A. G. Contract No. KR922262TRN
ECS File: JPA 92-94
Project: M-851-9(1)P
Fund: 8519 PM ORV S S278 01C
Section: Yellowstone Avenue/Camino Greenfield, Oracle - Camino Cortaro

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF ORO VALLEY

THIS AGREEMENT is entered into 26 January, 1992, 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 the TOWN OF ORO VALLEY, acting by and through its TOWN COUNCIL ("Town").

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 Town is empowered by Arizona Revised Statutes Section 48-572 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 Town.

3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.

4. Such project within the boundary of the Town has been selected by the Town; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for approval.

NO. 17343
FILED WITH SECRETARY OF STATE
Date Filed 01/26/93
Richard Mahoney
Secretary of State
By Virginia V. Greenwood

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The work embraced by this agreement and the estimated cost are as follows: OVERLAY, GRADING, DRAINAGE, SIGNING AND STRIPING

Estimated Total Project Cost	$	83,116.00
Federal Aid Funds @ 94.3%		78,378.00
Town Funds @ 5.7% of $83,116.		4,738.00
Two percent surcharge		1,662.00
Total Town Funds	$	6,400.00*

* This includes a two percent (2%) surcharge per ADOT Local Government Engineer memo of October 1991.

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

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the Town, award the contract, enter into a contract with a firm to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Standard Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation. Further, the State will enter into a Project Agreement with FHWA covering the work embraced in said contract or in this agreement and will request the maximum federal funds available.

b. The State will furnish Town with a copy of the proposed Project Agreement to be entered into by the State and FHWA, and any Railroad Company Agreement necessary for the full completion of this project. Upon approval of the terms and conditions of the Project Agreement and any State-Railroad Company Agreement by the Town, the agreements shall be incorporated in and made a part of this agreement by reference and shall have the same force and effect as though fully written herein. Further, the Town is bound by all the terms of any State-Railroad Company Agreement and will reimburse the State for the amount contracted for by and between the Railroad Company and the State acting as agent for the Town.

c. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of Town's deposit unless and until so authorized in writing by the Town.

2. Prior to the solicitation of bids, the Town shall deposit with State funds in the amount determined by the State to be necessary to match federal funds in the ratio required.

Upon completion of the construction contract, the State shall return to the Town any part of the funds deposited by Town remaining after Town's pro rata share of the cost, as finally fixed and determined by FHWA, has been paid.

3. The Town shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

4. The Town shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom.

5. The Town shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the Town.

6. Upon completion of construction, the Town shall provide for, at its own cost and as an annual item in its budget, proper maintenance, including, but not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

7. The Town shall mark and sign school crossings and railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

8. By such regulation as it may by ordinance provide, the Town shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic at intersections and at such other locations as necessary.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans and 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; 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 Town and that the Town 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 Town, 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 or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this agreement is to be borne by FHWA and Town, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, Town agrees to furnish and provide State with Town funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

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

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

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

7. 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.

8. 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
Phoenix, AZ 85007

Town of Oro Valley
Town Manager
11000 N. La Canada Drive
Tucson, AZ 85737

9. Attached hereto and incorporated herein is 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.

TOWN OR ORO VALLEY

By Lanetta Lee Elliott
Lanetta Lee Elliott
Mayor

STATE OF ARIZONA
Department of Transportation

By R. P. Mickelson
ROBERT P. MICKELSON
Deputy State Engineer

ATTEST

By Kathryn E. Cuvelier
KATHRYN CUVELIER
Town Clerk

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RESOLUTION

BE IT RESOLVED on this 1st day of September 1992, that I, CHARLES E. COWAN, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the Town of Oro Valley for the purpose of defining responsibilities for the design, construction and maintenance of improvements to Yellowstone Avenue/Camino Greenfield, from Oracle to Camino Cortaro in the Town.

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

CHARLES E. COWAN
Director

RESOLUTION NO. (R)-92-56

A RESOLUTION BETWEEN THE TOWN OF ORO VALLEY, AND THE STATE OF ARIZONA, FOR THE CONSTRUCTION OF PROJECT M-851-9(1)P, YELLOWSTONE AVENUE/CAMINO GREENFIELD, ORACLE-CAMINO CORTARO.

WHEREAS, the State of Arizona is empowered by ARS Sec. 28-108 and ARS 11-951 et seq. to enter into an Intergovernmental Agreement for the construction of an overlay and reconstruction project on Yellowstone Avenue and Camino Greenfield in the Town of Oro Valley; and

WHEREAS the Town of Oro Valley is empowered pursuant to ARS 48-572 and ARS 11-951 et seq. to enter into an Intergovernmental Agreement for the construction of an overlay and reconstruction project on Yellowstone Avenue and Camino Greenfield between Oracle and Camino Cortaro; and

WHEREAS, Congress has authorized appropriations for, but not limited to the construction of streets and primary feeder and farm to market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings; and

WHEREAS, the Yellowstone Avenue/Camino Greenfield, Oracle Road to Camino Cortaro project lies within the corporate limits of the Town of Oro Valley; and

WHEREAS, the Town of Oro Valley has provided to the State of Arizona plans, specifications and estimates of the construction project and these plans, specifications and estimates have been submitted to the Federal Highway Administration for approval,

NOW, THEREFORE, BE IT RESOLVED:

That the Mayor and Council of the Town of Oro Valley hereby approves the attached IGA and authorizes the Mayor of the Town of Oro Valley to execute Attorney General Contract No. KR 922262TRN, ECS File:JPA 92-94 for the construction of Yellowstone Avenue/Camino Greenfield between Oracle Road and Camino Cortaro.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Oro Valley, Arizona this 2nd day of December, 1992.

TOWN OF ORO VALLEY, ARIZONA

Loretta Lee Elliott
Mayor

ATTEST:

Kathryn E. Cuvelier
Kathryn E. Cuvelier, Town Clerk

APPROVED AS TO FORM:

Gary D. Kidd
Gary D. Kidd, Town Attorney

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APPROVAL OF THE ORO VALLEY TOWN ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the TOWN OF ORO VALLEY and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

DATED this 25th day of December, 1992.

Town Attorney

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A. G. Contract No. KR92-2262-TRN, 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 21st day of January, 1993.

GRANT WOODS
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

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