

RESOLUTION NO. 2168

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. KRXX-XXXXTRN, ADOT PROJECT (TRAFFIC SIGNAL AT STATE ROUTE 87 AND AIRPORT ROAD).

WHEREAS, the State of Arizona and the Town of Payson desire to participate in the design, construction, and maintenance of a warranted traffic signal and emergency pre-emptive equipment at the intersection of State Route 87 and Airport Road; 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 and the Town of Payson for Arizona Department of Transportation, 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 Barbara G. Brewer, 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 ____ day of _____, 2006, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Barbara G. Brewer, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

Prepared by Town of Payson Legal Department

SIS:drs April 19, 2006 (10:00AM)

C:\MyFiles\Resolutions\2168 Approving IGA w-ADOT re Hwy 87 & Airport Rd Traffic Signal.wpd

APR 27 2006 BT-4*

A.G. Contract No.: KRXX-XXXXTRN
ECS File No.: JPA 06-009
Project No.:
Project: State Route 87 Signal
Section: Airport/Airline @ MP 253.8
TRACS No.: HX170S 1D
Budget Source Item No.: 71207

DRAFT

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF PAYSON

THIS AGREEMENT is entered into this date _____, 2006, pursuant to 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").

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated 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 parties hereby agree to and acknowledge the following conditions: a) The estimated monetary amounts referenced in this Agreement are subject to possible substantial change before project completion; b) The parties shall perform their responsibilities consistent with the Agreement; and c) Any change or modification to the Project will only occur with the mutual written consent of the parties.

4. The State and the Town desire to participate in the design, construction and maintenance of a new a warranted traffic signal and emergency pre-emptive equipment at the intersection of State Route (SR) 87 with Airport and Airline roads, hereinafter referred to as the "Project", for a current estimated cost of \$383,500.00. The parties hereto agree that the State will design, construct, and maintain the traffic signal and pay 50% of the total estimated cost of the Project. The Town agrees to pay the State 50% of the total estimated cost of the Project and 100% of the emergency pre-emptive costs estimated at \$6000.00 and provide payments for all electrical energy to operate the traffic signal.

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

EXHIBIT "A"

to Resolution No. 2168

II. SCOPE OF WORK

1. The State shall:

- a. Upon award of the Project and within thirty-days (30) invoice the Town for 100% of the cost of emergency pre-emptive equipment, which is estimated at \$,6000.00 and 50% of theremaining cost of the Project, the total cost of which is currently estimated at \$383,500.00.
- b. Prepare and provide design plans, specifications and other such documents and services required for construction bidding and construction of the Project, and submit it to the Town for concurrence.
- c. Call for bids and award one or more construction contracts for the Project. Administer project and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by Project delays attributable to the State.
- d. 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 has been satisfactorily completed.
- e. Provide maintenance to the signal, attached lighting, and its appurtenances.
- f. Be responsible for 50% of the total cost of the Project, less emergency pre-emptive costs.
- g. At project completion, invoice or remit to the Town, 50% of the difference between original invoice and total actual cost (excluding emergency pre-emptive equipment, which is to be invoiced by separate line item on the original invoice).

2. The Town shall:

- a. Upon award of the Project and within thirty-days (30) upon receipt of an invoice from the State, remit to the State 100% of the \$6,000 cost of emergency pre-emptive equipment, plus 50% of the remaining total cost of the Project, the total of which is currently estimated at \$383,500.00.
- b. Review the design documents required for construction of the Project, and provide comments to the State as appropriate.
- c. In the event unforeseen conditions or circumstances increase the cost of said work necessitated by a change in the Project's Scope of Work, such additional costs shall require prior approval of the State. All costs attributable to any engineering or construction change orders requested by the Town shall be the sole responsibility of the Town.
- d. Upon completion, approval and acceptance of the Project and upon behalf of the parties herein, provide and pay for electrical energy to operate the traffic signal and streetlights, all at the Town's expense.
- e. Upon project completion, provide payment or accept remittance for 50% of the difference between original invoice and actual cost of the Project .
- f. Upon completion, approval and acceptance of the Project maintain any streetlights, not attached to signal poles, by replacing burned out bulbs and repairing or replacing the fixtures and light poles as necessary to keep them in working order.

g. Grant the State right-of-way access to maintain the signal accessories on the Town's right-of-way.

III. MISCELLANEOUS PROVISIONS

1. Each party to this Agreement is responsible for its own negligence.
2. This Agreement shall remain in full force and effect until completion of the work; provided however, that any provisions in this Agreement for electrical power and maintenance of the luminary bulbs shall be perpetual, unless assumed by another governmental entity.
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 pertaining to State audit are applicable to this Agreement. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by the required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.
6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) 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".
7. Non-Availability of Funds: Every payment obligation of the State and the Town under this Agreement 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 Agreement, this Agreement may be terminated by the State or the Town at the end of the period for which the funds are available. No liability shall accrue to the State or the Town in the event this provision is exercised, and neither the State nor the Town shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
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:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
(602) 712-7525

Town of Payson
Attn: Town Manager
303 N. Beeline Highway
Payson, Arizona 85541
(928) 474-5242

9. In accordance with Arizona Revised Statutes § 11-952, (D) 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.

TOWN OF PAYSON

STATE OF ARIZONA
Department of Transportation

By _____
BARBARA G. BREWER
Mayor

By _____
MICHAEL P. MANTHEY, P.E.
State Traffic Engineer

ATTEST:

By _____
SILVIA SMITH
Town Clerk

APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this contract and approved it as to form. When reviewing this contract for form, the Legal Department considers whether the following situations have been addressed:

1. Identification of parties;
2. Offer and acceptance;
3. Existence of contract consideration (we do not review to determine if consideration is adequate);
4. That certain provisions specifically required by statute are included (i.e., provisions concerning non-availability of funds and conflict of interest, A.R.S. § 38-511).

We have not reviewed the contract for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the contract or the underlying transaction. In addition, approval as to form should not be considered approval of the underlying policy considerations addressed by the contract.

Dated: _____, 2006.

By _____
Samuel I. Streichman, Town Attorney