

RESOLUTION NO. 2023-12

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF TUSAYAN, ARIZONA, AUTHORIZING THE TOWN OF TUSAYAN TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE TUSAYAN SANITARY DISTRICT FOR THE BID AND AWARD OF A PAVING PROJECT IN THE TOWN OF TUSAYAN; AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE.

RECITALS:

WHEREAS, the Tusayan Sanitary District ("District") owns and controls Long Jim Loop Road located within the corporate borders of the Town; and

WHEREAS, Long Jim Loop Road is in need of improvements including paving; and

WHEREAS, the Town is in receipt of Highway User Revenue Funds (HURF) from the State of Arizona for road building and improvement projects throughout the Town, with priority focus on Long Jim Loop Road ("Project"); and

WHEREAS, the Town desires to use the HURF funding to participate in paying for the Project with the District; and

WHEREAS, the Town desires to use the General Fund Monies to participate in paying for the Project with the District; and

WHEREAS, Arizona Revised Statutes (A.R.S.) § 11-951 *et seq.* allows the Parties to enter into an IGA for the joint exercise of governmental powers; and

WHEREAS, it is in the best interest of the Town of Tusayan to enter into this IGA with the District.

ENACTMENTS:

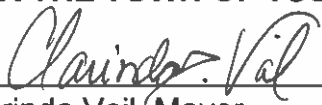
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE TOWN OF TUSAYAN AS FOLLOWS:

Section 1. THAT the Town of Tusayan hereby approves entering into an IGA with the Tusayan Sanitary District to publish a request for bids, award the bid to the lowest responsible and responsive bidder and complete the Project as described in the bid documents.

Section 2. THAT the Mayor and Staff are hereby authorized to execute an IGA between the Town of Tusayan and the Tusayan Sanitary District and to take any and all steps deemed necessary to accomplish the above.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the Town of Tusayan this day of AUGUST 8, 2023.

FOR THE TOWN OF TUSAYAN:



Clarinda Vail, Mayor

ATTESTED TO:



Tina Abriani, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

Charlie Hendrix, Town Manager

Aaron Arnson
Aaron D. Arnson, Town Attorney

CERTIFICATION

I, TINA ABRIANI, the duly appointed Town Clerk of the Town of Tusayan, Arizona, do hereby certify that the above and foregoing Resolution No. 2023-12 was duly passed by the Town Council of the Town of Tusayan, Arizona, at a regular meeting held on AUGUST 8, 2023, and that a quorum was present thereat and that the vote thereon was 4 ayes and 0 nays; 1 did not vote or were absent

DATED AUGUST 9, 2023.

Tina M. Abriani
Tina Abriani, Town Clerk

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE TOWN OF TUSAYAN
AND
TUSAYAN SANITARY DISTRICT
FOR THE TUSAYAN SANITARY DISTRICT STREET PAVING PROJECT

THIS INTERGOVERNMENTAL AGREEMENT (this “Agreement”) is made and entered into this 8 day of August, 2023, by and between the Town of Tusayan, an Arizona municipal corporation (“Town”), and the Tusayan Sanitary District, a political subdivision of the State of Arizona, organized and existing under and by virtue of the laws of the State of Arizona (“District”). The Town and the District may be collectively referred to herein as “Parties” to this Agreement and each individually as a “Party.”

RECITALS

A. The District is the lessee of that portion of the roadway, as depicted in **Exhibit A** hereto, commonly known as Long Jim Loop.

B. The purpose of this Agreement is to facilitate cooperation between the Town and the District for minor repairs on RP Drive and the repaving of Long Jim Loop along with requisite and necessary related services (hereinafter the “Services”), the scope of which to be materially consistent with the form of the request for proposals set forth in **Exhibit B** and in compliance with the applicable statutory public procurement process.

C. Town has agreed to fund the Services in the amount set forth in Section 3. The District has agreed to be the responsible party to oversee the project, manage the Services, including construction, and complete the improvement of Long Jim Loop.

