AG Contract No. KR912237TRD
ECS File: JPA 91-67A
Project: H 2778 04C
Section: SR-347/Maricopa Road
Segment III

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
PINAL COUNTY

THIS AGREEMENT is entered into ~~October 21~~ 19 November, 1991, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and PINAL COUNTY, ARIZONA, acting by and through its Board of Supervisors (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 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 delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes Section 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. The State and the County have participated in the design of and construction of improvements to SR-347 (Maricopa Road) between the SR-238 and SR-84. This agreement is to define the responsibilities of the parties hereto for the construction and reimbursement of railroad crossing improvements to Maricopa Road in Pinal County, hereinafter referred to as the Project.

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

NO. 16226
FILED WITH SECRETARY OF STATE
Date Filed 11/19/91
Richard H. Mahoney
Secretary of State
By Nancy V. Greenwald

II. SCOPE OF WORK

1. The State will:

a. On behalf of the County, enter into a separate agreement with the Southern Pacific Railroad Company for railroad crossing improvements, as contemplated in (AG Contract No. KR911474TRD) agreement 1536-91-SPTC, a copy of which is attached hereto and made a part hereof.

b. The State assumes no financial obligation or liability under this agreement. County 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 any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the County and that the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost 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, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of 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, expenses of litigation and attorneys' fees. It is understood agreed that the State is acting solely as an agent for the County and the State assumes no other liability hereunder for the County.

2. The County will:

Reimburse the State for actual construction costs associated with the Southern Pacific Railroad design change improvements, in an amount estimated at $205,615.00, within thirty (30) days after receipt of an invoice.

III. MISCELLANEOUS PROVISIONS

1. This agreement is contingent upon the availability of funds for each party, and shall remain in force and effect until completion of said Project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time upon thirty (30) days written notice to the other party.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. 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 Section 12-1518 (B) and (C).

6. 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 South 17 Avenue, Mail Drop 616E Room 222E
Phoenix, AZ 85007

Pinal County
Attn: Mr. Brad Gair
PO Box 727
Florence, AZ 85232

7. Attached hereto and incorporated herein is a copy of the written determination of each party's legal counsel 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.

PINAL COUNTY, ARIZONA

By _____
WILLIAM "BILL" MATHIESON
Chairman, Pinal County
Board of Supervisors

STATE OF ARIZONA
Department of Transportation

By _____
ROBERT P. MICKELSON
Deputy State Engineer

3757j
10CT

JPA 91-67

RESOLUTION

BE IT RESOLVED on this 13th day of June 1991, that I, JAMES S. CREEDON, as Acting Director of the Arizona Department of Transportation, have determined that it is in the best interest of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement at the request of Pinal County, for the purpose of defining certain responsibilities for the continued construction of improvements to Maricopa Road, Segment IV, between State Route 238 and State Route 84.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.

JAMES S.CREEDON, Acting Director
Arizona Department of
Transportation

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COMPANY COPY

ARIZONA DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
UTILITY AND RAILROAD ENGINEERING SERVICES

RAILROAD AGREEMENT

NON-FEDERAL AID

Agreement No. 1536-91-SPTC
TRACS NO. 347 PN PPN SS243 01C
Project No. RS-347(15)
MARICOPA ROAD - SEGMENT III
Williams Avenue
AAR/DOT No. 741-343C
RR File No. E-933100/323-2
AG Contract No. KR91-1474 TRD

THIS AGREEMENT by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation, herein termed "RAILROAD," and STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, herein termed "STATE",

WITNESSETH:

The parties hereto desire to set forth by this instrument their understanding and agreements with respect to the installation of railroad protective devices at Maricopa Road in the County of Pinal, State of Arizona, where same crosses the property and tracks of RAILROAD at railroad milepost B-897.8.

AGREEMENT:

NOW THEREFORE, it is mutually agreed as follows:

1. RAILROAD shall furnish all necessary labor, materials, tools, and equipment and shall perform the following work:

Install four (4) flashing light grade crossing signals augmented with five (5) automatic gate arms, together with necessary

actuating and operating circuits and adequate instrument housing, hereinafter collectively referred to as "SIGNALS," at said crossing. Said SIGNALS shall be located approximately as described in EXHIBIT "B," attached to and made a part hereof. The installation shall include rubber crossing surface. Said installation shall comply with the latest standards prescribed by the Association of American Railroads and the Manual On Uniform Traffic Control Devices, Part VIII.

2. It is agreed that there is no ascertainable net benefit to RAILROAD, and STATE agrees to reimburse RAILROAD for one hundred percent (100%) of the cost and expense incurred by RAILROAD in the furnishing of materials and performing work of the installing surfacing, and signals as described in the "Summary of Estimate," marked EXHIBIT "A," attached to and made a part hereof.

3. It is understood and agreed that STATE is acting solely as an agent for the County of Pinal ~~in securing and administering Federal funds for that certain Project No. RS-347(15). STATE's liability is expressly limited to the securing and administering of Federal funds~~ and STATE assumes no other liability hereunder for the County of Pinal.

