

IGA/JPA File No.: 07-109I  
AG Contract No.: P0012008005567  
Project No: STP-000-6(151)P  
Project: Flashers, Gates  
Section: BIXBY RD (GILA CO)  
#742-364-Y  
TRACS No.: SR 17001C  
Budget Source Item No.:

**INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE GILA COUNTY

**THIS AGREEMENT** is entered into this date January 8, 2009, 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 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 § 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 County.
3. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, and other railroad crossing related appurtenances.
4. The County has selected a project within the boundary of the County, the field survey of the project has been completed, and the plans, estimates and specifications have been prepared and, as required, submitted to the State and Federal Highway Administration ("FHWA") for their approval
5. The only interest of the State for this project is in the acquisition of Federal funds for the use and benefit of the County by reason of Federal Law and regulations under which funds for the Project are authorized to be expended.

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NO. 30572  
Filed with the Secretary of State  
Date Filed: 1-8-09  
Jenice K. Powell  
Secretary of State  
By: [Signature]

6. The work embraced in this Agreement is to upgrade the railroad crossing (#742-364-Y), by furnishing and installing flashers, gates and a timber crossing surface at Bixby Road in Gila County, hereinafter referred to as the "Project". The estimated construction costs are as follows:

Preliminary Engineering	\$ 4,000.00
Furnish and Install Poles with LED Flashing Lights (by Railroad forces)	\$158,132.09
Total protection Work	\$162,132.09
Furnish and Install a Timber Crossing Surface (by Railroad forces)	\$101,760.23
Total Project	\$263,892.32
Federal Funds @ 94.3% of \$263,892.32	\$248,850.46
AZ Corp. Comm. Funds @ 5.7% of \$162,132.09	\$ 9,241.53
Gila County Funds @ 5.7% of \$101,760.23	\$ 5,800.33

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

## **II. SCOPE OF WORK**

### 1. The State shall:

a. Submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction

b. If such Project is approved for construction by FHWA and the funds are available for construction of the Project, the State with the aid and consent of FHWA will authorize the Arizona Eastern Railway Company to proceed with the work covered by the State Railroad Agreement and will request the maximum Federal Funds available.

c. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of Scope of Work called for in this Agreement, the State shall not be obligated to incur any expenditure on behalf of the County, in excess of the amount referenced herein, unless and until so authorized in writing by the County and approved by the FHWA.

d. Upon execution of this Agreement invoice the County in the amount of \$5,800.33 for the estimated cost of the Project.

### 2. The County shall:

a. Acquire any necessary right-of-way for this project and hereby certifies that all necessary rights-of-way have been or will be acquired.

b. Once acquired, remove from the County rights-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway and hereby certifies that all obstructions and encroachments have been or will be removed.

c. Agree not to permit or allow any encroachments, except those authorized by permit, upon or private use of the County's right-of-way. 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.

d. Upon completion of construction, be responsible to provide for at its own cost and as an annual item in its budget, proper maintenance, such maintenance (exclusive of maintenance by the Railroad Company of its Facilities), to include, but is not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

e. Be responsible to mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work.

f. By such regulation as it may by ordinance provided be responsible to regulate parking and not permit vehicles to be left on the street in any manner other than at any parallel with the curb and to restrict parking to as to prevent conflicts with moving traffic.

g. Upon execution of this Agreement and upon receipt of an invoice from the State, remit to the State for the amount of \$5,800.33 for the estimated cost of the Project.

### **III. MISCELLANEOUS PROVISIONS**

1. This Agreement shall remain in full force and effect until completion of the work herein embraced; provided, however, that any provisions in this Agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity

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. Such assumption of the responsibility by the County for the benefit of the State in no way acts as a waiver by the County for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction or the improvements contemplating, cost overruns and construction claims. It is understood and agreed that the State's participation is confined solely to securing Federal Aid; 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 and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost 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 nonperformance of any provisions of this Agreement by the County, any of its departments, agencies, officers and employees the County, any of its agents, officers and employees, or any of its independent contractors. Cost 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 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 be filed with the Arizona Secretary of State and shall not become effective until the date of said filing.

