Staff Report

Agenda Item: **Intergovernmental Agreement Between the State of Arizona Through its Department of Transportation (ADOT) and the Town of Clarkdale** – Approval of an Intergovernmental Agreement (IGA) between the State of Arizona through its Department of Transportation (ADOT) and the Town of Clarkdale for bridge inspection services.

Staff Contact: Steve Burroughs, Public Works Director

Meeting Date: September 28, 2010

Background: The purpose of the Intergovernmental Agreement (IGA) is to assist the Town with the Federal Highways Administration (FHWA) required inspection of bridges and box culverts located within the Town. Currently the Town has one single lane bridge and two (2) sets of box culverts all located along Broadway Road. They are inspected every four years by ADOT's Intermodal Transportation Division with the cost being passed along to the Town for the inspection time, which varies depending on time spent in the field and writing the report that is submitted to the FHWA.

Entering into the IGA with ADOT will allow the cost for inspection services to be covered by bridge and maintenance funding in place under the Surface Transportation Program funds.

Recommendation: Approval of the Intergovernmental Agreement between the State of Arizona through its Department of Transportation (ADOT) and the Town of Clarkdale for Bridge Inspection Services.

ADOT File No.: IGA /JPA 08-062I
AG Contract No.: P001-2010-000432-7
Project: Bridge Inspection
TRACS No.: MAINTAGR
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF CLARKDALE

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 CLARKDALE, 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 § 11-952 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. By order of 23 United States Code 151, the Federal Highway Administration (FHWA) in coordination with the American Association of State Highway and Transportation Officials (AASHTO) has implemented bridge inspection standards under 23 Code of Federal Regulations 650 subpart C, The National Bridge Inspection Standards (NBIS). The NBIS requires that State must inspect, or cause to be inspected, all highway bridges located on public roads, with some exceptions. The NBIS outline requirements for inspection frequency and procedures that each State's must follow, including routine, in-depth, underwater and fracture critical member inspections, load rating, and scour plans of action. Compliance with of the NBIS is a required component in order to be eligible for Federal-Aid Highway Bridge funding.

4. A local agency has the authority to perform NBIS inspections on its Public bridges. Currently, some local agencies throughout the State perform such inspections. This agreement does not preclude a local agency from requesting to perform NBIS inspections on its public bridges.

5. The Parties wish to promote consistent inspection methodologies throughout the State.

6. The State will cover the cost of Town bridge inspections through adjusting the percentage of Federal bridge funding allocated to off-system Highway Bridges.

7. The State and the Town wish to enter into an agreement whereby Town authorizes State to perform NBIS inspections on bridges owned or controlled by the Town.

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

II. DEFINITIONS

NBI Inventoried Bridge:
A structure including supports erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of openings for multiple boxes; it may also include multiple pipes, where the clear distance between the openings is less than half of the smaller contiguous opening.

National Bridge Inspection Standards (NBIS):
Federal regulations establishing requirements for Inspection procedures, frequency of inspections, qualifications of personnel, inspection reports, and preparation and maintenance of a State bridge inventory. The NBIS apply to all structures defined as bridges located on all public roads.

Public Road;
Any road under the jurisdiction of and maintained by a public authority and open to public travel.

III. SCOPE OF WORK

1. The State will:

a. Inspect NBI inventoried bridges owned by Town according to the NBIS.

b. Communicate with Town on a timely basis and inform Town of the start date of the bridge inspection; and offer to meet with the designated representatives of Town to discuss the inspection.

c. Forward the copies of completed bridge inspection report documents to the Town in a timely manner, if other activities are undertaken by the State, forward the copies of the relevant documents generated for these tasks to the Town.

d. Record the updated Bridge Inspection data in the ADOT database and transmit annually to the Federal Highway Administration (FHWA).

e. The State will not carry out any recommended maintenance or repair activities for Town bridges.

2. The Town will:

a. Allow and authorize the State to inspect NBI inventoried bridges owned by Town according to NBIS.

b. Grant the State any necessary Rights of Entry or permits at no fee for the completion of the State's tasks under this Agreement.

c. Provide the State all the necessary relevant information and documents such as copies of bridge plans, average daily traffic counts, known deficiencies of the existing structures and additions/deletions to its bridge inventory.

d. Notify the State of all new or existing structures that may meet the NBI inventoried bridge definition. Also notify the State of any NBI inventoried bridge removal, transfer, or change of ownership.

e. Provide traffic control at no fee during the bridge inspections by the State when necessary.

f. Once Town performs the recommended repair work, forward the information and the completion date to the State.

IV. MISCELLANEOUS PROVISIONS

1. State may carry out its activities under this Agreement through consultants.

2. The State will not carry out any maintenance or repair activities for local agency bridges.

3. On its own discretion, Town may accompany State or Consultant bridge inspection team to the bridge site and actively participate in the inspection or be an observer.

4. Town may obtain a second opinion at Town expense whenever it does not agree with the State's findings and recommendations for bridge maintenance or repairs. A second opinion shall be obtained by hiring qualified bridge inspection engineers to perform an inspection per NBIS and accepted bridge inspection procedures and practices and submit the completed bridge inspection documents to the State for review and acceptance. The State will make a final recommendation.

5. The Parties to this Agreement agree that neither party shall be indemnified or held harmless by the other party. However, the Parties further agree that each party shall be responsible for its own negligence. Neither the State, nor any of its officers, employees, or contractors shall be liable for any damage occurring to the Town structure nor liability for any damages liability to third party unless the State or its officers, employees, or contractors cause the damages.

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

7. This Agreement is perpetual, except for the provisions for termination or cancellation in the Agreement.

8. Either Party may terminate this Agreement upon thirty days written notice.

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

10. The Parties agree to submit any disputes arising under this Agreement to binding arbitration before the American Arbitration Association; except that if there are any parties involved in the dispute other than the State and local agency, venue shall lie in Maricopa County Superior Court, Phoenix Arizona.

11. 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	Town of Clarkdale
Korina Lopez	Public Works Director
Joint Project Administration	Attn: Steven Burroughs
205 S. 17th Avenue, Mail Drop 637E	PO Box 308
Phoenix, Arizona 85007	Clarkdale, Arizona, 86324
(602) 712-8753	(928) 649-3538
(602) 712-3132 Fax	(928) 639-2559 FAX

12. 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".

13. Non-Availability of Funds: Fulfillment of the obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance 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.

14. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The City 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 City 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 City or subcontractor is complying with the warranty under paragraph (a).

15. 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.

16. 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 CLARKDALE

By _____
DOUG VON GAUSIG
Mayor

ATTEST:

By _____
KATHY BAINBRIDGE
Clerk

STATE OF ARIZONA
Department of Transportation

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

JPA 08-062

ATTORNEY APPROVAL FORM FOR THE TOWN OF CLARKDALE

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 CLARKDALE, 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 14th day of September, 2010

Boyle, Pechman, Cline, Whittington & Stallings, P.L.L.C

by _____

Town Attorney