



# Staff Report

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**Agenda Item:**           **INTERGOVERNMENTAL AGREEMENT AMONG THE STATE OF ARIZONA AND TOWN OF CLARKDALE AND CITY OF COTTONWOOD** – Discussion and consideration of an Intergovernmental Agreement (IGA) between the State of Arizona through the Department of Transportation (ADOT) and the Town of Clarkdale and the City of Cottonwood defining their responsibilities in the SR 89A sidewalk project.

**Staff Contact:**           Steve Burroughs, Public Works Director

**Meeting Date:**         October 12, 2010

**Background:** Arizona Department of Transportation (ADOT) is requesting an agreement which defines the responsibilities of the Town of Clarkdale, the City of Cottonwood and the Arizona Department of Transportation for the sidewalk project being constructed on both sides of 89A from the Cement Plant/Clarkdale Parkway roundabout to the Blackhills roundabout in the City of Cottonwood. The project is fully funded through a Federal Closeout Project of Opportunity Funds source of \$1,415,250.00.

Due to the project spanning both the Town of Clarkdale and the City of Cottonwood, both Councils are requested to sign the IGA. Attorneys for both jurisdictions have reviewed and approved the IGA.

The Scope of Work requests that the Town:

- a. Review design plans, specifications (PS&E's) and other such documents and services required for the construction bidding and construction of the Project and provide comments to the State as appropriate.
- b. 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 the Town will pay such costs within thirty (30) days of receipt of an invoice from the State.
- c. Upon completion of construction, the Town shall provide for, at its own cost, perpetual maintenance of all Project sidewalks, handrails and visual enhancements within its jurisdiction and Project limits. Perpetual maintenance refers to all maintenance, including but is not limited to: minor maintenance such as sweeping and keeping

sidewalk areas clear of debris and safe for pedestrians, and major maintenance such as replacement of ramps, handrails or sidewalk areas behind the curb, if damaged.

d. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through-traffic. All traffic control will meet the requirements of the most recent Arizona Department of Transportation's "Uniform Traffic Control Manual".

e. Obtain, per established procedures of the State's Prescott District Permit Office, a valid annual citywide blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance work provided by the Town within the State's rights of way. Agree, that any new construction or installation shall require a separate permit as per the Prescott District's established procedures.

**Recommendation:** Approval of the Intergovernmental Agreement among the State of Arizona through its Department of Transportation (ADOT) and the Town of Clarkdale and the City of Cottonwood defining their responsibilities in the SR 89A sidewalk project.

ADOT File No.: IGA/JPA 10-111-I  
AG Contract No.: P001 2010 003367  
Project: Sidewalk and related  
improvements  
Project No.: TEA-A89-A(206)A  
Section: SR 89A, between Cottonwood  
and Clarkdale, MP 349.0 – MP 351.2  
COG/MPO TIP Item No.: n/a  
**TRACS No.:** H8165 01C  
**Budget Source Item No.:** Federal  
closeout Project of Opportunity funds,  
**13511; \$1,415,250.00**

## INTERGOVERNMENTAL AGREEMENT

AMONG  
THE STATE OF ARIZONA  
AND  
TOWN OF CLARKDALE  
AND  
CITY OF COTTONWOOD

**THIS AGREEMENT** is entered into this date \_\_\_\_\_, 2010, pursuant to the Arizona Revised Statutes § 11-951 through § 11-954, as amended, among the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State"), the TOWN OF CLARKDALE, acting by and through its MAYOR and TOWN COUNCIL (the "Town"), and the CITY OF COTTONWOOD, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State, the Town and the City 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 on behalf of the Town.
  3. The City 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 City.
  4. The State will administer and fund the design and construction of sidewalk and related enhancements along SR 89A within State existing right-of-way, from MP 349.0 – MP 351.2. Related enhancements will include visual enhancements in the roundabouts, all of which the Town and City will maintain completely, collectively hereinafter referred to as the "Project." The estimated Project cost is \$1,415,250.00.
  5. The Parties hereby agree to and acknowledge the following conditions: **a)** any estimated monetary amounts referenced in this Agreement are subject to change and can change significantly before completion of the Project; **b)** the Parties shall perform their responsibilities consistent with this Agreement; and **c)** any change or modification to the Project will only occur with the written consent of all Parties.
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**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

1. The State will:

a. Be the authorized agent for the Town and City. Submit a program to the FHWA containing the above-mentioned Project with the recommendation that it be approved for design and construction funding.

b. On behalf of the Town and City, enter into a project Agreement with FHWA covering the work embraced in said Project and request the maximum authorized Federal funds available, including design, construction and construction administration costs. Should costs exceed the maximum Federal funds available, it is understood and agreed that the State will be responsible for any excess costs, with the exception of any City or Town-requested change orders or scope changes.

c. Prepare design plans, specifications (PS&E's) and other such documents and services required for the construction bidding and construction of the Project and incorporate comments from the Town and City as appropriate.

d. Proceed to advertise for, receive and open bids subject to the concurrence of FHWA, the Town and the City plus enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. Administer all contracts for the Project, making all payments to the consultant(s) and contractor(s).

