

ADOT File No.: IGA/JPA 16-0005860-I
AG Contract No.: P001 2016 001490
Project Name: Lincoln Dr. - 32nd Street
to Scottsdale Rd.
Project Location: Lincoln Dr.: 32nd
Street to Scottsdale Rd.
Federal-aid No.: PVY-0(204)T
ADOT Project No.: T0081 01D/01C
TIP/STIP No.: PVY16-440 & PVY19-740
**CFDA No.: 20.205 - Highway Planning
and Construction**
Budget Source Item No.: n/a

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF PARADISE VALLEY

THIS AGREEMENT is entered into this date _____, 2016, 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 PARADISE VALLEY, 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. The work proposed under this Agreement, hereinafter referred to as the "Project", consists of the construction of sidewalks, retaining walls, culvert, American Disability Act (ADA) ramps, landscaping and way finding signage. The Project will link commercial improvements along the Town's western boundary within the Town of Phoenix, at 32nd Street and Lincoln Drive, to those along the eastern boundary within the Town of Scottsdale. The State will advertise, bid, award, and administer the construction phase of the Project.
4. The Town, in order to obtain federal funds for the construction of the Project, is willing to provide Town funds to match federal funds in the ratio required or as finally fixed and determined by the Town and Federal Highway Administration (FHWA).

5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the Town and the authorization of 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. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project specifications and terms and conditions.
6. The Parties will perform their responsibilities consistent with this Agreement; 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 the construction of the Project, including the construction engineering and administration cost (CE). The estimated Project costs are as follows:

T0081 01D (ADOT Project Management & Design Review (PMDR) Cost, non-federal-aid):

PMDR costs*	\$ 30,000.00
-------------	--------------

T0081 01C (construction):

Federal-aid funds @ 94.3% (capped)	\$1,958,977.00
Town's match @ 5.7%	<u>\$ 118,411.00</u>

Subtotal – Construction**	\$2,077,388.00
----------------------------------	-----------------------

TOTAL Estimated Project Cost	\$2,107,388.00
-------------------------------------	-----------------------

Total Estimated Town's Funds	\$ 148,411.00
-------------------------------------	----------------------

Total Federal Funds	\$1,958,977.00
----------------------------	-----------------------

* (Included in the Town Estimated Funds)

** (Includes 15% CE (this percentage is subject to change, any change will require concurrence from the Town) and 5% Project contingencies)

8. The Parties acknowledge that the final Project costs may exceed the initial estimate(s) shown above. In the event the costs exceed or are anticipated to exceed the estimates above with no agreed change in the scope of work, ADOT shall advise the Town in writing. Town is responsible for, and agrees to pay, any and all actual costs exceeding the initial estimate. If the final bid amount is less than the initial estimate, the Town is responsible for the 5.7% of the actual costs and 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 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. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the Town's designated agent for the Project.
 - b. Execute this Agreement, and prior to performing or authorizing **any** work, invoice the Town for the initial PMDR costs, estimated at **\$30,000.00**. If actual PMDR costs exceed the estimate during the development of design, notify the Town and obtain concurrence prior to continuing with the development of design. Once the Project costs have been finalized, the State will either invoice or reimburse the Town for the difference between estimated and actual costs. Refund any remaining PMDR costs if the Project does not proceed through complete design.
 - c. After receipt of the PMDR costs review design plans, specifications, cost estimates and other such documents required for the construction bidding and construction of the Project, including scoping/design plans and documents required by FHWA to qualify projects for and to receive federal funds; provide design review comments to the Town as appropriate and prepare any documents required by FHWA.
 - d. After completion of design and prior to bid advertisement, invoice the Town for the Town's share of the Project construction costs, estimated at **\$118,411.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the Town for the difference between estimated and actual costs; and de-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.
 - e. After receipt of the Town's actual PMDR costs and the Town's estimated share of the Project construction costs, prepare any additional FHWA required documents and submit all required documentation to FHWA with the recommendation that the maximum federal funds programmed for construction of this Project be approved. Should costs exceed the maximum federal funds available, it is understood and agreed that the Town will be responsible for any overage.
 - f. With FHWA authorization, proceed to administer construction, advertise for, receive and open bids, award and enter into a contract with the firm for the construction of the Project. If the bid amounts exceed the construction cost estimate, obtain Town concurrence prior to awarding the contract. Once awarded, invoice the Town for the difference between estimated and actual costs that have been approved by the Town, if applicable.
 - g. Be granted, without cost requirements, the right to enter Town right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry on to and over said rights-of-way of the Town.
 - h. Notify the Town of substantial completion and coordinate with the Town for final acceptance of the Project; turn over full responsibility of the Project improvements; de-

obligate or otherwise release any remaining federal funds from the construction phase of the Project within ninety (90) days of final acceptance.