D. The Parties are permitted to enter into intergovernmental agreements for services pursuant to A.R.S. § 11-952.

E. The Parties desire to enter into this Agreement to set forth the terms and conditions of the street paving project.

AGREEMENT

NOW THEREFORE, in consideration of the recitals and the mutual covenants, terms and conditions in this Agreement, the Parties agree as follows:

1. Term. This Agreement is effective upon its execution by both Parties and will remain effective until the Services are complete or upon the Parties’ mutual agreement.

Notwithstanding the provisions in this section, the Town may cancel this Agreement at any time prior to the District entering into contracts with any third-party to construct the improvements contemplated herein, which shall not occur until the Town has budgeted the amount set forth in Section 3. The District shall not contract with a third-party until the Town has budgeted the amount set forth in Section 3.

2. Services. The District will engage, as necessary, to provide the Services, as more expressly set forth in the Scope of Work attached as **Exhibit B** hereto.

3. The Town will provide payment, subject to budgetary appropriation, as set forth herein and in an aggregate amount not to exceed \$600,000.00 consistent with normal business practices. The Town may make periodic payments upon completion of portions of the Services. Any excess revenues provided hereunder that are not appropriated for payment of Services may be used for uses reasonably related to the Long Jim Loop project, in the District's discretion.

If additional funding is necessary, the District shall file a change order request with the Town manager, who is authorized to approve change orders not to exceed ten percent (10%) of the budgeted Services amount approved in the Agreement. Any change order request exceeding ten percent (10%) of the budget will require approval by the Town Council.

The District shall make a quarterly report to the Town Council regarding its use of expenditures.

This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Agreement for payment of funds by the Town shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The Town shall be the sole judge and authority in determining the availability of funds under this Agreement and the Town shall keep the District fully informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is a current expense of the Town, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Town. If the Town Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the Town and the District shall be relieved of any subsequent obligation under this Agreement.

4. Insurance. Each Party shall maintain in force the insurance policies and coverages set forth below.

a. Liability Insurance Coverage and Limits. A commercial general liability insurance policy insuring against claims for personal injury, bodily injury, death, property damage occurring on, in or related to work performed on the Public Works Joint Efforts with a "Combined Single Limit" covering personal injury liability, bodily injury liability and property damage liability) of not less than Two Million Dollars (\$2,000,000.00). The Town and the

District must be endorsed as an additional insured on such policy. The coverage set forth above shall be primary coverage.

b. **Workers' Compensation Insurance.** All Workers' Compensation and Employers' Liability Insurance required under applicable Workers' Compensation Acts and/or applicable law. In addition, the District shall maintain Employers' Liability Insurance with a minimum limit of not less than Five Hundred Thousand Dollars (\$500,000.00).

c. **Automobile Insurance.** Automobile Liability Insurance with a minimum limit of not less than One Million Dollars (\$1,000,000.00) Combined Single Limit per accident, and coverage applying to "Any Auto."

d. **Waiver.** District hereby waives and shall cause its insurance carriers to waive any and all rights of subrogation, recovery, claims, actions or causes of action against the Town, its departments, agencies, boards, commissions, officers, officials, agents, volunteers and employees for claims, losses or damages, including rights, claims, actions and causes of action based on negligence, which loss or damage is (or would have been, had the insurance required by this Agreement been carried) covered by insurance.

5. **Severability.** In the event that a court of competent jurisdiction shall hold any part or provision of this Agreement void or of no effect, the remaining provisions of this Agreement shall remain in full force and effect, to the extent permitted by law.

6. **Compliance with Laws.** The Parties shall comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this Agreement. Any changes in the governing laws, rules and regulations during the term of this agreement shall apply but do not require an amendment.

7. **No Third-Party Beneficiaries.** Except as provided in Section 5, nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement. This Agreement shall not create any right to any person or entity as a third-party beneficiary.

