ADOT File No.: IGA/JPA 14-0004031-I
AG Contract No.: P001 2014 00xxxx
Project: Oak Creek Bridge-Ewing Trail
Across Oak Creek
Section: Tonto Basin
Federal-aid No.: GGI-0(212)T
ADOT Project No.: SZ11601C
TIP/STIP No.: GIL 13-01C
CFDA No.: 20.205 - Highway Planning and Construction
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
GILA COUNTY

THIS AGREEMENT is entered into this date _____, 2014, 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 theCounty.

3. The work proposed under this Agreement consists of constructing a new 147'10" long 2-span AASHTO type III girder bridge over Oak Creek, replacing a pipe culvert crossing that was washed out there several years ago. The work also includes reconstructing Ewing Trail/ FR 423 approaching the new bridge, installing guardrail, riprap gabions, and other related work, hereinafter referred to as the "Project". The County has completed and will provide the design; the State will review the design, advertise, bid, award and administer the construction of the Project. The plans, estimates and specifications for the Project will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.

4. 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).

5. 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 State shall be the designated agent for theCounty.

6. The Parties shall perform their responsibilities consistent with this Agreement and any change or modification to the Project will only occur with the mutual written consent of both Parties.

7. The federal funds will be used for the construction of the Project, including the construction engineering and administration cost (CE). The estimated Project costs are as follows:

SZ116 01C (construction)

Federal-aid funds @ (appropriate percentage)	**$ 1,350,979.00**
County's match @ 5.7%	**$ 81,660.00**
County's share @100%	**$ 567,361.00**
Total Estimated County **Funds**	**$ 649,021.00**
Total Federal Funds	**$ 1,350,979.00**
TOTAL Project Construction Costs**	**$ 2,000,000.00**

** (Includes 15% CE and 5% Project contingencies)

The Parties acknowledge that the final Project costs 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, be the designated agent for the County, if the Project is approved by FHWA and funds for the Project are available.

b. Upon completion of design and prior to bid advertisement, invoice the County for the County's share of the Project construction costs, currently estimated at **$649,021.00.** Once the Project costs have been finalized, the State will either invoice or reimburse the County for the difference between estimated and actual Project construction costs.

c. Upon receipt of the County's estimated share of the Project construction costs, submit all documentation required to FHWA with the recommendation that funding be approved for construction. 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 FHWA authorization and with the aid of the County, proceed to advertise for, receive and open bids, subject to the concurrence of the County to whom the award is made, and enter into a contract(s) with a firm(s) for the construction of the Project.

e. Be granted, without cost requirements, the right to enter County right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry on to and over said rights-of-way of the County.

f. Notify the County that the Project has been completed and is considered acceptable, coordinating with the County as appropriate to turn over full responsibility of the Project improvements. De-obligate or otherwise release any remaining federal funds from the construction phase of the Project within ninety (90) days of final acceptance.

g. 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. Prepare and provide the design plans, specifications and other such documents and services required for construction bidding and construction of the Project and incorporate comments from the State as appropriate.

c. 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.

d. Upon completion of design, within thirty (30) days of receipt of an invoice from the State and prior to bid advertisement, remit to the State, the County's Project construction costs, currently estimated at **$649,021.00.** Once the Project costs have been finalized, the State will either invoice or reimburse the County for the difference between estimated and actual costs.

e. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, not covered by federal funding. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the County is responsible for these costs. , Payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

f. 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, payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

g. 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, in accordance with The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended; 49 CFR 24.102 Basic Acquisition Policies; 49 CFR 24.4 Assurances, Monitoring and Corrective Action, parts (a) & (b) and ADOT ROW Manual: 8.02 Responsibilities, 8.03 Prime Functions, 9.07 Monitoring Process and 9.08 Certification of Compliance. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the County, if applicable.

h. 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.

i. 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.

j. Upon completion of the construction phase of the Project, provide an electronic version of the as-built plans to Arizona Department of Transportation Project Management Section.

k. Upon notification of Project completion, from the State, agree to accept, maintain and assume full responsibility of the 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, including related deposits and/or reimbursements. Any provisions for maintenance/electrical power and/or landscaping maintenance shall be perpetual by the County. 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 County will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that should the County terminate 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. The cost of construction and construction engineering work 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 pay the difference between actual costs of the Project and the federal funds received.

4. Should the federal funding related to this Project be terminated or reduced by the federal government, or Congress 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.

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

6. The Parties 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. The County acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend $500,000.00 or more (prior to 12/26/14) and $750,000.00 or more (on or after 12/26/14) of federal assistance (federal funds, federal grants, or federal awards) are required to comply by having an independent audit. Either an electronic or hardcopy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of 9 months of the sub recipient fiscal year end.

ADOT – FMS
Attn: Cost Accounting Administrator
206 S 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
SingleAudit@azdot.gov

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

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

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

11. 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".

12. 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.

13. 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.

14. The Parties shall comply with the applicable requirements of Arizona Revised Statute § 41-4401.

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

16. 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
745 N. Rose Mofford Way
Globe, Arizona 85501
(928) 425-3231 Ext. 8502
(928) 425-8104 Fax

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 _____
MICHAEL A. PASTOR
Chairman

ATTEST:

By _____
MARIAN SHEPPARD
County Clerk

STATE OF ARIZONA
Department of Transportation

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

IGA/JPA 14-0004031-I

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 _____ day of _____, 2014.

_____
Bryan Chambers, Deputy Attorney Principal