JPA File No.: 07-122 I
AG Contract No.: P001 2007 003880
Project: New sidewalks, curb and gutter and pathways
Section: SR 260, Hill Drive to Branding Iron Loop Road
TRACS No.: H6597 01C
Budget Source Item No.: 75308

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF PINETOP-LAKESIDE

THIS AGREEMENT is entered into this date December 26th, 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 PINETOP-LAKESIDE, 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. Incident to a State project on SR 260, the State will design, bid and advertise for the construction of a new 5-ft wide concrete sidewalk (to match existing) and a driveway from MP 354.10 to Hill Drive; a new 5-ft wide concrete sidewalk with curb and gutter and two driveways from Hill Drive to Worldmark Drive; and an 8-ft wide asphalt path offset from the roadway at MP 355.84 from Worldmark Drive to Branding Iron Loop Road. The Town will provide routine and emergency maintenance and repair, hereinafter referred to as the "Project."

4. The Parties hereto agree to and acknowledge the following conditions **a)** the Parties shall perform their responsibilities consistent with this Agreement; and **b)** any change or modification to the Project will only occur with the mutual written consent of the Parties.

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

29512
Filed with the Secretary of State
Date Filed: 12/24/07
Secretary of State
By:

II. SCOPE OF WORK

1. The State shall:

a. Prepare design plans, specifications and other such documents and services required for the construction bidding and construction of the Project, and submit same to the Town as appropriate for comments.

b. Advertise for bids and award one or more construction contract(s) for the Project. Administer contract(s) for the Project and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by the Project delays attributable to the State.

c. Upon completion of the Project, perform the final inspection and notify the Town in writing that the Project has been constructed in accordance with the project documents and the Project has been satisfactorily completed.

d. Not be responsible for maintenance of said Project should the Town not budget for or provide perpetual maintenance as set forth in this Agreement.

e. Grant the Town an "Encroachment Permit" through the State's Globe Maintenance District Permits Office for the purpose of conducting maintenance activities for said Project. This permit may be renewed on an annual basis, as established by the State's Globe District Permit Supervisor.

2. The Town shall:

a. Review the design documents required for construction of the Project, and provide comments to the State as appropriate.

b. Be responsible for contractor claims for additional compensation caused by Project delays attributable to the Town.

c. Be responsible for the on going maintenance and emergency repairs upon completion of said Project. Maintenance shall include but not be limited to: keeping tree limbs and vertical obstructions at least 3 feet from the edge of the path and pruned at least 7 feet above the surface of the path; keep the concrete sidewalk and asphalt path surfaces clean of debris (gravels, silt, organic debris, etc.) and maintained as constructed; where the path intersects low lying drainage areas, clean out such areas after storm events to keep the path surface free of debris and maintaining a stable, firm and slip-resistant surface. And, if culverts or scuppers are used under the asphalt path, keep those drainage features free of debris so as not to restrict water flow.

d. Be responsible for repairs to said Project, including but not limited to: repairs to the sidewalk and path as needed, including repairs to the sidewalk, path or tactile warning strips caused by cracking, buckling or heaving.

e. Obtain an "Encroachment Permit" through the State's Globe Maintenance District Permits Office for the purpose of conducting maintenance activities for said Project. This permit may be renewed on an annual basis, as established by the State's Globe District Permit Supervisor.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements; provided herein. However, any provisions for maintenance provided by the Town shall be perpetual and such obligation shall survive any later termination of this Agreement. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon

thirty-days (30) written notice to either 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. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or other expenses (including, but not limited to, reasonable attorneys' fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death), property damage and any other claims (including, but not limited to, claims of derivative or vicarious liability), which are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

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. 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 Pinetop-Lakeside Attn: Town Manager 1360 North Niels Hansen Lane Lakeside, Arizona 85929 (928) 368-8696 (928) 368-8528 Fax

8. 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".

9. 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.

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.

TOWN OF PINETOP-LAKESIDE

By _____
LUKE SMITH
Mayor

ATTEST:

By _____
LU ANNE FROST
Clerk

STATE OF ARIZONA
Department of Transportation

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

G:\07-122 Town of Pinetop-Lakeside
SR 260 Hill Dr. – Branding Iron Loop Rd.
Initial Draft 10/26/07 ghc
PM comments 11/5/07 ghc
FINAL AG approved 11/13/07 ghc

JPA 07-122

ATTORNEY APPROVAL FORM FOR THE TOWN OF PINETOP-LAKESIDE

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 6th day of December, 2007.

Jack Barker

Town Attorney

TOWN OF PINETOP-LAKESIDE

RESOLUTION NO. 07-962

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PINETOP-LAKESIDE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT, A.G. CONTRACT P001 2007 003880, BETWEEN THE TOWN AND THE STATE OF ARIZONA.

WHEREAS, the Town of Pinetop-Lakeside is in agreement with the terms and conditions of the Intergovernmental Agreement between the Town and the State of Arizona, A.G. Contract No. P001 2007 003880, regarding the new sidewalks, curb and gutter, pathways along Highway 260, from Hill Drive to Branding Iron Loop.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Town Council of the Town of Pinetop-Lakeside, Arizona, hereby approve the Intergovernmental Agreement with the State of Arizona, A.G. Contract No. P001 2007 003880.

PASSED AND ADOPTED by the Mayor and Council of the Town of Pinetop-Lakeside this 6th day of December 2007.

TOWN OF PINETOP-LAKESIDE

LUKE SMITH, Vice Mayor

ATTEST:

LU ANNE FROST, Town Clerk

APPROVED:

JACK BARKER, 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
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E-mail: Susan.Davis@azag.gov

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. P0012007003880 (**JPA 07-122-I**), an Agreement between public agencies, i.e., The State of Arizona and Town of Pinetop-Lakeside, 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: December 18, 2007

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:108808
Attachment