RESOLUTION NO. 2012-13

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION (ADOT) FOR UPGRADING EXISTING TRAFFIC SIGNS

WHEREAS, two or more public agencies may enter into an intergovernmental agreement pursuant to ARS 11-952.A, and

WHEREAS, the City of Sedona ("City") and the State of Arizona, Department of Transportation ("ADOT") have determined that it would be in their best interests to enter into a mutual aid agreement to upgrade existing traffic signs utilizing the funding provided by the federal Highway Safety Improvement Program (HSIP), and

WHEREAS, the City has reviewed the terms of the proposed mutual aid agreement and determined that it qualifies as an intergovernmental agreement under ARS 11-952.B,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA, ARIZONA, THAT:

The City of Sedona, through its Mayor and Council, hereby approves the Intergovernmental Agreement between the City of Sedona and the State of Arizona, Department of Transportation (ADOT)(IGA File No. IGA/JPA 12-037I)(AG Contract No. P0012012001895), and authorizes the Mayor to execute said agreement.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 10th day of July, 2012.

Mark DiNunzio, Vice Mayor

ATTEST:

Susan L. Irvine, City Clerk

APPROVED AS TO FORM:

City Attorney

ADOT File No.: IGA/JPA 12-037I
AG Contract No.:P0012012001895
Federal Aid No.: SED-0(200)A
Project: Replacement Signs
Section: Various Locations
ADOT Project No.: SH55501C & 03D
TIP/STIP No.:
Budget Source Item No.: 72812

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF SEDONA

THIS AGREEMENT is entered into this date _____, 2012, 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 CITY OF SEDONA acting by and through its MAYOR and CITY COUNCIL (the "CITY). The State 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 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 and has authorized the undersigned to execute this Agreement on behalf of the City.

3. Congress has established the Highway Safety Improvement Program (HSIP) as a core Federal-aid for the specific purpose of achieving a significant reduction in traffic fatalities and serious injuries on public roads. The State, the Federal Highway Administration (FHWA) and the City have identified systematic improvements within the City as eligible for this funding.

4. The purpose of this joint exercise of powers and cooperative action (which constitute the agreement), between the State and the City is to allow the State to acquire Federal funds for the purchase of regulatory, warning and street names signs to upgrade existing traffic signs within the City limits, hereinafter referred to as the "Project". The City, through the State's Procurement Process and Arizona Department of Transportation (ADOT) procurement contract(s) will utilize an authorized supplier to provide the equipment and services as outlined in the contract and approved plans to complete this project with the aid and consent of the State and the FHWA.

5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and to authorize such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City.

6. The Parties shall perform their responsibilities consistent with this Agreement and 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 design and equipment purchase of the Project. The estimated Project costs are as follows:

ADOT Project No.: SH55503D (Design)	
HSIP Funds @ 100%	$10,000.00
ADOT Project No.: SH55401C)	
HSIP Funds @ 100%	$65,000.00
Total Federal Funds	$75,000.00
*TOTAL Project Costs	$75,000.00
*(Includes CE and project contingencies)	

The Parties acknowledge that the final bid amount may exceed the initial estimate(s) shown above, and in such case, the City is responsible for, and agrees to pay, any and all eventual, actual costs exceeding the initial estimate. If the final bid amount is less than the initial estimate, the difference between the final bid amount and the initial estimate will be de-obligated or otherwise released from the Project back to the authorizing authority. The City acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all eventual, 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. Submit all documentation required to the FHWA containing the above-mentioned Project with the recommendation that funding be approved for preliminary engineering and procurement. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project specifications, terms and conditions.

b. Request the maximum federal funds programmed for this Project, including City contract administration costs. Should costs exceed the maximum federal funds available it is understood and agreed that the City will be responsible for any overage.

c. Approve the Project, if such project funds are available from and authorized by FHWA for the Project. Be the designated authorized agent for the City.

