

RESOLUTION NO. 2010-43

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY RELATING TO SHEA BOULEVARD IMPROVEMENTS PROJECT FUNDING.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The Intergovernmental Agreement between the Town of Fountain Hills and Maricopa County dated December 16, 2010, relating to Shea Boulevard improvements project funding (the "Agreement"), is hereby approved substantially in the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed 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 Council of the Town of Fountain Hills, December 16, 2010.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:


Jay T. Schlum, Mayor


Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:


Richard L. Davis, Town Manager


Andrew J. McGuire, Town Attorney

INTERGOVERNMENTAL AGREEMENT
BETWEEN MARICOPA COUNTY AND THE TOWN OF FOUNTAIN HILLS
FOR IMPROVEMENTS TO: SHEA BOULEVARD
FROM FOUNTAIN HILLS TOWN LIMITS TO BEELINE HIGHWAY (SR87)
(TT003)

(C-91-11- 131 -M-00)

This Intergovernmental Agreement (**Agreement**) is between the County of Maricopa, a political subdivision of the State, acting through the Maricopa County Department of Transportation (**County**), and the Town of Fountain Hills, a municipal corporation (**Fountain Hills**). The County and Town are collectively referred to as the **Parties** or individually as a **Party**.

This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors and may be filed with the Maricopa County Recorder.

STATUTORY AUTHORIZATION

1. A.R.S. §11-251 and §§28-6701 et seq. authorize the County to layout, maintain, control and manage public roads within the County.
2. A.R.S. §§11-951 et seq. authorize public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.

BACKGROUND

3. Fountain Hills is currently underway with roadway improvements which will provide a mill and 2 inch rubberized asphalt overlay and other work on Shea Boulevard. This overlay work extends from the southeastern corner of Fountain Hills to west of Palisades Boulevard. The Shea Boulevard/Saguaro Boulevard improvement is the final segment of the work and is scheduled for construction during summer of 2011. These improvements will provide a rubberized asphalt overlay on Shea Boulevard ending at the east boundary of Fountain Hills.

4. Shea Boulevard, from the southeast boundary of Fountain Hills to the Beeline Highway (SR87), lies within Fort McDowell Yavapai Nation and Salt River Pima-Maricopa Indian Community and is maintained by the County under tribal resolution SR415-65.
5. Fountain Hills proposes that the rubberized asphalt overlay improvements be extended to include Shea Boulevard from the southeast boundary of Fountain Hills to the Beeline Highway (SR87) for a distance of approximately 700 feet (**Project**).
6. The Project is anticipated to begin construction in the spring or summer of 2011. Fountain Hills is the lead agency for the Project. The total cost of the Shea Boulevard/Saguaro Boulevard improvements is currently estimated at \$2.4 million. The estimated cost of the Project is \$152,400.
7. The Board of Supervisors, by Resolution in May 2002, approved the creation of the Transportation Advisory Board Special Project Fund (**TAB-SPF**) in the amount of \$1,000,000 per fiscal year. The Board of Supervisors increased the TAB-SPF to \$1,500,000 by Amendment Resolution 02-05A in June 2007.
 - 7.1 The TAB-SPF may be utilized by the Maricopa County Department of Transportation (**MCDOT**) to respond to proposed projects as determined appropriate by the Transportation Advisory Board (**TAB**).
 - 7.2 The TAB-SPF is administered by MCDOT, in accordance with the Board of Supervisors resolutions, through MCDOT Policy T 1103.
8. On September 21, 2010 the Transportation Advisory Board (TAB) recommended that the Board of Supervisors fund the Project submitted by Fountain Hills from the FY 2011 Special Project Fund (SPF) in the amount of \$152,400.

PURPOSE OF THE AGREEMENT

9. The purpose of this Agreement is to identify and define the responsibilities of the County and Fountain Hills for the cost sharing, design, construction, construction management, rights-of-way acquisition, utility relocation, and annexation of the roadway.

TERMS OF THE AGREEMENT

10. Responsibilities of the County:

- 10.1 The County shall cooperate with Fountain Hills in the completion of the Project.
- 10.2 The County shall issue permits at no cost to Fountain Hills for work done on the Project within County jurisdiction, as applicable.
- 10.3 The County shall remit payment to Fountain Hills within 30 days of receipt of an invoice from Fountain Hills for \$152,400.
- 10.4 Upon approval of this Agreement by the County Board of Supervisors, the County shall notify Fountain Hills that the Board approved the Agreement.