- i. 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.

2. The Town will:

- a. Designate the State as the Town's authorized agent for the Project.
- b. Within 30 days of receipt of an invoice from the State, pay the initial PMDR costs, estimated at **\$30,000.00**. Agree to be responsible for actual PMDR costs, if during the development of design, PMDR costs exceed the initial estimate. Be responsible for any difference between the estimated and actual PMDR and design costs of the Project.
- c. After completion of design, within 30 days of receipt of an invoice from the State and prior to bid advertisement, pay to the State, any outstanding PMDR costs and the Town's Project construction costs, estimated at **\$118,411.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the Town for the difference between estimated and actual costs.
- d. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, that are 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 30 days of receipt of an invoice from the State.
- e. Certify that all necessary rights-of-way, which may be obtained by easement, fee title dedication or any other manner authorized by law, have been or will be acquired prior to advertisement for bid and that all obstructions or unauthorized encroachments of any 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, 9.06 Monitoring Process and 9.07 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.
- f. 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.
- g. 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.

- h. Be obligated to incur, after notification from the State, any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any Town requested changes to the scope of work of the Project, such changes will require State and FHWA approval. Be responsible for any contractor claims for additional compensation caused by Project delay attributable to the Town. Payment for these costs will be made to the State within 30 days of receipt of an invoice from the State.
- i. Enter into an agreement with the design consultant which states that the design consultant will provide professional post-design services as required and requested throughout and at completion of the construction phase of the Project. After completion of the construction phase of the Project, provide an electronic version of the record drawings to the State.
- j. Upon notification of Project completion, agree to accept, maintain and assume full responsibility of the Project and all Project components in writing.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and all related deposits and/or reimbursements are made. Any provisions for maintenance shall be perpetual, unless assumed by another competent entity. This Agreement may be cancelled at any time prior to the award of the Project construction contract, upon 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 not be obligated to complete and/or maintain the Project.
2. The Town shall indemnify, defend, and hold harmless the State, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as the "State") from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the Town, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. The Town's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the State, except the obligation does apply to any negligence of the Town which may be legally imputed to the State by virtue of the State's ownership or possession of land. The Town's obligations under this paragraph shall survive the termination of this Agreement

3. The State shall include Section 107.13 of the 2008 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated to this Agreement by reference, in the State's contract with any and all contractors, of which the Town shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the Town.
4. The cost of construction and construction engineering work under this Agreement is to be covered by the maximum available amount of federal funds programmed for this Project. The Town acknowledges that the 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, upon notification to the Town, consistent with I.8. above, the Town agrees to pay the difference between actual Project costs and the federal funds received.
5. 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.
6. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.
7. 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.
8. 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
9. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.
10. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

11. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.
12. 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".
13. 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.
14. 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.
15. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.
16. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
17. 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:

For Agreement Administration:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax
JPABranch@azdot.gov

Town of Paradise Valley
Attn: Jeremy T. Knapp
6401 East Lincoln Drive.
Paradise Valley, AZ 85253
(480) 348-3622
jknapp@paradisevalleyaz.gov

For Project Administration:

Arizona Department of Transportation
Attn: Project Management Group
1615 W Jackson St
Phoenix, AZ 85007
(602)712-4428

Town of Paradise Valley
Attn: Jeremy T. Knapp
6401 East Lincoln Drive.
Paradise Valley, AZ 85253
(480) 348-3622
jknapp@paradisevalleyaz.gov

For Financial Administration:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax
JPABranch@azdot.gov

Town of Paradise Valley
Attn: Dawn Marie Buckland
6401 East Lincoln Drive.
Paradise Valley, AZ 85253
(480) 348-3555
dbuckland@paradisevalleyaz.gov

18. 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 PARADISE VALLEY

STATE OF ARIZONA

Department of Transportation

By _____
MICHAEL COLLINS
Mayor

By _____
STEVE BOSCHEN, P.E.
IDO Division Director

ATTEST:

By _____
DUNCAN MILLER
Town Clerk

ATTORNEY APPROVAL FORM FOR THE TOWN OF PARADISE VALLEY

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 PARADISE VALLEY, 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 _____, 2016.

Town Attorney