RESOLUTION 2779

A RESOLUTION OF THE PAYSON TOWN COUNCIL, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA (DEPARTMENT OF TRANSPORTATION) FOR THE REPLACMENT OF ROADWAY WARNING SIGNS AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, the State of Arizona through its Department of Transportation ("ADOT") has obtained federal funds for the replacement of approximately 633 roadway warning signs in the Town of Payson; and

WHEREAS, an Intergovernmental Agreement between the Town and ADOT ("the IGA") to facilitate the receipt of such funds and the provision of the roadway warning signs to the Town has been prepared; and

WHEREAS, the Town desires to execute the IGA,

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 Town of Payson and the State of Arizona (Department of Transportation) attached as Exhibit A is approved in substantially the form attached.

Section 2. The Mayor of the Town of Payson is authorized to execute the attached Intergovernmental Agreement in substantially the form attached.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this _____ day of _____, 2014, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT ____

_____
Kenny J. Evans, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Timothy M. Wright, Town Attorney

MAY 1 5 2014 D.J.B

Exhibit A
To
Resolution 2779

ADOT CAR No.: IGA /JPA 14-0004284-I
AG Contract No.: P001 2014 000xxx
Project: Warning Signs
Section: Various Locations
Federal-aid No.: PAY-0(205)T
ADOT Project No.: SH615 01D/ 01C
TIP/STIP No.: FY14 PAY 14-01C
CFDA No.: 20.205 - Highway Planning and Construction
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 _____, 2014, 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" or "ADOT") 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 § 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. Congress has established the Highway Safety Improvement Program (HSIP) as a core federal-aid for the specific purpose of achieving a significant reduction in traffic fatalities and serious injuries on public roads. The State, the Federal Highway Administration (FHWA) and the Town have identified systematic improvements within the Town as eligible for this funding.

4. The purpose of this Agreement between the Town and the State is to allow the State to acquire federal funds for the purchase/upgrading of approximately six hundred thirty-three (633) roadway warning signs, hereinafter referred to as the "Project". The State, through the State's Procurement Process and ADOT Procurement contract(s) will utilize an authorized supplier to provide the equipment and services as outlined in the contract and approved plans to complete this project with the aid and consent of the State and the FHWA. The Town will install the Project at its own cost.

5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the Town and to authorize such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the Town for the Project, if the Project is approved by FHWA and funds for the Project are available.

6. The Parties shall perform their responsibilities consistent with this Agreement and any change or modification to the Project will only occur with the mutual written consent of both Parties.

7. The federal funds will be used for construction of the Project, including the construction engineering and administration cost (CE). The estimated Project costs are as follows:

SH615 01D (scoping/design):

Federal-aid funds @100%	**$ 30,000.00**
Subtotal – Scoping/Design*	**$ 30,000.00**

SH615 01C (construction):

Federal-aid funds @ 100% (capped)	**$ 49,088.00**
Subtotal – Construction**	$ **49,088.00**
TOTAL Estimated Project Cost	**$ 79,088.00**

* (ADOT Project Management & Design Review (PMDR) fee is included)
** (Includes 15% CE and 5% Project contingencies)

The Parties acknowledge that the final Project costs may exceed the initial estimate(s) shown above, and in such case, the Town is responsible for, and agrees to pay, any and all eventual, actual costs exceeding the initial estimate. If the final bid amount is less than the initial estimate, the difference between the final bid amount and the initial estimate will be de-obligated or otherwise released from the Project. The Town acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all eventual, actual costs exceeding the final bid amount.

