrying out the terms and intent of said Intergovernmental Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this 15th day of February, 2007, by the following vote:

AYES 7 NOES 0 ABSTENTIONS 0 ABSENT 0

F. Robert Edwards, Mayor

ATTEST:

Marcia J. Huffman
for Silvia Smith, Town Clerk
Chief Deputy Town Clerk

APPROVED AS TO FORM:

Samuel I. Streichman, Town Attorney

Prepared by Town of Payson Legal Department
SIS.drs February 8, 2007 (8 59AM)
C \MyFiles\Resolutions\2246 Approving IGA w-ADOT re St Phillips Street wpd

FEB 15 2007 G.4

JPA 06-144

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, 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 16th day of February, 2007.

Town Attorney

TERRY GODDARD
Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
Writer's Direct Line:
602.542.8855
Facsimile: 602.542.3646
E-mail: Susan Davis@azag.gov

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR07-0018TRN (**JPA 06-144-I**), an Agreement between public agencies, i.e., The State of Arizona and Town of Payson, 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: March 5, 2007

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:1002570
Attachment