

ADOT CAR No.: IGA /JPA 16-0006158-I  
AG Contract No.: P001 2016 004687  
Project Location/Name: SR92 @ Foothills Dr  
Type of Work: Intersection Improvements  
Federal-aid No.: 092-A(204)A  
ADOT Project No.: H8265 01D & 01C  
TIP/STIP No.:  
CFDA No.: 20.205 - Highway Planning and  
Construction  
Budget Source Item No.: 17014

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE COCHISE COUNTY

THIS AGREEMENT is entered into this date \_\_\_\_\_, 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" or "ADOT") and the COCHISE COUNTY, acting by and through its BOARD OF SUPERVISORS and CHAIRMAN (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 is resolved to enter into this Agreement on behalf of the County.
3. The State will design, advertise, award and administer construction of intersection improvements at State Route (SR) 92 and Foothills Drive (Dr), (the "Project"). The Project consists of widening SR 92 and Foothills Dr, relocating traffic signal equipment, extending the southbound SR 92 left-turn lane by reconfiguring the existing raised median, reconfiguring the raised median on SR 92 and Blue Bird Dr to prevent left turns from Blue Bird Dr onto northbound SR 92, modifying radius returns, constructing a right-turn lane on eastbound Foothills Dr, adding a median island, extending and replacing drainage structures, and removing and replacing utility poles and utility facilities as needed.
4. The State will obtain federal funds for the right-of-way and construction costs associated with the Project. The State will, by Resolution, bring into the State system the necessary rights-of-way needed for the Project, shown in Exhibit A, from existing ADOT right-of-way at SR92 to the eastern project limits on Foothills Dr at STA 65+41.52. After final acceptance of the Project, the State will abandon ownership, jurisdiction, and maintenance responsibilities of all existing

features within the project area right of way except for the west leg of Foothills Dr, encompassed by the SR 92 right-of-way (100' from SR 92 centerline) to 200' west, bounded by the existing and newly acquired Foothills Dr right-of-way (see Exhibit A ADOT R/W Limits boundary). The County agrees to waive the requirements of Arizona Revised Statutes § 28-7209.

5. After completion of construction, the State will maintain right-of-way along the west leg of Foothills Dr, encompassed by the SR 92 right-of-way (100' from SR 92 centerline) to 200' west, bounded by the existing and newly acquired Foothills Dr right-of-way (see Exhibit A ADOT R/W Limits boundary) and all existing features within this area, including the pavement, curb and gutter, sidewalk, and drainage features shown in ADOT right-of-way limits of Exhibit A. All other right-of-way taken in by Resolution for construction purposes will be abandoned back to the County. The County will be responsible to maintain all existing and newly constructed features within the County right-of-way.
6. The Parties will 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 Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.

THEREFORE, in consideration of the mutual commitments expressed in this Agreement, the Parties agree as follows:

## II. SCOPE OF WORK

1. The State will:
  - a. After signing and execution of this Agreement, by Resolution of the State's Transportation Board, bring into the State system the necessary rights-of-way needed for the Project.
  - b. Prepare and provide the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project and incorporate comments from the County as appropriate.
  - c. With FHWA authorization, proceed to administer construction: advertise, receive and open bids, award, and enter into a contract with the firm for the construction of the Project. Administer contract(s) for the Project and make all payments to the contractor(s).
  - d. After final acceptance of the Project, with approval by Resolution of the State's Transportation Board, abandon and transfer ownership, jurisdiction, and maintenance responsibilities of right-of-way acquired for construction of the project, with the exception of right-of-way along the west leg of Foothills Dr, encompassed by the SR 92 right-of-way (100' from SR 92 centerline) to 200' west (300' from SR 92 centerline), bounded by the Foothills Dr existing and newly acquired right-of-way (see Exhibit A ADOT R/W Limits boundary).