Init.

4. Prior to commencing construction, RAILROAD agrees to notify STATE, in writing, of the actual construction start date. Upon completion, RAILROAD agrees to notify STATE, in writing, of the actual completion date. The construction start date shall not be prior to receiving a notice to proceed from STATE.

5. Following execution of this instrument, RAILROAD will order the delivery of all materials required to perform the work contemplated herein and shall submit to STATE, upon receipt of all the aforementioned materials, a bill for eighty percent (80%) of STATE's share of the estimated cost of materials to be furnished by RAILROAD. As soon as the crossing signals have been placed in operation, RAILROAD shall submit to STATE a final bill for STATE's actual share of the cost of work performed by RAILROAD, less the progress payments made by STATE hereunder. Ten percent (10) of partial or final payments shall be withheld by STATE until a final audit is made of the records of RAILROAD by the Arizona Department of Transportation External Audit Group. After said audit, RAILROAD shall be reimbursed for any monies due as determined by the final audit. All billings shall contain STATE's project number and agreement number. The billing shall be forwarded to:

Arizona Department of Transportation
Utility & Railroad Engineering Services
205 South 17th Avenue
Mail Drop 618E Room 118E
Phoenix, Arizona 85007

6. After installation of SIGNALS and surfacing has been completed, RAILROAD shall maintain same as long as they remain in place.

7. The work to be performed by RAILROAD hereunder shall be commenced following execution of this instrument, and shall be completed within such time as is ordered by the Arizona Corporation Commission in its Opinion and Order.

8. All work to be performed by RAILROAD hereunder shall be done on a force-account basis. STATE's share shall be paid to RAILROAD in the manner hereinafter set forth.

Should some unforeseen condition or combination of conditions cause a change in the Scope of Work as called for by the plans, then RAILROAD shall not be obligated to incur, and STATE shall not be obligated to reimburse RAILROAD for its share of the cost of work of changed scope until such change shall have been approved, in writing, by STATE and RAILROAD.

Pursuant to A.R.S. Sections 35-214, 35-215 and 41-1279.04, the books of RAILROAD shall be open for inspection and audit by authorized representatives of STATE for a period of not less than five (5) years from the date final payment has been received by RAILROAD.

9. RAILROAD agrees to reimburse STATE, within sixty (60) days of notification, for any amounts STATE disallows as a result of its audit. Any audit exceptions with which RAILROAD disagrees shall be paid to STATE under protest subject to resolution.

10. Claims and disputes between STATE and RAILROAD involving sums less than $100,000 and arising out of the terms of this Agreement relating to work performed, billing, and similar matters,

shall be subject to arbitration, at the request of either party, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining; provided, however, that claims or disputes arising out of personal injury, death, property damage, or environmental incidents shall not be subject to arbitration without the concurrence of both parties, except to the extent otherwise required by the rules of Arizona courts.

11. In compliance with the regulations of the Department of Transportation, RAILROAD hereby agrees to comply fully with all of the provisions of Appendix A, attached hereto and by this reference made a part of this Agreement; provided, however, that Appendix A shall be applicable only in those cases where RAILROAD does not perform the work contemplated in this Agreement with its own forces.

12. This Agreement is subject to the budgetary limitations set forth in Arizona Revised Statutes Subsection 28-1823 through 28-1826 inclusive and is further subject to the provisions of Chapter 1 of Title 35, Arizona Revised Statutes.

13. STATE and RAILROAD each agrees to be liable to the other party for its own acts of negligence and the negligence of its own employees.

14. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of RAILROAD and the assigns of STATE.

15. RAILROAD is required to comply with Executive Order 75-5, "Non-Discrimination in Employment by Government Contractors and

Subcontractors," which is hereby included in its entirety by reference and considered a part of this Agreement.

16. Pursuant to A.R.S. Subsection 38-511, STATE may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of STATE or any of its departments or agencies is, at any time while this Agreement or any extension of it is in effect, an employee of any other party to this Agreement with respect to the subject matter of this Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year signed by both parties.

SOUTHERN PACIFIC TRANSPORTATION COMPANY	ARIZONA DEPART. OF TRANSPORTATION HIGHWAY DIVISION
	Recommended By _____ Manager, Utility & Railroad Engr.
By J. L. Wahler	By Gary K. Robinson
Its Manager-Contracts	Its STATE ENGINEER
Date 7/30/91	Date 8/30/91

STATE OF CALIFORNIA)
) ss.
COUNTY of SAN FRANCISCO)

The foregoing instrument was acknowledged before me this 2nd day of August, 1991, by Ms. J. L. Wahler, the MANAGER CONTRACTS of SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, on behalf of the corporation.

