

RESOLUTION NO. 2542

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA FOR CONTRACT NO. P0012009XXXXX, ARIZONA DEPARTMENT OF TRANSPORTATION FILE NUMBER IGA/JPA 09-042I REGARDING CONSTRUCTION OF A ROUNDABOUT AT THE INTERSECTION OF HIGHWAY 87 AND AIRPORT/AIRLINE ROAD.

WHEREAS, the State of Arizona, Department of Transportation (“ADOT”), and the Town of Payson (“TOP”) desire to participate in the design, construction, and maintenance of a new roundabout and luminaire street lighting at the intersection of State Route 87 and Airport/Airline Road; and

WHEREAS, ADOT and TOP desire to participate in alignment modifications to the north approach to the roundabout located at the intersection of State Route 87 and Tyler Parkway; and

WHEREAS, for such purpose, the parties have negotiated an intergovernmental agreement,

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

Section 1. That the Intergovernmental Agreement Between the State of Arizona and the Town of Payson for AG Contract No. P0012009XXXXX, ADOT File No. IGA/JPA 00-0421 attached hereto marked Exhibit “A” and made a part hereof as though set forth in full at this point, be and is hereby approved in substantially the form attached.

Section 2. That Kenny J. Evans, Mayor of the Town of Payson, be and is hereby authorized to execute said Intergovernmental Agreement Between the State of Arizona and the Town of Payson for AG Contract No. P0012009XXXXX, ADOT File No. IGA/JPA 00-0421 in substantially the form set forth in Exhibit “A”.

Section 3. That the Town be and is hereby authorized to take such other and further actions as may be necessary or appropriate to implement the terms and intent of this Resolution Number 2542 and said Intergovernmental Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this ____ day of _____, 2010, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

APPROVED AS TO FORM:

ATTEST:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

Prepared by Town of Payson Legal Department

SIS:drs February 8, 2010 (5:35pm)

C:\MyFiles\Resolutions\2500s\2542 Approving IGA w-ADOT for roundabout @ 87-Airport Rd.wpd

FEB 18 2010 G.2

ADOT File No.: IGA/JPA 09-042I
AG Contract No.: P0012009XXXXX
Project:
Section: SR 87 at Airport/Airline and
North approach of the SR 87
Tyler Parkway Roundabout
TRACS No.: H730401C
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF PAYSON

THIS AGREEMENT is entered into this date _____, 2010, 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 § 28-401 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 on behalf of the Town.

3. The State and the Town desire to participate in the design, construction and maintenance of a new Roundabout and luminaire street lighting at the Intersection of State Route (SR) 87 with Airport and Airline Boulevard, and alignment modifications to the north approach of the SR 87/Tyler Parkway roundabout, hereinafter referred to as the "Project", currently estimated at \$1,500,000. The parties hereto agree that the State will design, construct, and maintain the roundabout and pay the total estimated cost less the amount reimbursed by the Town for the Project. The State will not pay for landscaping costs. The Town agrees to pay the State **\$390,000.00** of the total estimated cost of the Project construction and provide electrical power and pay for the electricity costs at the Towns expense. The Town would pay for any landscaping cost which would be an additional expense.

4. The Parties hereto agree to and acknowledge the following conditions: **a)** the estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; **b)** the Parties shall perform their responsibilities consistent with this Agreement; and **c)** The Towns portion of the project is a total of \$390,000.00 unless costs increases are incurred due to Town requests. **d)** any change or modification to the Project will only occur with the mutual written consent of both Parties.

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

EXHIBIT 'A'
To Resolution No. 2542

II. SCOPE OF WORK

1. The State will:

- a. Prepare and provide design plans, specifications and other such documents and services required for construction bidding and construction for the Project, and submit it to the Town for concurrence.
- b. Acquire all necessary rights of way.
- c. Be responsible for environmental review and clearance.
- d. Coordinate all utility relocation and provide funding for utilities with established prior rights.
- e. Provide a right of way environmental and utility clearance prior to construction.
- f. Advertise and award one or more construction contracts for the Project. Administer Project and make all payments to the contractor(s).
- g. Be responsible for contractor claims for additional compensation caused by Project delays attributable to the State.
- h. 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.
- i. Upon completion of this project, transfer ownership of the luminaire street lighting to the Town.
- j. Maintain the enhance crosswalk system
- k. Upon execution of this Agreement invoice the Town in the amount of **\$390,000.00** for the Town's share of the Project cost.

2. The Town will:

- a. Review design documents required for construction of the Project, and provide comments to the State as appropriate.
- b. In the event unforeseen conditions or circumstances increase the cost of said work necessitated by a change in the Projects Scope of Work initiated by the Town, 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.
- c. Upon completion, approval and acceptance of the Project provide electrical energy to operate the streetlights, the enhance crosswalk system and pay for the electricity costs at the Towns expense and maintain luminaire street lighting by replacing burned out bulbs and repairing or replacing the fixtures as necessary to keep them in working order.
- d. Reimburse the State in the amount of \$390,000 for the Town's total contribution for the project.
- e. Be responsible for all landscaping costs.

III. MISCELLANEOUS PROVISIONS

1. 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.

2. 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. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty-day (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.

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. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply 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 637E
 Phoenix, Arizona 85007
 (602) 712-7124
 (602) 712-3132 Fax

Town of Payson
 Attn: LaRon Garrett
 303 N. Beeline Hwy
 Payson, Arizona 85541
 (928) 474-5242 ext 283
 (928) 472-7490 Fax

8. This Agreement is subject to all applicable provisions of the Americans with Disabilities 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. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The Town warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. 23-214, Subsection A.

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the Town may be subject to penalties up to and including termination of the Agreement.

c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the Town or subcontractor is complying with the warranty under paragraph (a).

11. Pursuant to A.R.S. Sections 35-391.06 and 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in A.R.S. Section 35-391 or and 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

12. 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 PAYSON

STATE OF ARIZONA

Department of Transportation

By _____
KENNY J. EVANS
Mayor

By _____
DALLAS HAMMIT
Deputy State Engineer

ATTEST:

By _____
SILVIA SMITH
Clerk

JPA 09-042I

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 OF PAYSON, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 48-572 and 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 _____ day of _____, 2010.

Town Attorney