

ADOT File No.: IGA/JPA 12-110I  
AG Contract No.: P0012012003520  
Project: Median Improvements &  
Roundabout  
Section: SR 92  
TRACS No.: H7167 01C  
Budget Source: 19213

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE COCHISE COUNTY

Please Do Not Enter

**THIS AGREEMENT** is entered into this date \_\_\_\_\_, 2012, 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 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 on behalf of the County.

3. The State will acquire right-of-way adjacent to Glenn Road and design, advertise, award and administer construction of raised median improvements along SR 92, Canyon de Flores extension to Golden Acres Drive, a roundabout as the new intersection, and a jug-handle turnaround along the north side of Glenn Road east of SR 92, hereinafter collectively referred to as the 'Project'. The intent of this agreement is to ascertain the County's acceptance of ownership jurisdiction and maintenance responsibilities for the jug-handle turnaround and its Glenn Road connection to SR 92. The State will request authorization of federal funds for design and development costs and for the construction and construction administration of the Project. The County agrees to waive the four year advance notification requirements of Arizona Revised Statutes Section § 28-7209 and will thereafter maintain the jug-handle turnaround and its Glenn Road connection to SR 92 while within County control and jurisdiction.

4. The Parties hereto agree to and acknowledge the following conditions: 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.

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

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## **II. SCOPE OF WORK**

### 1. The State will:

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

b. Submit all documentation required to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that funding be approved for the design. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.

c. Upon authorization from FHWA, signing and execution of this Agreement, and approval by resolution of the State's Transportation Board, acquire ownership of property underlying the proposed jug handle turnaround adjacent to Glenn Road.

d. Upon authorization from FHWA, proceed to advertise for, receive and open bids, enter into contract(s) with a firm(s) to whom the award is made for the design and construction of the Project. Be responsible for contractor claims for additional compensation caused by or attributable to the State.

e. 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.

f. Upon signing and execution of this Agreement, approval by resolution of the State's Transportation Board and completion of construction, abandon and transfer right-of-way ownership jurisdiction and maintenance responsibilities to the County for the jug-handle turnaround and its Glenn Road connection to SR 92.

g. Be responsible for the perpetual maintenance of the portions of the Project within the State's SR 92 right-of-way.

### 2. The County will:

a. Review the design documents required for construction of the Project and provide comments to the State as appropriate.

b. Waive the four year advance notification requirements of Arizona Revised Statutes § 28-7209 of the area to be abandoned, depicted in Exhibit A, once construction is complete.

c. Confer to the State Temporary Construction Easement along Glenn Road connecting the jug handle turnaround to SR 92.

d. Upon signing and execution of this Agreement by the State, approval by resolution of the State's Transportation Board and completion of construction, accept right-of-way ownership jurisdiction and maintenance responsibilities for the jug-handle turnaround and its Glenn Road connection to SR 92.

## **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project. However, any provisions for maintenance, provided by the respective parties

shall be perpetual, unless assumed by another competent entity or is determined to no longer be necessary for public use consistent with the provisions of ARS 28-7202. This Agreement may be cancelled at any time prior to award of the Project, upon thirty (30) days written notice to either party. It is understood and agreed that, in the event the County cancels this Agreement, the State shall in no way be obligated to maintain said Project.

2. The parties to this Agreement agree that the State of Arizona shall be indemnified and held harmless by the County for the vicarious liability of the State as a result of entering into this Agreement. Each party to this contract is responsible for its own negligence.

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

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 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.

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

7. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

8. 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 09-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. 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.

10. 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.

11. 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  
Attn: Karen Lamberton  
1415 Melody Lane  
Bisbee, AZ 85603  
(520) 432-9300  
(520) 432-9338 Fax  
klamberton@cochise.az.gov

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

13. 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.

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

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.

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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

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

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