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

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to all parties to this Agreement and all parties shall be afforded the same rights, interest and obligations..

7. 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.

8. 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 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

Gila County  
Attn: Steve Sanders  
1400 E. Ash Street  
Globe, AZ 85501  
(928) 425-3231 X8530  
(928) 425-8104 Fax

9. This Agreement is subject to all applicable provisions of the Americans with Disability 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".

10. 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.

11. 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

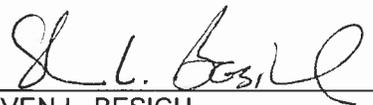
  
JOSE M. SANCHEZ  
Chairman of the Board

By

  
RAKESH TRIPATHI  
Division Director

ATTEST:

By

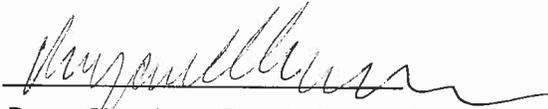
  
STEVEN L. BESICH  
Clerk of the Board

ATTORNEY APPROVAL FORM FOR THE 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 among public agencies which, has been reviewed pursuant to A.R.S. § 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 24<sup>th</sup> day of November, 2008.

  
Bryan Chambers, Deputy County Attorney

When recorded,  
return to:  
Marian Sheppard, BOS  
(12/9/08 #4)

RESOLUTION

No. 08-12-03

**RESOLUTION AUTHORIZING THE GILA COUNTY BOARD OF SUPERVISORS TO SIGN AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, FOR JPA FILE NO. 07-1091, REGARDING APPROPRIATION STANDARDS FOR RAILROAD CROSSING RELATED APPURTENANCES ON BIXBY ROAD IN GILA COUNTY.**

**WHEREAS**, the State is empowered by Arizona Revised Statutes §28-401 to enter into the above described Intergovernmental Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

**WHEREAS**, the County is empowered by Arizona Revised Statutes §48-572 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that Gila County Board of Supervisors authorizes the chairman, José M. Sanchez, to execute the Intergovernmental Agreement for Arizona Department of Transportation JPA File No. IGA 07-1091 regarding appropriation standards for railroad crossing related appurtenances on Bixby Road in Gila County, and authorizes him to take all actions to carry out all provisions of the agreement.

**PASSED and ADOPTED** this 9<sup>th</sup> day of December, 2008.

**GILA COUNTY BOARD OF SUPERVISORS:**

  
José M. Sanchez, Chairman of the Board

**ATTEST:**

**APPROVED AS TO FORM:**

  
Steven L. Besich, Clerk of the Board

  
Bryan Chambers, Chief Deputy County Attorney

<p>TERRY GODDARD Attorney General</p>	<p style="text-align: center;"> <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8837 Facsimile: 602.542.3646</p>
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**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. P0012008005567 (IGA/JPA 07-109I), an Agreement between public agencies, i.e., The State of Arizona and The Gila County, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: December 31, 2008.

TERRY GODDARD  
Attorney General



JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:ln:#366693  
Attachment



**Arizona Department of Transportation**  
**Intermodal Transportation Division**  
206 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janet Napolitano  
Governor

Victor M. Mendez  
Director

Floyd Roehrich Jr.  
State Engineer

January 13, 2009

Gila County  
Attn: Steve Sanders  
Deputy Director  
Gila County Public Works  
1400 East Ash Street  
Globe, AZ 85501

**RE:** IGA/JPA File No.: 07-109I  
AG Contract No.: P0012008005567  
Project No: STP-000-6(151)P  
Project: Flashers, Gates  
Section: BIXBY RD (GILA CO) #742-364-Y  
**TRACS No.: SR 17001C**  
**Budget Source Item No.:**

Dear Mr. Sanders

Enclosed please find one fully conformed executed original Agreement for the above-mentioned Intergovernmental Agreement.

Should you have any questions, please do not hesitate to call at (602) 712-7785.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cindy Childers", with a long horizontal flourish extending to the right.

Cindy Childers  
Joint Project Coordinator  
Engineering Consultant Section

cc: Project Manager