

RESOLUTION NO. 2020-1167

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, RELATING TO THE CONSTRUCTION OF A NEW TRAFFIC SIGNAL AND ROADWAY WIDENING.

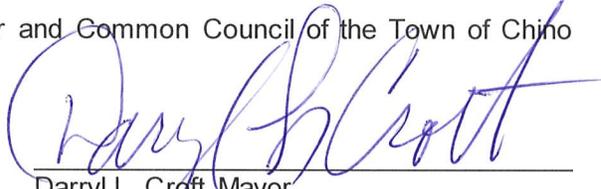
BE IT RESOLVED by the Mayor and Common Council of the Town of Chino Valley, Arizona as follows:

SECTION 1. The Intergovernmental Agreement between the Town of Chino Valley (the "Town") and the State of Arizona, acting by and through its Department of Transportation relating to the construction of a new traffic signal and roadway widening at Road 1 North, along State Route (SR) 89 (the "Agreement") is hereby approved substantially in the form and substance attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2. The Town hereby designates the Arizona Department of Transportation as the Town's authorized agent for the purpose of the construction described in the Agreement.

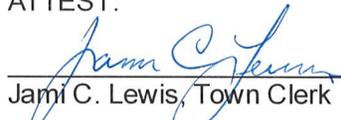
SECTION 3. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Chino Valley, Arizona this 9th day of June, 2020.



Darryl L. Croft, Mayor

ATTEST:



Jami C. Lewis, Town Clerk

APPROVED AS TO FORM:



Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC

I hereby certify the above foregoing Resolution No. 2020-1167 was duly passed by the Council of the Town of Chino Valley, Arizona, at a meeting held on June 9, 2020, and that quorum was present thereat and that the vote thereon was 6 ayes and 0 nays and 0 abstentions. 1 Council members were absent or excused.



Jami C. Lewis, Town Clerk

EXHIBIT A
TO
RESOLUTION NO. 2020-1167

[Agreement]

See following page.

ADOT CAR No.: IGA 20-0007712-I
AG Contract No.: P0012020000736
Project Location/Name: SR 89 @ Road 1
North
Type of Work: New Traffic Signal and
Roadway Widening
Federal-aid No.:089-B(213)ST
ADOT Project No.: HX247 01C
TIP/STIP No.:
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 CHINO VALLEY

THIS AGREEMENT is entered into this date _____, pursuant to the Arizona Revised Statutes (“A.R.S.”) §§ 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 CHINO 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 A.R.S. § 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 A.R.S. § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached and made a part of, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.
3. The State will design, advertise, award and administer construction of a new traffic signal and roadway widening at Road 1 North, along State Route (SR) 89, (the “Project”), estimated at \$1,300,000.00. The State will obtain federal funds for construction costs associated with the Project. The Town will contribute \$125,000.00 toward the construction of the Project improvements along Road 1 North and be responsible for the maintenance of any improvements within the Town’s right-of-way.

THEREFORE, in consideration of the mutual terms expressed in this Agreement, it is agreed as follows:

II. SCOPE OF WORK

1. The Parties agree:
 - a. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.

2. 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. After this Agreement is executed, invoice the Town for their contribution of \$125,000.00 toward the construction costs of the Project improvements along Road 1 North. After the Project costs are finalized, the State will either reimburse the City in the same percentages as originally contributed to the Project or invoice the Town, in a 50/50 split, for the difference between estimated and actual costs of the Project in Road 1 North right-of-way, if necessary.
 - c. Prepare and provide the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project and incorporate comments from the Town as appropriate.
 - d. With FHWA authorization, proceed to administer construction: advertise, receive and open bids, award, and enter into a contract with the firm for the construction of the Project. Administer contract(s) for the Project and make all payments to the contractor(s).
 - e. Notify the Town of final inspection and acceptance of all the Project improvements, and not be responsible for maintenance of the Project improvements within the Town's right-of-way.

