A. G. Contract No. KR930291TRN
ECS File: JPA 93-27
Project: RRP-000-6(26)P
TRACS: 0940 CN FLA SR023 01C
Section: San Francisco @ ATSFRR
AAR/DOT No. 025-132-G

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF FLAGSTAFF

THIS AGREEMENT is entered into 5 November, 1993, 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 CITY OF FLAGSTAFF, acting by and through its Mayor and City Council (the "City").

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 City 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 City.

3. The Arizona Corporation Commission is empowered by Arizona Revised Statutes Section 40-337 to participate in the funding of this project, and has authorized funds for this project.

4. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances.

NO. 18/93
FILED WITH SECRETARY OF STATE
Date Filed 11/05/93
Richard Mahoney
Secretary of State
By Vicky V. Greenewald

5. Such project within the boundary of the City has been selected by the City; 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 its approval.

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

6. The work embraced in this agreement and the estimated cost are as follows: Furnish and install cantilever, flashing lights and automatic gates.

Preliminary and Construction Engineering	$ 2,000.00
Furnish and Install Cantilever Flashing Lights and Automatic Gates	$ 168,123.00
Total Project	$ 170,123.00
Federal Aid Funds @ 90% of $170,123.00	$ 153,111.00
AZ Corp. Comm. Funds @ 10% of $170,123.00	$ 17,012.00
City of Flagstaff Funds	$ 0.00

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 authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b. 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 the City's deposit unless and until so authorized in writing by the City.

2. The City shall acquire, to the extent necessary for the proposed improvement, and without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

3. To the extent of the City's jurisdiction, the City 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.

4. To the extent of the City's jurisdiction, the City 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 City 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 City.

5. Upon completion of construction, the City shall provide for, at its own cost and as an annual item in its budget, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities) to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The City shall mark and sign 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.

7. By such regulation as it may by ordinance provide, the City 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.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The City 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; 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 City and that the City 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 City, 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.

2. The cost of the construction and construction engineering work covered by this agreement is to be borne by FHWA, Arizona Corporation Commission and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the City agrees to furnish and provide the State with City 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 herein embraced; 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, Room 222E, Mail Drop 616E
Phoenix, AZ 85007

City of Flagstaff
City Manager
211 West Aspen Street
Flagstaff, AZ 86001

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.

CITY OF FLAGSTAFF

By _____
CHRISTOPHER BAVASI
Mayor

STATE OF ARIZONA
Department of Transportation

By _____
for ROBERT P. MICKELSON
Deputy State Engineer

ATTEST:

By _____
LINDA BUTLER
City Clerk

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RESOLUTION

BE IT RESOLVED on this 12th day of February 1993, that I, THOMAS R. WARNE, as Acting 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 City of Flagstaff for the purpose of defining responsibilities for the construction and maintenance of railroad crossing improvements at San Francisco Street and the Atchison, Topeka & Santa Fe Railroad crossing.

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

Mary E. Peters

for THOMAS R. WARNE
Acting Director

RESOLUTION NO. 1880

A RESOLUTION AUTHORIZING INTERGOVERNMENTAL AGREEMENTS WITH THE HIGHWAYS DIVISION OF THE ARIZONA DEPARTMENT OF TRANSPORTATION TO CONSTRUCT RAIL CROSSING IMPROVEMENTS AT SOUTH BEAVER STREET AND AT SOUTH SAN FRANCISCO STREET, AND TO APPLY FOR FEDERAL REIMBURSEMENT FUNDS.

WHEREAS, the Highways Division of the Arizona Department of Transportation has entered a master railroad agreement with the Atchison, Topeka and Santa Fe Railway Company whereby the railway company will provide the improvements specified therein at railway crossings designated by the State, and the State will apply for federal funds to reimburse the railroad for the cost of the improvements made; and

WHEREAS, the Arizona Department of Transportation has proposed the entry of two intergovernmental agreements between the State of Arizona and the City of Flagstaff whereby the City will become responsible for the cost of improving the railroad crossings at South Beaver and at South San Francisco Streets and the improvements will be constructed by Atchison, Topeka and Santa Fe under the provisions of its master agreement with the State, and the City will become responsible for the cost of said improvements subject to the State's obligation to apply for federal funds for ninety percent of the approved scheduled costs, with the remaining ten percent of those costs to be paid by the Arizona Corporation Commission; and

WHEREAS, the Mayor and Council find that it would be to the City's benefit to reconstruct the improvements at the two railroad crossings to bring them into conformance with the current standards and regulations; and

WHEREAS, the City is empowered to enter into intergovernmental agreements with the State to accomplish the improvements;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1: The terms and conditions of the intergovernmental agreements between the State of Arizona and the City of Flagstaff for the railroad crossing improvement projects (A.G. Contract No. KR930291TRN and A.G. Contract No. KR930292TRN) are hereby approved and the Mayor is authorized and directed to execute the agreement on behalf of the City of Flagstaff.

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APPROVAL OF THE FLAGSTAFF CITY ATTORNEY

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

DATED this 27th day of September, 1993.

By Gerald Steiger, Asst City Atty

City Attorney

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A. G. Contract No. KR93-0291-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 3rd day of November 1993.

GRANT WOODS
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section