ADOT File No.: IGA/JPA 10-230-I
AG Contract No.: P0012011 000387
Project No.: TEA GGI-0(201)A
Project: Pedestrian Sidewalks
Section: Westerly side of Six Shooter Canyon Rd., from Remington – Cherokee Roads
CAAG TIP No.: FY 2010-2013, page 60
TRACS No.: SL648 01C/02D
Budget Source Item No.: n/a

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
GILA COUNTY

THIS AGREEMENT is entered into this date _____, 2011, 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 GILA COUNTY, acting by and through its CHAIRMAN and BOARD OF SUPERVISORS (the "County"). The State and the County 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 County is empowered by Arizona Revised Statutes § 11-251 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 County.

3. Congress has authorized appropriations for, but not limited to twelve eligible categories of Transportation Enhancement (TE) activities and the County has requested federal funds from the Federal Highway Administration (FHWA), and paid through the State, up to $499,484.00 for a project within the boundary of the County and described more fully below in Paragraph 6 of these Recitals.

4. Such project lies within the boundary of the County and has been selected by the County; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.

5. The County, in order to obtain Federal funds for the construction of the project, is willing to provide County funds to match Federal funds in the ratio required or as finally fixed and determined by the County and FHWA, including actual construction engineering and administration costs (CE).

6. The work contemplated under this Agreement is the design and construction by the County of approximately 2120 linear feet of pedestrian facilities along the west side of Six Shooter Canyon Road. The Pedestrian improvements include, but are not limited to, sidewalks, curb & gutter, water turn outs, catch basins, driveway entrances, ADA compliant ramps and handrails. The County shall advertise, bid and award the project, plus subsequently maintain said improvements, collectively hereinafter referred to as the "Project." The estimated costs are as follows:

Estimated Total Project Cost	**$529,676.00**
Construction (TRACS No.: SL648 01C)	
Federal-aid funds @ 94.3% (capped)	$437,448.00
County's match @ 5.7%	$ 26,442.00
County's contribution @ 100%	$ -0-
Subtotal – Construction*	$463,890.00
Design (TRACS No.: SL648 02D)	
Federal-aid funds @ 94.3% (capped)	$ 62,036.00
County's match @ 5.7%	$ 3,750.00
Subtotal – Design	$ 65,786.00
***Total Estimated County Funds**	**$ 30,192.00**

*(Includes construction, CE and incidentals).

The Parties acknowledge that the final bid amount may exceed the initial estimate(s) shown above, and in such case, the County 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. The County 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

7. The interest of the State in this project is the acquisition of Federal funds for the use and benefit of the County and to authorize such Federal funds for the Project pursuant to Federal law and regulations. The County has been approved by FHWA and the State to bid and administer the construction of the Project, with the State as the designated agent for the County.

8. The Parties hereby agree to and acknowledge the following conditions: **a)** the estimated monetary amounts referenced in this Agreement are subject to change and can change significantly before completion of the Project; **b)** the Parties shall perform their responsibilities consistent with this Agreement; and **c)** any change or modification to the Project will only occur with the mutual written consent of both Parties.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for design and construction. Coordinate with the County so that the Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions and Standard Specifications.

b. Review design plans, specifications (PS&E's) and other such documents and services required for the construction bidding and construction of the Project and provide comments to the County as appropriate.

c. Enter into an Agreement with FHWA on behalf of the County covering the work encompassed for said design and construction, and request the maximum Federal Funds available, including construction engineering and administration costs. Upon authorization, notify the County that they may proceed to advertise for, receive and open bids, enter into contracts(s) with a firm(s) to whom the award is made for the design and construction of the Project. Should costs exceed the maximum Federal funds available or be deemed ineligible for reimbursement, it is understood and agreed that the County will be responsible for such costs.

d. Upon execution of this Agreement and within thirty (30) days of receipt of approved invoices, reimburse the County for eligible costs incurred for design and construction with federal funds at 94.3% of incurred, actual costs not to exceed the total federal amounts shown above in Article I, Paragraph 6 of this Agreement, unless changed by amendment to this Agreement.