3. 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 to the State the Town's contribution of \$125,000.00 toward the construction costs of the Project. Be responsible for and pay, in a 50/50 split with the State, total Project costs within Road 1 North right-of-way, that exceed the original estimate, within 30 days of receipt of an invoice.
 - c. Review the design documents required for construction of the Project and provide comments to the State as appropriate.
 - d. Not permit or allow any encroachments upon or private use of the public 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.

- e. Automatically grant to the State, by execution of this Agreement, its agents and/or contractors, without cost, the temporary right to enter Town rights-of-way, as required, to conduct any and all construction and preconstruction related activities for the Project, on, to and over said Town rights-of-way. This temporary right will expire with completion of the Project.
- f. Investigate and document utilities within the Project limits; submit findings to ADOT determining prior rights or no prior rights; approve an easement within the final right-of-way to re-establish the prior right location for those utilities with prior rights.
- g. After final inspection and acceptance of the Project is complete, assume maintenance responsibility of any Project improvements within the Town's right-of-way at its sole expense.

III. MISCELLANEOUS PROVISIONS

- 1. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.
- 2. Any change or modification to the Project will only occur with the mutual written consent of both Parties.
- 3. 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.
- 4. This Agreement may be cancelled at any time up to 30 days before the award of the Project contract, so long as the cancelling Party provides at least 30 days' prior written notice to the other Party. It is understood and agreed that, in the event the Town terminates this Agreement, the Town shall 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 complete or maintain the Project.
- 5. 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.

6. 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 into 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.
7. 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.
8. The cost of the Project under this Agreement includes indirect costs approved by the FHWA, as applicable.
9. 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 shall provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.
10. The Town acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
11. This Agreement shall be governed by and construed in accordance with Arizona laws.
12. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
13. The Town shall retain all books, accounts, reports, files and other records relating to the Agreement for five years after completion of the Project. These documents shall be subject at all reasonable times to inspection and audit by the State. Such records shall be produced by the Town at the request of ADOT.
14. 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 by reference regarding "Non-Discrimination."
15. 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.

16. In the event of any controversy, which may arise out of this Agreement, the Parties agree to abide by arbitration as is set forth for public works contracts if required by A.R.S. § 12-1518.
17. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
18. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01.
19. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
20. All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered electronically, in person, or sent by mail, addressed as follows:

For Agreement Administration:

Arizona Department of Transportation
Joint Project Agreement Section
205 S. 17th Avenue, Mail Drop 637E
Phoenix, AZ 85007
JPABranch@azdot.gov

Town of Chino Valley
Attn: Frank Marbury
202 N. State Route 89
Chino Valley, AZ 86323
928.636.7140
fmarbury@chinoaz.net

For Project Administration:

Arizona Department of Transportation
Project Management Group
205 S. 17th Avenue, Mail Drop 614E
602.712.7046
PMG@azdot.gov

Town of Chino Valley
Attn: Frank Marbury
202 N. State Route 89
Chino Valley, AZ 86323
928.636.7140
fmarbury@chinoaz.net

For Financial Administration:

Arizona Department of Transportation
Project Management Group
205 S. 17th Avenue, Mail Drop 614E
Phoenix, AZ 85007
PMG@azdot.gov

Town of Chino Valley
Attn: Frank Marbury
202 N. State Route 89
Chino Valley, AZ 86323
928.636.7140
fmarbury@chinoaz.net

21. Any revisions to the names and addresses above may be updated administratively by either Party and shall be in writing.
 22. In accordance with A.R.S. § 11-952 (D), attached and incorporated in this Agreement 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.
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IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

TOWN OF CHINO VALLEY

STATE OF ARIZONA
Department of Transportation

By _____
DARRYL L. CROFT
Mayor

By _____
STEVE BOSCHEN, PE
Division Director

ATTEST:

By _____
JAMI LEWIS
Town Clerk

ATTORNEY APPROVAL FORM FOR THE TOWN OF CHINO 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 CHINO 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.

Town Attorney

Date