



The current Study costs are as follows:

ADOT Project No. SZ050 03D

Federal Funds @ 94.3% (capped)	\$ 355,225.00
County Funds @ 5.7% match	\$ 21,472.00
State Design Review Fee	<u>\$ 5,000.00</u>
<b>Total Estimated Study Costs</b>	<b>\$ 381,697.00</b>

The Parties acknowledge that the final cost of the study 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 study amount is less than the initial estimate, the difference between the final study amount and the initial estimate will be de-obligated or otherwise released from the Study. 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 study 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, consistent with the terms of Amendment No. One to JPA 11-121I, the State will apply, towards this Project, \$5,000.00 of the \$10,000.00 design review fee and \$21,472.00 of the \$46,056.00 local match monies received from the County. Once the Study 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 Study.

b. Upon execution of this Agreement, and completion of the project Scope of Work, provide the County with an estimate of applicable review fees expected to be incurred by ADOT on behalf of the County. Provide regular billing statements related to charges against the design review fee balance to the County throughout the project.

c. Upon execution of this Agreement, act as the County's designated agent, retain and contract with professional Engineering and Environmental Consultants (the "Consultants") to prepare a Project Assessment, with a completed Environmental Overview; a freight corridor assessment and preliminary future corridor alignment recommendations to complete the Study. Review and approve documents required by FHWA to qualify certain projects for and to receive Federal funds. 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 prepared reports, design plans, maps, and specifications; geological materials testing and analysis; right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement. Comments from the County will be incorporated, as appropriate.

d. Upon transfer of the funding from ADOT Project No. SS986 03D to ADOT Project No. SZ050 03D, pursuant to paragraph a. of this Section, administer the Study, including advertising, hiring and making payments to the Consultants and complete the Study in accordance with ADOT standards, policies, procedures and design guidelines.

e. Jointly coordinate the Study with the County, provide the County with invoices for review prior to making payments to the Consultants, provide the County with the Study documents for review and comment, and incorporate the County's comments in preparation of the final Study documents.

2. The County will:

a. Upon execution of this Agreement designate the State as the authorized agent for and on behalf of the County to retain and contract with the Consultants to prepare the Project Assessment, with a completed Environmental Overview; a freight corridor assessment and preliminary future corridor alignment recommendations.

b. Jointly coordinate the Study with the State, review and comment on invoices submitted by the Consultants for payment within seven (7) days of receipt, review and provide comments to the Study documents provided by the State within fourteen (14) days of receipt.

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

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Study. Further, this Agreement may be cancelled at any time prior to initiation of a Study, 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 complete the Study.

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 Study under this Agreement is to be covered by the federal funds set aside for the Study, 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 Study 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

**Cochise County**  
**Community Development Dept.**  
Attn: Karen Lamberton, AICP  
County Transportation Planner  
1415 E. Melody Lane, Bldg E  
Bisbee, Arizona 85603  
(520)432-9240  
(520) 432-9278 Fax  
E-mail: klamberton@cochise.az.gov

**For County Financial Matters:**  
Vendor # 866000398-46  
ATTN: Anissa Acedo  
1415 E. Melody Lane  
Bisbee, Arizona 85603  
(520) 432-9300  
(520) 432-9278 Fax  
E-mail: aacedo@cochise.az.gov

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.

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**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 \_\_\_\_\_  
**RICHARD SEARLE**  
Chairman, Board of Supervisors

By \_\_\_\_\_  
**DALLAS HAMMIT, P.E.**  
Senior Deputy State Engineer, Development

ATTEST:

By \_\_\_\_\_  
**KATIE HOWARD**  
Clerk of the Board

IGA/JPA 12-081I

**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 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 \_\_\_\_\_, 2012

\_\_\_\_\_  
County Attorney