d. Upon execution of this Agreement, coordinate with the City regarding the specifics of the equipment to be ordered by the State to best ensure the requirements of the Project are met. Enter into a contract(s) with a firm(s) to whom the award is made for the purpose of the Project.

e. Instruct the vendor to deliver equipment directly to the City for final acceptance and to bill the City directly. The State will reimburse the City 80% of allocated equipment purchase funds, up to **$52,000.00**, within thirty (30) days after receipt and approval of an invoice for equipment purchased under this Agreement, based on the initial estimate. Upon completion of final inspection, within thirty (30) days after receipt of invoice from the City, the State will reimburse the City with the remaining federal funds allocated for this Project not to exceed **$65,000.00**, based on the initial estimate.

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

g. Verify installation of equipment was performed and completed in compliance with FHWA requirements, upon notification of installation of equipment by the City.

2. The City will:

a. Designate the State as authorized agent for the City, if such project is approved by the FHWA and project funds are available.

b. Be responsible for the installation of equipment purchase under this Agreement all costs associated with such installation and any overage of costs exceeding the maximum federal funds available for the Project. Agree that the cost of the analysis and work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA.

c. Coordinate with the State during the procurement and installation process of the Project and follow all applicable FHWA and State policies and procedures.

d. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever 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, 9.07 Monitoring Process and 9.08 Certification of Compliance. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the City, if applicable.

e. Purchase and install the equipment acquired under this Agreement and maintain all improvements provided by this Project for the entire design life of the equipment.

f. Be responsible for ensuring all equipment purchased is installed within one (1) year of receipt of equipment; keep complete records of all equipment installed per this Project in a manner consistent with State and FHWA requirements.

g. Within thirty (30) days of making payment, invoice the State for reimbursement of eligible costs incurred by the City 80% of allocated equipment purchase funds, up to **$52,000.00** based on the initial estimate, and provide all necessary backup documentation with said invoice to the State. Be entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement not covered by federal funding.

h. Notify the State in writing when all equipment has been installed and is ready for inspection. Upon completion of final inspection, invoice the State for the remaining federal funds allocated for this Project not to exceed $**65,000.00,** based on the initial estimate.

i. 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 FHWA. Be responsible for any contractor claims for additional compensation caused by Project delays attributable to the City. Payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

j. 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 City shall take all necessary steps to remove or prevent any such encroachment or use.

k. Hereby grant the State, its agents and/or contractors, without cost, the right to enter City 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.

l. Pursuant to 23 USC 102(b), repay all federal funds reimbursements for preliminary engineering costs on the Project if it does not advance to right of way acquisition or construction within ten (10) years after federal funds were first made available.

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 and/or reimbursement. Any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the Project contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project. If the federal funding related to this Project is terminated or reduced by the federal government, or if 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.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid on behalf of the City and the fulfillment of any other responsibilities of the State as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless, defend and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

4. The cost of the Project under this Agreement includes applicable indirect costs approved by the FHWA.

5. The City and State warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the City 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.

6. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

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

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

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 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. 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.

11. 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.

12. 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. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

City of Sedona
Charles P. Mosley
102 Roadrunner Drive
Sedona, AZ 86336

For City Financial Matters:
Barbara Ashley
102 Roadrunner Drive,
Sedona AZ 86336
Phone: (928) 204-7193

13. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.

14. 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.

15. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

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.

CITY OF SEDONA

By _____
VICE ~~**ROBERT M. ADAMS**~~ MARK DINUNZIO
MAYOR

STATE OF ARIZONA
Department of Transportation

By _____
DALLAS HAMMIT, P.E.
Deputy State Engineer, Development

ATTEST:

By _____
Susan L. Irvine, CMC
City Clerk

IGA/JPA 12-037I

ATTORNEY APPROVAL FORM FOR THE CITY OF SEDONA

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF SEDONA, 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 to enter into this Agreement.

DATED this 11 day of July, 2012.

City Attorney