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

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this Agreement, be the designated agent for the Town for the Project, if the Project is approved by FHWA and funds for the Project are available.

b. Submit all documentation required to the FHWA containing the above-mentioned Project with the recommendation that funding be approved for procurement of equipment. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project specifications and terms and conditions.

c. Request the maximum federal funds programmed for this Project. Should costs exceed the maximum federal funds available it is understood and agreed that the Town will be responsible for any overage.

d. Upon execution of this Agreement and authorization by FHWA, coordinate with the Town regarding the specifics of the equipment to be ordered to best ensure the requirements of the Project are met. Enter into a contract(s) with a firm(s) to whom the award is made for the purpose of the Project.

e. Be granted, without cost, the right to enter Town right-of-way, as required, to conduct any and all construction and preconstruction related activities, including without limitation, temporary construction

easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

f. Instruct the vendor to deliver equipment directly to the Town for final acceptance and to bill the State directly.

g. Not be obligated to maintain said Project, should the Town fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

h. Verify installation of equipment was performed and completed in compliance with FHWA requirements, upon notification of installation of equipment by the Town.

2. The Town will:

a. Upon execution of the Agreement, designate the State as authorized agent for the Town for the Project.

b. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, not covered by federal funding. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the Town is responsible for these costs, payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

c. Coordinate with the State during the procurement process of the Project.

d. Install the equipment acquired under this Agreement and maintain all improvements provided by this Project for the entire design life of the equipment.

e. Be responsible for ensuring all equipment purchased is installed within one (1) year of receipt of equipment; keep complete records of all equipment installed per this Project in a manner consistent with State and FHWA requirements.

f. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction, in accordance with The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended; 49 CFR 24.102 Basic Acquisition Policies; 49 CFR 24.4 Assurances, Monitoring and Corrective Action, parts (a) & (b) and ADOT ROW Manual: 8.02 Responsibilities, 8.03 Prime Functions, 9.07 Monitoring Process and 9.08 Certification of Compliance. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the Town, if applicable.

g. Not permit or allow any encroachments upon or private use of the right-of-way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use.

h. Grant the State, its agents and/or contractors, without cost, the right to enter Town rights-of-way, as required, to conduct any and all construction and preconstruction related activities, including without limitation, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

i. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work requested by the Town. Such changes require the prior approval of the State and FHWA. Be responsible for any

contractor claims for additional compensation caused by Project delays attributable to the Town, payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

j. Notify the State when all equipment has been installed and is ready for inspection.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the Project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event the Town terminates this Agreement, the Town will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that in the event the Town terminates 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, in regard to the Town 's relationship with the State only, 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. It is understood and agreed that the State's participation is confined solely to securing federal aid on behalf of the Town and the fulfillment of any other responsibilities of the State as specifically set forth herein; 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, defend and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all liability, costs and/or damage incurred by any of the above arising or resulting from this Agreement; and from any other liability, 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 non-performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the Town, any of its agents, officers and employees, or 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. The cost of design, construction and construction engineering work under this Agreement is to be covered by the federal funds set aside for this Project, up to the maximum available. The Town acknowledges that the eventual actual costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the Town agrees to furnish and provide the difference between actual Project costs and the federal funds received.

4. Should the federal funding related to this Project be terminated or reduced by the federal government, or Congress rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for any past, current or future expenses under this agreement.

5. The cost of the project under this Agreement includes indirect costs approved by FHWA, as applicable.

6. The Parties warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the Town will provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.

7. The Town acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend $500,000.00 or more (prior to 12/26/14) and $750,000.00 or more (on or after 12/26/14) of federal assistance (federal funds, federal grants, or federal awards) are required to comply by having an independent audit. Either an electronic or hardcopy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine (9) months of the sub recipient fiscal year end.

ADOT – FMS
Attn: Cost Accounting Administrator
206 S 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
SingleAudit@azdot.gov

8. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

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

10. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.

11. 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 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

12. Non-Availability of Funds: Every obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment 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.

13. 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.

14. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.

15. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

16. 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: Curtis Ward
303 N Beeline Hwy
Payson, AZ 85541
Phone
Fax

17. 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

By _____
KENNY EVANS
Mayor

ATTEST:

By _____
SILVIA SMITH
Town Clerk

STATE OF ARIZONA
Department of Transportation

By _____
DALLAS HAMMIT, P.E.
Senior Deputy State Engineer, Development

IGA/JPA 14-0004284-I

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 Arizona Revised Statutes §§ 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 _____, 2014.

_____

Town Attorney