

ADOT File No.: IGA/JPA 11-0101
AG Contract No.: P001 2011 001885
Project: St. David Pathway
Section: SR 80 - MP 300.2-300.6
Project No.: 080-A(203)A
TRACS No.: H7796 01C
COG/MPO TIP Item No.: TEA Round
16
Budget Source Item No.: 75311

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE COCHISE COUNTY

THIS AGREEMENT is entered into this date _____ *PLEASE DO NOT ENTER* _____, 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 COCHISE 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 TE funds have been requested from the Federal Highway Administration (FHWA) through the State for a project within the boundary of the County.
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4. This Agreement pertains to the design and construction of approximately two thousand two hundred (2200) feet of a six (6) foot wide pedestrian pathway along the south side of SR 80 from MP 300.2 to MP 300.6, hereinafter referred to as the "Project". The improvements included in the Project consist of landscaping, benches, bicycle racks and trash receptacles. The State shall advertise, bid and award the Project and the County will maintain the Project.

5. The Parties hereby agree to and acknowledge the following conditions: **a)** the estimated Project costs 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, such as an Amendment to include future construction of the Project. Amendments must be approved with the same formality as this original Agreement.

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

II. SCOPE OF WORK

1. The State will:

a. Prepare and provide design plans, specifications and other such documents and services required for construction of the Project.

b. Upon approval by the Federal Highway Administration (FHWA), proceed to advertise for, receive and open bids subject to the concurrence of the FHWA. 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 contract(s) for the Project; make all payments to the contractor(s) and assume responsibility for contractor claims for additional compensation caused by the Project delays attributable to the State.

c. Upon completion of the Project, perform the final inspection and notify the County in writing that the Project has been constructed in accordance with the Project documents and has been satisfactorily completed.

d. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

e. Provide, per established procedures of the State's Safford District Permit Office, a valid blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance work to be provided by the County within the State's rights-of-way. Process in a timely manner any other Encroachment Permits that may be needed to work within the State's right-of-way to effectively meet the obligations set forth for the County in this Agreement. The State agrees all activities that are reasonably required to be performed by the County under this Agreement shall be set forth in and covered by the appropriate Encroachment Permit.

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. Upon execution of this Agreement designate the State as authorized agent for the County.

b. Provide for cost and, as an annual item in the County's budget, all maintenance of any and all permanent improvements constructed and installed by the State as a result of this Agreement.

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

d. Provide for cost and, as an annual item in the County's budget, all maintenance of any and all emergency repairs, including replacements, if necessary, of any and all improvements constructed and installed by the State as a result of this Agreement, including all components for the Project cited in Recital 4 of this Agreement. Provide perpetual maintenance for any and all improvements constructed and installed by the State as a result of this Agreement including, but not limited to, keeping sidewalks and ramps reasonably clean and clear of debris, removing overhanging and intruding vegetation, and maintaining and repairing landscaped surfaces. Be responsible for any repairs necessary to keep the sidewalks and ramps compliant with the American with Disabilities Act Accessibility Guidelines.

e. Provide and maintain at it's sole cost, the electrical and/or solar power and water necessary to establish Project landscaping, including all testing, adjusting, repairing and operation of the temporary irrigation system, if installed for this Project.

f. Provide all maintenance work within the State right-of-way in a manner which minimizes traffic congestion and interference with through-traffic. All traffic control will meet the requirements of the most recent approved version of Arizona Department of Transportation's "Manual on Uniform Traffic Control Devices 2003".

g. Maintain, per established procedures of the State's Safford District Permit Office, a valid blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance work provided by the County within the State's rights-of-way. Agree to obtain separate permits for any new construction or installations in accordance with the Safford District established procedures. The County agrees all activities performed by the County under this Agreement shall be set forth in and covered by the appropriate Encroachment Permit.

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 shall be perpetual, unless assumed by another competent entity. 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 or remove said Project.

2. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or other expenses (including, but not limited to, reasonable attorneys' fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death), property damage and any other claims (including, but not limited to, claims of derivative or vicarious liability), which are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

3. The cost of design, construction and construction engineering work covered by this Agreement is to be borne by the Federal Highway Administration (FHWA).

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

5. The County and the State (Arizona Department of Transportation) (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.

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

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

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

9. 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".

10. 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.

11. 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.

12. 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

Cochise County

Attn: Karen L. Lamberton, AICP
County Transportation Planner
1415 Melody Lane
Bisbee, Arizona 85603
(520) 432-9240
(520) 432-9338 Fax

**ADOT Transportation Enhancement & Scenic
Roads Section**

1615 W. Jackson St. MD EM10
Phoenix, AZ 85007
(602) 712-6258
(602) 712-3347 Fax

For Financial Matters:

Attn: Anissa Acedo
1415 Melody Lane
Bisbee, Arizona 85603
(520) 432-9240
(520) 432-9338 Fax

13. 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).

14. Pursuant 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.

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.

COCHISE COUNTY

STATE OF ARIZONA

Department of Transportation

By _____
PATRICK CALL
Chairman

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

ATTEST:

By _____
KATIE A. HOWARD
Clerk of the Board

ATTORNEY APPROVAL FORM FOR THE COCHISE COUNTY

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

BRITT HANSON
County Attorney