- e. After final acceptance of the Project by the State and approval by Resolution of the State's Transportation Board, accept ownership, jurisdiction, and maintenance responsibilities of the west leg of Foothills Dr, encompassed by the SR 92 right-of-way (100' from SR 92 centerline) to 200' west (300' from SR 92 centerline), bounded by the Foothills Dr existing and newly acquired right-of-way (see Exhibit A ADOT R/W Limits boundary).
  - f. Notify the County of final inspection and acceptance of all the Project improvements.
2. The County will:
- a. Waive the requirements of Arizona Revised Statutes Section § 28-7209.
  - b. Review the design documents required for construction of the Project and provide comments to the State as appropriate.
  - c. After final acceptance of the Project by the State and approval by Resolution of the State's Transportation Board, accept back ownership, jurisdiction, and maintenance responsibilities of the west leg of Foothills Dr, with the exception of right-of-way along the west leg of Foothills Dr, encompassed by the SR 92 right-of-way (100' from SR 92 centerline) to 200' west (300' from SR 92 centerline), bounded by the Foothills Dr existing and newly acquired right-of-way (see Exhibit A ADOT R/W Limits boundary).
  - d. After acceptance of ownership, jurisdiction, and maintenance responsibilities, continue to grant the State, its agents and/or contracts, without cost, right of entry on and through County's rights of way on Foothills Drive to access the State rights-of-way for maintenance and right-of-way monumentation activities.

### III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project, the abandonment of the right-of-way, by State Transportation Board Resolution, as shown in Exhibit A, and the County's waiver of the requirements of Arizona Revised Statutes Section § 28-7209. Any provisions for maintenance shall be perpetual, unless assumed by another competent entity. This Agreement may be cancelled at any time prior to the award of the Project contract and after 30 days written notice to the other Party. It is understood and agreed that, in the event the County terminates this Agreement, the County shall be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that in the event the County terminates this Agreement, the State shall in no way be obligated to complete or maintain the Project.
2. The County shall indemnify, defend, and hold harmless the State, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as the "State") from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or

incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the County, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. The County's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the State, except the obligation does apply to any negligence of the County which may be legally imputed to the State by virtue of the State's ownership or possession of land. The County's obligations under this paragraph shall survive the termination of this Agreement.

3. The State shall include Section 107.13 of the 2008 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated to this Agreement by reference, in the State's contract with any and all contractors, of which the County shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the County.
4. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.
5. The cost of the Project under this Agreement includes indirect costs approved by the FHWA, as applicable.
6. 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.
7. 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 shall provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.
8. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
9. The provisions of Arizona Revised Statutes § 35-214 are applicable 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 09-09 issued by the Governor of the State of Arizona and incorporated in this Agreement 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 agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.
13. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401 and Title 34 of the Arizona Revised Statutes.
14. The Parties shall comply with the applicable requirements of Arizona Revised Statutes §35-393.01.
15. The Parties 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:

For Agreement Administration:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, AZ 85007  
602.712.7124  
602.712.3132 Fax

Cochise County  
Community Development Dept.  
Attn: Karen Lamberton, AICP  
1415 E. Melody Lane, Bldg E  
Bisbee, AZ 85603  
520.432.9240  
520.432.9278 Fax  
[KLamberton@cochise.az.gov](mailto:KLamberton@cochise.az.gov)

For Project Administration:

Arizona Department of Transportation  
Project Management Group  
Attn. Zahit Katz  
205 S. 17<sup>th</sup> Avenue, Mail Drop 614E  
Phoenix, AZ 85007  
602.712.7030  
602.712.7630 Fax  
[ZKatz@azdot.gov](mailto:ZKatz@azdot.gov)

Cochise County  
Attn: Karen Lamberton, AICP  
1415 E. Melody Lane, Bldg E  
Bisbee, AZ 85603  
520.432.9240  
520.432.9278 Fax  
[KLamberton@cochise.az.gov](mailto:KLamberton@cochise.az.gov)

For Financial Administration:

Arizona Department of Transportation  
Project Management Group  
Attn. Zahit Katz  
205 S. 17<sup>th</sup> Avenue, Mail Drop 614E  
Phoenix, AZ 85007  
602.712.7030

Cochise County  
Attn: Anissa Acedo  
1415 E. Melody Lane  
Bisbee, AZ 85603  
520.432.9300  
520.432.9278 Fax

602.712.7630 Fax  
[ZKatz@azdot.gov](mailto:ZKatz@azdot.gov)

[AAcedo@cochise.az.gov](mailto:AAcedo@cochise.az.gov)

17. In accordance with Arizona Revised Statutes § 11-952 (D) attached and incorporated in this Agreement 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 \_\_\_\_\_  
STEVE BOSCHEN, P.E.  
Division Director

ATTEST:

By \_\_\_\_\_  
ARLETHE G. RIOS  
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 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 \_\_\_\_\_, 2016.

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