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

2. The County will:

a. Upon execution of this Agreement designate the State as authorized agent for the County to secure the Federal Aid.

b. Enter into an agreement with the Design Consultant(s), solicited and selected in compliance with Arizona Procurement Procedures, which defines a specific scope of services and approved contract price. Said Design Consultant(s) shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project.

c. Upon execution of this Agreement and within thirty (30) days of payment to a contractor or consultant, invoice the State for reimbursement of eligible, incurred costs by the County and provide all necessary backup documentation with said invoice up to an amount of Federal Aid received for this Project and currently estimated at $62,036.00 for design and $437,448.00 for construction, not to exceed the Federal Aid capped at $499,484.00 Be entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement, whether covered by Federal funding or not.

d. Prior to advertising the Project, and per FHWA's conditions, provide the State design plans, specifications (PS&E's) and other such documents and services required for the construction bidding and construction of the Project and incorporate or resolve State review comments as appropriate.

e. Upon approval by FHWA, and with the aid and consent of the State and FHWA, the County shall proceed to advertise using Arizona Procurement Procedures, and receive and open bids subject to the concurrence of the FHWA and the State and enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. Under direct supervision of a registered engineer, administer contract(s) for the Project and make all payments to the consultant(s) and contractor(s). Agree the Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions and Standard Specifications.

f. Copy ADOT's Transportation Enhancements Section on any addendums issued during bidding and change orders issued during construction. Addendums and change orders unrelated to the Transportation Enhancement Project and adding new work that is beyond the originally-approved Project scope requiring amendments to clearances (utility, right-of-way, or environmental) are subject to prior ADOT/FHWA approval.

g. Coordinate with the Contractor for collecting federal labor compliance documentation (including, but not limited to, DBE, EEO, Davis-Bacon, and OJT as applicable) and compliance with the Buy America Act. Ensure that documentation is being appropriately collected in accordance with the Federal Aid process and recorded and filed for potential auditing purposes. Ensure that the Contractor posts the required federal posters and performs DBE compliance reporting to ADOT's Civil Rights Office.

h. Upon completion of Project, assume responsibility for maintenance of the Project, at its own expense and as an annual item in its budget. Provide perpetual and proper maintenance and emergency repairs, including, but not limited to, keeping the sidewalk surface and surrounding areas free of all debris and doing any repairs that might be necessary to keep the sidewalks, safety railing and retaining wall compliant with the Americans with Disabilities Act Accessibility Guidelines.

i. Upon completion of construction, the County shall also provide for, at its own cost, perpetual and proper maintenance of all drainage improvements.

j. 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 County. 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 County.

k. Provide a letter from its project manager or other responsible engineering official, along with the final billing, that the work on the Project is complete and has been considered acceptable, and the Federal project is ready to be closed. Accept and maintain full responsibility of Project improvements.

l. Provide a set of as-built plans upon completion of the construction phase of the Project. An electronic version of the as-built plans shall be forwarded to the Arizona Department of Transportation Enhancement Section.

m. 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 or reimbursement, except any provisions for maintenance and indemnification shall survive any termination of this Agreement. Further, this Agreement may be cancelled at any time prior to the award of the project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the County terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The County, in regard to the County'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. The County shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The County shall also require its contractors to name the State as an additional indemnitee in the County contracts with its contractors. It is understood and agreed that the State's participation is confined to securing federal aid on behalf of the County and requirements contained in this Agreement; 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 County and that to the extent permitted by law, the County 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 County, 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 design, construction and construction engineering work covered by this Agreement is to be borne by FHWA and the County, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the County 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. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

5. The cost of the Project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (FHWA).

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

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

8. 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 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment 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.

10. 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.

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

ADOT Transportation Enhancement & Scenic Roads Section
1615 W. Jackson St. MD EM10
Phoenix, AZ 85007
(602) 712-6258
(602) 712-3347 Fax

Gila County
Attn: Public Works Director
1400 E. Ash Street
Globe, Arizona 85501
(928) 425-3231 x8899
(928) 425-8104 Fax

Gila County Finance Department
Attn: Finance Director
(928) 425-3231 x8743

12. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The County warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes § 23-214, Subsection A.

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the County may be subject to penalties up to and including termination of the Agreement.

c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the County or subcontractor is complying with the warranty under paragraph (a).

13. 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.

14. The County and ADOT warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the County will provide information that is requested by the State (ADOT) to enable the State (ADOT) to comply with the requirements of the Act, as may be applicable.

15. 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.

GILA COUNTY

By _____
MICHAEL A. PASTOR
Chairman, Board of Supervisors

ATTEST:

By _____
MARIAN SHEPPARD
Chief Deputy Clerk

STATE OF ARIZONA
Department of Transportation

By _____
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

Initial Draft 12/3/10 ghc
Internal Review 12/8/10
Draft 2 1/7/11 ghc (changes after County review)
AG approved 1/26/11

IGA/JPA 10-230-I

ATTORNEY APPROVAL FORM FOR GILA COUNTY

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the GILA COUNTY, an Agreement between 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 County 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 _____, 2011.

_____

BRYAN CHAMBERS
Chief Deputy County Attorney