11. Responsibilities of Fountain Hills:

- 11.1 Fountain Hills shall act as the Lead Agency for the Project consistent with Fountain Hills' standards to include, but not be limited to, the design, construction, construction management, rights-of-way acquisition, and utility relocations, as applicable.
- 11.2 Fountain Hills shall coordinate with the Fort McDowell Yavapai Nation and Salt River Pima-Maricopa Indian Community, as needed, to ensure collaborative cooperation.
- 11.3 Fountain Hills shall invoice the County for \$152,400 upon approval of this agreement by the Board of Supervisors.
- 11.4 Fountain Hills shall deliver a copy of the Project bid award, when issued, to the County c/o Intergovernmental Relations Branch, 2901 West Durango Street, Phoenix, Arizona 85009.
- 11.5 Fountain Hills shall provide for the County a final accounting of all funds upon completion of the Project.
- 11.6 Fountain Hills shall return any remaining funds to the County upon completion of the Project.

GENERAL TERMS AND CONDITIONS

- 12. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify and save the other Parties harmless, including any of the Parties' departments, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or nonperformance by the indemnifying Party of any of the provisions of this Agreement. By entering into this Agreement, each Party indemnifies the other against all liability, losses and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement, except such injury or damage as shall have been occasioned by the negligence of that other Party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Party, its departments, agencies, officers, employees, elected officials or agents. In the event of an action, the damages which are the subject of this indemnity shall include costs, expenses of litigation and reasonable attorney's fees.
- 13. This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors and may be recorded with the Maricopa County Recorder, and remain in full force and effect until all stipulations previously indicated have been satisfied except that it may be amended upon written Agreement by all Parties. Any Party may terminate this Agreement upon furnishing the other Parties with a written notice at least thirty (30) days prior to the effective termination date.

14. This Agreement shall be subject to the provisions of A.R.S. §38-511.
15. The Parties warrant that they are in compliance with A.R.S. § 41-4401 and further acknowledge that:
 - 15.1 Any contractor or subcontractor who is contracted by a Party to perform work on the Project shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A), and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer;
 - 15.2 That any breach of the warranty, shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract;
 - 15.3 The Parties retain the legal right to inspect the papers of any contractor or subcontractor employee who works on the Project to ensure that the contractor or subcontractor is complying with the warranty above and that the contractor agrees to make all papers and employment records of said employee available during normal working hours in order to facilitate such an inspection;
 - 15.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
16. The Parties warrant that they do not have scrutinized business operations in Sudan or Iran, as prohibited by ARS sections 35-391.06 and 35-393.06, and further acknowledge that any contractor or subcontractor who is contracted by a party to perform work on the Project shall warrant that they do not have scrutinized business operations in Sudan or Iran.
17. Each Party in this Agreement warrants that neither it nor any contractor or vendor under contract with the Party to provide goods or services toward the accomplishment of the objectives of this Agreement are not suspended or debarred by any federal agency which has provided funding that will be used in the Project described in this Agreement.
18. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.
19. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.
20. This Agreement shall not be modified or extended except by written instrument adopted under the requirements for adopting a new agreement.
21. This Agreement does not grant authority to control the subject roadway, except to the extent necessary to perform the tasks expressly undertaken pursuant to this Agreement.
22. Any funding provided for in this Agreement, other than in the current fiscal year, is contingent upon being budgeted and appropriated by the Maricopa County Board of Supervisors and the Fountain Hills Town Council in such fiscal year.

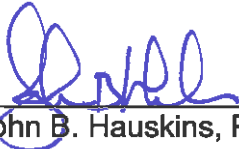
23. This Agreement has been arrived at by negotiation and shall not be construed against any Party or against the Party who prepared the last draft.
24. Unless otherwise lawfully terminated by the Parties, this Agreement shall expire upon the completion and acceptance of the Project and the fulfillment of all terms of the Agreement.

End of Agreement - Signature Page Follows

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

MARICOPA COUNTY

Recommended by:


John B. Hauskins, P.E. 11-29-10
Transportation Director Date

Approved and Accepted by:


Don Stapley, Chairman FEB 01 2011
Board of Supervisors Date
ANDREW KUNASEK

Attest by:


Fran McCarroll 012611
Clerk of the Board Date

TOWN OF FOUNTAIN HILLS

Recommended by:


Richard L. Davis 12-16-10
Town Manager Date

Approved and Accepted by:


Jay Schlum 12-16-10
Town Mayor Date

Attest by:


Beverlyn Bender 12-16-10
Town Clerk Date

APPROVAL OF ATTORNEY FOR BOS AND TOWN ATTORNEY

I hereby state that I have reviewed the proposed Intergovernmental Agreement and declare the Agreement to be in proper form and within the powers and authority granted to the Parties by their respective governing bodies under the laws of the State of Arizona.


Daniel Benton Jan 31 2011
Attorney for BOS Date


C. Milner 12-17-10
Town Attorney Date