OFFICIAL SEAL
SAN MICOCCI
State of California
SAN FRANCISCO COUNTY
My Commission Expires
April 8, 1994

Notary Public

STATE OF ARIZONA)
)ss.
COUNTY of MARICOPA)

The foregoing instrument was acknowledged before me this 30th day of August, 1991, by GARY K. ROBINSON, the STATE ENGINEER of the Arizona Department of Transportation.

My Commission Expires:
July 24th, 1992

Notary Public

Agreement No. 1536-91-SPTC

COST ESTIMATE
EXHIBIT "A"

	TRACK WORK	SIGNAL WORK	TOTAL
Labor	$ 6,955	$33,070	$40,025
Material	7,512	83,080	90,592
Other	14,503	60,495	74,998
TOTAL	$28,970	$176,645	$205,615

JPA 91-67A

APPROVAL OF THE PINAL COUNTY ATTORNEY

I have reviewed the attached proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and PINAL COUNTY 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

DATED this 15th day of October, 1991.

ROY A. MENDOZA
PINAL COUNTY ATTORNEY

By Patricia A. Grieb
Patricia A. Grieb
Deputy County Attorney

RESOLUTION NO. 102191-MRRID

RESOLUTION AUTHORIZING PINAL COUNTY TO ACT ON BEHALF OF MARICOPA RURAL ROAD IMPROVEMENT DISTRICT AND ENTER INTO INTERGOVERNMENTAL AGREEMENT JPA 91-67A WITH THE STATE OF ARIZONA AND TO EXECUTE ANY DOCUMENTS NEEDED TO TRANSFER THE FUNDS COVERED BY JPA 91-67A.

WHEREAS, Pinal County ("County") and the State of Arizona through Arizona Department of Transportation ("ADOT") have participated in the design of improvements to State Route 347 (Maricopa Road) between Maricopa-Pinal County Line and SR-84 ("the Project"); and

WHEREAS, Maricopa Rural Road Improvement District ("District") was formed pursuant to A.R.S. § 48-1031, *et seq.* to raise bond monies for the improvements of State Route 347 between Maricopa-Pinal County Line and SR-84; and

WHEREAS, an intergovernmental agreement is needed to define the responsibilities of the County and State for construction and reimbursement of railroad crossing improvements under Segments III of the Project and to define the terms for the transfer of funds from the District to the State through ADOT under JPA 91-67A; and

WHEREAS, it is ADOT procedure to deal with the County governments and limit agreements to two party agreements.

THEREFORE, BE IT RESOLVED:

That it is in the best interest of the District to authorize the County to enter into intergovernmental agreement JPA 91-67A with the State through ADOT on behalf of the District and to authorize the County to execute any documents needed to transfer funds to the State through ADOT under JPA 91-67A.

BE IT FURTHER RESOLVED:

The County is authorized to deposit the District's bond monies raised for this Project with the State prior to solicitation of bids on the Project and to execute any documents needed to transfer the funds under JPA 91-67A and to agree on behalf of the District to continue to apply for funds for the Project and commit those, if obtained, to the Project.

PASSED AND ADOPTED this 21st day of October, 1991.

MARICOPA RURAL ROAD IMPROVEMENT DISTRICT

By _____
Chairman, Board of Directors

ATTEST:

_____

RESOLUTION NO. 102191-JPA 91-67A-A

RESOLUTION OF THE PINAL COUNTY BOARD OF SUPERVISORS AUTHORIZING PINAL COUNTY TO ENTER INTO INTERGOVERNMENTAL AGREEMENT JPA 91-67A WITH THE STATE OF ARIZONA AND TO EXECUTE ANY DOCUMENTS NEEDED TO TRANSFER THE FUNDS COVERED BY JPA 91-67A.

WHEREAS, Pinal County ("County") and the State of Arizona through Arizona Department of Transportation ("ADOT") have participated in the design of improvements to State Route 347 (Maricopa Road) between Maricopa-Pinal County Line and SR-84 ("the Project"); and

WHEREAS, Pinal County Board of Supervisors has determined the need to define the responsibilities of the County and State for construction and reimbursement of railroad crossing improvements under Segment III of the Project.

THEREFORE, BE IT RESOLVED:

That it is in the best interest of Pinal County to enter into intergovernmental agreement JPA 91-67A with the State through ADOT for the purpose of defining the responsibilities of the County and State for construction and reimbursement of railroad crossing improvements under Segment III of the Project and execute any documents needed to transfer the funds under JPA 91-67A.

BE IT FURTHER RESOLVED:

William Mathieson, as Chairman of the Pinal County Board of Supervisors is authorized to execute Intergovernmental Agreement JPA 91-67A and to execute any documents needed to transfer funds under JPA 91-67A to the State through ADOT.

PASSED AND ADOPTED this 21st day of October, 1991.

PINAL COUNTY

By _____
William Mathieson, Chairman
Board of Supervisors

ATTEST:

_____
Stanley D. Griffis
Clerk of the Board

Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007
~~Robert K. Corbin~~

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. KR91-2237TRD, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 6th day of November, 1991.

GRANT WOODS
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

7005G/102