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

2. The Town will:

a. Review design plans, specifications (PS&E's) and other such documents and services required for the construction bidding and construction of the Project and provide comments to the State as appropriate.

b. 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 the Town will pay such costs within thirty (30) days of receipt of an invoice from the State.

c. Upon completion of construction, the Town shall provide for, at its own cost, perpetual maintenance of all Project sidewalks, handrails and visual enhancements within its jurisdiction and Project limits. Perpetual maintenance refers to all maintenance, including but is not limited to: minor maintenance such as sweeping and keeping sidewalk areas clear of debris and safe for pedestrians, and major maintenance such as replacement of ramps, handrails or sidewalk areas behind the curb, if damaged.

d. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through-traffic. All traffic control will meet the requirements of the most recent Arizona Department of Transportation's "Uniform Traffic Control Manual".

e. Obtain, per established procedures of the State's Prescott District Permit Office, a valid annual citywide blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance work provided by the Town within the State's rights of way. Agree, that any new construction or installation shall require a separate permit as per the Prescott District's established procedures.

f. Obtain, per established procedures of the State's Prescott District Permit Office, a valid Encroachment Permit for visual enhancements, either constructed with the Project or after completion of said Project.

3. The City will:

a. Review design plans, specifications (PS&E's) and other such documents and services required for the construction bidding and construction of the Project and provide comments to the State as appropriate.

b. 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 City. Such changes require the prior approval of the State, and the City will pay such costs within thirty (30) days of receipt of an invoice from the State.

c. Upon completion of construction, the City shall provide for, at its own cost, perpetual maintenance of all Project sidewalks, handrails and visual enhancements within its jurisdiction and Project limits. Perpetual maintenance refers to all maintenance, including but is not limited to: minor maintenance such as sweeping and keeping sidewalk areas clear of debris and safe for pedestrians, and major maintenance such as replacement of ramps, handrails or sidewalk areas behind the curb, if damaged.

d. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through-traffic. All traffic control will meet the requirements of the most recent Arizona Department of Transportation's "Uniform Traffic Control Manual".

e. Obtain, per established procedures of the State's Prescott District Permit Office, a valid annual citywide blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance work provided by the City within the State's rights of way. Agree, that any new construction or installation shall require a separate permit as per the Prescott District's established procedures.

f. Obtain, per established procedures of the State's Prescott District Permit Office, a valid Encroachment Permit for visual enhancements, either constructed with the Project or after completion of said Project.

### **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 and indemnification shall survive any termination of this Agreement. Further, this Agreement may be cancelled at any time prior to the award of the project construction contract, upon thirty days (30) written notice to the other parties. It is understood and agreed that, in the event the Town or City terminates 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 other parties (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 signing and dating of the Determination Letter by the State's Attorney General.

4. The cost of the Project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (FHWA).

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

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

7. 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.

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. 17<sup>th</sup> Avenue, Mail Drop 637E  
 Phoenix, Arizona 85007  
 (602) 712-7124  
 (602) 712-3132 Fax

Town of Clarkdale  
 Attn: Public Works Director  
 890 Main Street  
 Clarkdale, Arizona 86324  
 (928) 639-2550  
 (928) 693-2559Fax

City of Cottonwood  
 Attn: Utility Engineer  
 111 North Main Street  
 Cottonwood, AZ 86326  
 (928) 634-0186  
 (928) 639-4254 Fax

9. 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".

10. 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.

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

a. The City and Town warrant compliance with all Federal immigration laws and regulations relating to employees and warrant their compliance with Arizona Revised Statutes § 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 and 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 City and Town or their subcontractors are complying with the warranty under paragraph (a).

12. Pursuant to Arizona Revised Statutes § 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 Arizona Revised Statutes § 35-391 and/or § 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.

13. 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**

**STATE OF ARIZONA**

Department of Transportation

By \_\_\_\_\_  
DOUG VON GAUSIG  
Mayor

By \_\_\_\_\_  
SAM MAROUFKHANI, P.E.  
Deputy State Engineer, Development

ATTEST:

By \_\_\_\_\_  
KATHY BAINBRIDGE  
Town Clerk

Initial Draft 7/1/10 ghc  
ADOT District Comments 7/27/10 & 8/24/10  
AG approved 9/22/10

**CITY OF COTTONWOOD**

By \_\_\_\_\_  
DIANE JOENS  
Mayor

ATTEST:

By \_\_\_\_\_  
MARIANNE JIMENEZ  
City Clerk

IGA/JPA 10-111-I

**ATTORNEY APPROVAL FORM FOR THE TOWN OF CLARKDALE**

I have reviewed the above referenced Intergovernmental Agreement among the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, the TOWN OF CLARKDALE, and the CITY OF COTTONWOOD, 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 and City to enter into this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Robert Pecharich Town Attorney

**IGA/JPA 10-111-I**

**ATTORNEY APPROVAL FORM FOR THE CITY OF COTTONWOOD**

I have reviewed the above referenced Intergovernmental Agreement among the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, the TOWN OF CLARKDALE, and the CITY OF COTTONWOOD, 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 City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State and Town to enter into this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Steve Horton, City Attorney