ADOT File No.: IGA/JPA 11-102I
AG Contract No.: P001 2011 002869
Project: Thermoplastic Striping
Section: Various Locations
Federal Project No.: GGI-0(210)A
ADOT Project No.: SS981 01C
TIP/STIP No.: CAAG TIP 03-23-11
Budget Source Item No.: LOCAL

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
GILA COUNTY

THIS AGREEMENT is entered into this date **October 24**, 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 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. The improvements proposed in this Agreement, hereinafter referred to as the "Project," include pavement marking upgrades to Wheatfields Road (approx. 4.1 miles), Main Street/Golden Hill Street (combined approx 1.6 miles) Russell Road (approx 1.7 miles), Ragus Road/Railroad Avenue (approx 1.4 miles), San Carlos Drive (approx 1.4 miles), Gisela Road (approx 5.8 miles), Fossil Creek Road (approx 2.4 miles), Control Road (East end, approx. 2.2 miles) and Colcord Road (approx. 2 miles). The upgrades include, but are not limited to, re-striping the roadways to eleven (11) foot wide lanes with six (6) inch wide edge lines and four (4) inch wide yellow center lines, the addition of two-way yellow retroflective raised pavement markers and center line position guides (if funding permits). The State shall advertise, bid and award the Project.

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 by the State to the Federal Highway Administration (FHWA) for its approval.

5. The interest of the State in this project is the acquisition and distribution 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 State shall be the designated agent for the County.

6. The Federal funds will be used for the construction of the project, including the construction engineering and administration cost (CE).

The current Project costs are estimated as follows:

ADOT Project No. SS981 01C

Federal Funds @ 94.3%	**$ 200,000.00**
County Funds @ 5.7%	**$ 11,400.00**
*TOTAL Project Costs	**$ 211,400.00**

*(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 **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. Upon execution of this Agreement, and prior to performing or authorizing **any** work, invoice the County for the State's design review fee, currently estimated at **$10,000.00**. After bid opening and prior to award, invoice the County for the County's share of the Project, currently estimated at **$11,400.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the County for the difference between estimated and actual costs. The State will prepare a final reconciliation upon completion of the Project.

b. Upon receipt of the design review fee, on behalf of the County, review and approve documents required by FHWA to qualify certain projects for and to receive federal funds, providing comments to the County as appropriate. Such documents may consist of, but are not specifically limited to, environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement.

c. Request the maximum programmed federal funds for the construction of this Project. Should costs exceed the maximum federal funds available, it is understood and agreed that the County will be responsible for any overage.

d. Upon approval by the FHWA, and receipt of the County's funds, proceed to advertise for, receive and open bids. The State will enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project; administer contracts(s) for the Project and make all payments to the contractor(s).

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.

b. Within thirty (30) days of receipt of an invoice from the State, and prior to the performance or authorization of any work, remit to the State $10,000.00. After bid opening and prior to award, remit to the State, the County's share of the Project costs, currently estimated at **$11,400.00**.

c. Provide to the State design plans, specifications and other such documents and services required for the construction bidding and construction of the Project, including scoping/design plans and documents required by FHWA to qualify projects for and to receive federal funds. Incorporate State design review comments as appropriate.

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. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the County, if applicable.

f. 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 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 among other things, soil and foundation investigations.

h. Be responsible for any and all costs attributable to any engineering change orders requested by the County not covered by federal funds. The County will also be responsible for contractor claims for additional compensation caused by Project delays attributable to the County.

i. Provide for cost and proper maintenance of the Project, including all of the Project components.

j. Enter into an agreement with the design consultant which states that the design consultant shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project.

k. 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 Arizona Department of Transportation Local Government Section.

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

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 (30) days 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. If the federal funding related to this Project is terminated or reduced by the federal government, or if the federal government 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 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 the Project under this Agreement is to be covered by the federal 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 federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the County agrees to furnish and provide the difference between actual costs and the federal funds received.

5. The cost of the project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (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. 17th 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
(928) 425-8104 Fax

For County Financial Matters:
Joseph Heatherly, Director
1400 E. Ash Street
Globe, Arizona 85501
(928) 425-3231

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

17. 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 _____
TOMMIE C. MARTIN
Chairman of the Board

ATTEST:

By _____
MARIAN SHEPPARD
Clerk of the Board

STATE OF ARIZONA
Department of Transportation

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

IGA/JPA 11-102I

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 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 3rd day of October, 2011.

BRYAN CHAMBERS
Chief Deputy County Attorney

When recorded:
return to:
Marian Sheppard, BOS
(10/3/11 #2D)

RESOLUTION NO. 11-10-01

A RESOLUTION OF THE GILA COUNTY BOARD OF SUPERVISORS AUTHORIZING ITS CHAIRMAN TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, FOR ARIZONA DEPARTMENT OF TRANSPORTATION FILE NO. JPA 11-102I, FOR PAVEMENT MARKING UPGRADES ON WHEATFIELDS ROAD, MAIN STREET/GOLDEN HILL, RUSSELL ROAD, RAGUS ROAD/RAILROAD AVENUE, SAN CARLOS DRIVE, GISELA ROAD, FOSSIL CREEK ROAD, CONTROL ROAD, AND COLCORD ROAD, AND AUTHORIZES GILA COUNTY DESIGNATED STAFF TO CARRY OUT ALL PROVISIONS OF THE AGREEMENT.

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; and

WHEREAS, Gila County Board of Supervisors is empowered by Arizona Revised Statutes §11-251 to enter into this Agreement and has authorized its Chairman to execute this Agreement on behalf of the County.

NOW, THEREFORE, BE IT HEREBY RESOLVED that we, the Gila County Board of Supervisors, do hereby authorize the Chairman of the Board of Supervisors to execute the Intergovernmental Agreement, State of Arizona, Department of Transportation for Arizona Department of Transportation File No. JPA 11-047-I for pavement marking upgrades to Wheatfields Road, Main Street/Golden Hill, Russell Road, Ragus Road/Railroad Avenue, San Carlos Drive, Gisela Road, Fossil Creek Road, Control Road, and Colcord Road in Gila County, and authorizes Gila County designated staff to take all actions to carry out all provisions of the agreement.

PASSED AND ADOPTED this 4th day of October 2011, at Globe, Gila County, Arizona

Attest:

Marian Sheppard
Chief Deputy Clerk of the Board

GILA COUNTY BOARD OF SUPERVISORS

Tommie C. Martin Chairman

Approved as to form:

Bryan Chambers
Chief Deputy County Attorney

TOM HORNE
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
TRANSPORTATION SECTION

JAMES R. REDPATH
ASSISTANT ATTORNEY GENERAL
DIRECT LINE: 602-542-8837
E-MAIL: JIM.REDPATH@AZAG.GOV

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. P0012011002869 **(IGA/JPA 11-102-I)**, an Agreement between public agencies, i.e., The State of Arizona and 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: October 24, 2011

TOM HORNE
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:ln:#2374413
Attachment