8. **Notices.** All notices, demands, instructions, approvals or other communications required or permitted to be given hereunder shall be in writing, which includes email, to the authorized representative designated by the Party. The mailing and email addresses for the initial representatives are set forth below.

To District:
Robert Petzoldt
Tusayan Sanitary District Manager
PO Box 3055
Tusayan, AZ 86023
Sgcsd2000@yahoo.com

To Town:
Town Manager
Town of Tusayan
845 Mustang Drive
Tusayan, AZ 86023
tusayantownmanager@tusayan-az.gov

With Copy To:
Town Attorney
Town of Tusayan
Pierce Coleman PLLC
7730 E. Greenway Rd., Ste. 105
Scottsdale, AZ 85260

Upon written notice to the other Party, a Party may change its representative without amending this Agreement.

9. Conflict of Interest. Pursuant to A.R.S. § 38-511, the parties acknowledge that this Agreement is subject to cancellation within three years after its execution for violation of the conflict of interest statute.

10. Dispute Resolution. The Parties hereby covenant and agree to make all reasonable effort to resolve any and all disputes arising under this Agreement by good faith negotiations. If such negotiations fail, then the Parties shall seek mediation of the dispute. The Parties shall share the expense of the mediator, but each Party shall bear its own cost of presentation before the mediator, including the cost of attorney fees if the Party desires legal representation at the mediation.

11. Integration. Each of the Parties acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties, except as expressed herein, and that this Agreement constitutes the Parties' entire agreement with respect to the matters addressed in the Agreement. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are hereby unenforceable unless expressed in this Agreement.

12. Amendment. This Agreement may be modified or amended only by written agreement executed by both of the Parties.

13. No Assignment; Binding Effect. The benefits of this Agreement may not be assigned by either Party. The duties and obligations of this Agreement may be delegated by either Party and shall be binding upon the successors and delegees. No delegation shall relieve a Party of obligations under this Agreement unless the delegee assumes the obligations of the Party in writing and delivers such to the other Party.

14. Waiver. No failure to enforce any condition or covenant of this Agreement shall imply or constitute a waiver of the right to insist upon performance of such condition or covenant, of or any earlier provision hereof, nor shall any waiver by either Party of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or earlier breach hereunder.

15. Governing Law. This Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of Arizona.

This Agreement is determined to be in proper form and within the powers and authority granted under the laws of this State to the District:

Attorney for District

Exhibit A

16. Immigration Laws Compliance Warranty. Each Party warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A). The Parties acknowledge that pursuant to A.R.S. § 41-4401 a breach of this warranty is a material breach of this Agreement subject to penalties up to and including termination of this Agreement

17. Indemnification. To the extent permitted by law, the District shall indemnify and hold harmless the Town and its officials, employees, and agents from and against all claims, liens or demands that result in losses, liabilities, defense costs and expenses (including but not limited to attorney's fees and costs of litigation) arising out of the term, conditions, and performance under this Agreement.

The District further agrees to indemnify and hold harmless, to the extent permitted by law, the Town, its agents, or employees, against claims or liability arising from or based upon the violation of any federal, state, county, District, or other applicable laws, bylaws, ordinances, or regulations by a contractor, its agents, associates, or employees. The indemnification provided above shall obligate the District to defend at its own expense or to provide for such defense, at the Town's option, of any and all claims of liability and all suits and actions of every name and description that may be brought against the District which may result from the operations and activities under any contract resulting from this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by signing their names on the day and date first written above.

TUSAYAN SANITARY DISTRICT

By Pete Shearer
Pete Shearer, Chairman

ATTEST: [Signature]
Robert Patzoldt
Secretary

TOWN OF TUSAYAN

By Clarinda Vail
Clarinda Vail, Mayor

ATTEST: Tina M. Abriani
Tina Abriani, Town Clerk

A.R.S. § 11-952(D) CERTIFICATION

This Agreement is determined to be in proper form and within the powers and authority granted under the laws of this State to the Town:

Attorney for Town

A.R.S. § 11-952(D) CERTIFICATION

Exhibit B

