

ADOT File No.: IGA/JPA 11-047I  
AG Contract No.: P001-2011-001432  
Federal Aid No.:GGI-0(209)A  
Project: Gila County Pavement  
Markings  
Section: Various Rural Roads  
**ADOT Project No.: SH48601C**  
**COG/MPO TIP Item No.: CAAG**  
**Budget Source Item No.: HSIP**  
**Subprogram No: 727**

## 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") and the 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 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 and the County have identified systematic improvements within the County as eligible for this funding.
  4. The improvements proposed in this Agreement, hereinafter referred to as the 'Project,' includes pavement marking upgrades on Ice House/Kellner Canyon Road (3.8 miles), Six Shooter Canyon Road (4.7 miles), Forest Road 512 (Young Road)(4.7 miles) and Houston Mesa Road (10.3 miles) The marking upgrade will include re-stripping the roadways to 11 foot wide lanes with 6 inch wide edge lines and 4 inch wide yellow center lines, the addition of two-way yellow retroreflective raised pavement markers (RRPM) and center line position guides will also be included if funding allows. The upgraded white and yellow pavement marking materials will be either thermoplastic or a two component (epoxy or MMA) pavement marking system that is suitable for the environment and elevation. The State shall advertise, bid and award the Project.
  5. 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 by the State to the Federal Highway Administration (FHWA) for its approval.
  6. The interest of the State in this project is the acquisition and distribution of HSIP Funds for the use and benefit of the County and to authorize such HSIP Funds for the project pursuant to Federal law and regulations. The State shall be the designated agent for the County.
-

The current Project costs are as follows:

**ADOT Project No. SH48601C**

HSIP Funds @ 100%	\$234,000.00
*TOTAL Project Costs *(Includes CE and project contingencies)	\$234,000.00

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.

**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 design and construction. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.

b. Request the maximum HSIP funds programmed for this Project, including County costs if found to be eligible by FHWA previously. Should costs exceed the maximum HSIP funds available it is understood and agreed that the County 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 County.

d. With assistance from the County prepare and provide specifications and other such documents required to advertise, bid, award and construction the Project.

e. Upon notification authorization from FHWA, proceed to advertise for, receive and open bids and enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. Such Project is to be performed, completed, accepted and paid for in accordance with the requirements of the approved Project specifications and other related documents.

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

b. Assist the State in the preparation of all necessary studies and documents to achieve the required clearances.

c. Assist the State in the preparation of the specifications and other such documents and services required for the construction bidding and construction of the Project and incorporate.

d. Be responsible for all costs in excess of the maximum amount of federal funds and for any costs ineligible for federal funds. Such costs shall be paid by the County within thirty (30) days of receipt of invoice from the State.

e. 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.

f. Not permit or allow any encroachments upon or private use of the right-of-way, except those authorized by permit and the specified environmental clearance that is applicable to the project. In the event of any unauthorized encroachment or improper use, the County shall take all necessary steps to remove or prevent any such encroachment or use.

g. Hereby grant the State, its agents and/or contractors, without cost, the right to enter County 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 what needs to be done to develop and construct the project.

h. Be responsible for any unforeseen conditions or circumstances which increase the cost of said work. Should a change in the extent or scope of the work called for in this Agreement become necessary, be obligated to incur and will pay for said increased costs if additional HSIP funds are not available for such overages and FHWA will not approve them for such.

i. Upon completion of the Project, agree to accept and assume full responsibility of said Project in writing.

j. 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, except any provisions for maintenance/electrical power and/or landscaping maintenance shall be perpetual by the County. Further, this Agreement may be cancelled at any time prior to advertisement 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. It is understood and agreed that the State's participation is confined solely to securing federal aid on behalf of the County 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 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. This agreement shall remain in force and effect until completion of the work and related deposits and reimbursements.

4. The cost of construction and construction engineering work under this Agreement is to be covered by the HSIP funds set aside for this Project, up to the maximum available. The County acknowledges that the eventual actual costs may exceed the maximum available amount of HSIP funds, or that certain costs may not be accepted by the federal government as eligible for HSIP funds. Therefore, the County agrees to furnish and provide the difference between actual costs and the HSIP funds received.

5. The cost of the project under this Agreement includes applicable indirect costs approved by the FHWA.

6. The County and the 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 County 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.

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

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

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

10. 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".

11. 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.

12. 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.

13. 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. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, Arizona 85007  
(602) 712-7124  
(602) 712-3132 Fax

**Gila County**  
Attn: Steve Sanders  
1400 E Ash Street  
Globe, Arizona 85501  
(928) 425-3231 x8530  
(928) 425-8104 Fax

**Gila County Finance Dept.**  
Attn: Joe Heatherly  
1400 E Ash Street  
Globe, Arizona 85501  
(928) 425-3231 x8743  
Vendor # 866000444 11

14. 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(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).

15. 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.

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.

**GILA COUNTY**

**STATE OF ARIZONA**

Department of Transportation

By \_\_\_\_\_  
**MICHAEL A. PASTOR**  
Chairman, Board of Supervisors

By \_\_\_\_\_  
**SAM MAROUFKHANI, P.E.**  
Deputy State Engineer, Development

ATTEST:

By \_\_\_\_\_  
**MARIAN SHEPPARD**  
Clerk of the Board

**ATTORNEY APPROVAL FORM FOR THE 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 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 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