A. G. Contract No. KR93 1375TRN
ECS File: JPA 93-94
Project: RRP-000-6(62)P
TRACS: 0940 MA TMP SR072 01C
Section: Roosevelt Street @ SPTCRR
AAR/DOT No. 748-737-R

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

THIS AGREEMENT is entered into 14 September, 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 TEMPE, 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 and 28-112 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 ordinance, a copy of which is attached hereto and made a part hereof, ordained 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. 18004
FILED WITH SECRETARY OF STATE
Date Filed 09/14/93
Richard Mahoney
Secretary of State
By Vicky J. Graenewald

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.

6. 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.

7. The work embraced in this agreement and the estimated cost are as follows: Upgrade Railroad Crossing

Preliminary and Construction Engineering	$ 3,000.00
Furnish and Install Flashing Lights and Automatic Gates	$ 72,155.00
Total Protection Work	$ 75,155.00
Furnish and Install Rubber Grade Crossing	$ 44,156.00
Total Project	$ 119,311.00
Federal Aid Funds @ 90% of $119,311.00	$ 107,380.00
AZ Corp. Comm. Funds @ 10% of $ 75,155.00	$ 7,515.00
City of Tempe Funds @ 10% of $ 44,156.00	$ 4,416.00

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

3. 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. 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 Tempe
City Manager
31 E. Fifth Street
Tempe, AZ 85281

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 TEMPE

By Harry E. Mitchell
HARRY E. MITCHELL
Mayor

ATTEST:

By Helen Fowler
HELEN FOWLER
City Clerk

STATE OF ARIZONA
Department of Transportation

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

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JPA 93-94

RESOLUTION

BE IT RESOLVED on this 23rd day of June 1993, that I, the undersigned LARRY S. BONINE, 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 City of Tempe for the purpose of defining responsibilities for the design, construction and maintenance of improvements to Roosevelt Street at the Southern Pacific Transportation Company 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 LARRY S. BONINE
Director

JPA 93-94

APPROVAL OF THE TEMPE CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the CITY OF TEMPE 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 7th day of July, 1993.

C. Brad Woodford

City Attorney

RESOLUTION NO. 93.58

A RESOLUTION OF THE COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING EXECUTION OF AGREEMENTS WITH ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE ADMINISTRATION OF THE INSTALLATION OF GATES AND FLASHERS AND RUBBERIZED RAILROAD CROSSINGS ON ROOSEVELT STREET NORTH OF SOUTHERN AVENUE AND ON ROOSEVELT STREET NORTH OF GENEVA DRIVE

WHEREAS, with the construction and improvements to existing railroad crossings administered by the State of Arizona, Department of Transportation, it will be necessary to construct railroad gates and flashers and rubberized crossings.

WHEREAS, with the construction and improvements to existing railroad crossings, the City of Tempe has requested that certain design features be incorporated into the design.

WHEREAS, the State of Arizona is empowered by Section 28-108 Arizona Revised Statutes, and the City of Tempe is empowered by Section 48-572B, Arizona Revised Statutes, and Tempe City Charter, Article I, Section 1.03, to enter into intergovernmental agreements setting forth the conditions for the administration of the installation of gates and flashers and rubberized crossing material.

NOW THEREFORE, be it resolved by the City Council of the City of Tempe:

That the Mayor is authorized to execute said intergovernmental agreements with the State of Arizona, Department of Transportation, for the administration of the installation of railroad gates and flashers and rubberized crossing material in Tempe on Roosevelt Street north of Southern Avenue and on Roosevelt Street north of Geneva Drive.

PASSED AND ADOPTED by the Mayor and City Council of the City of Tempe, this 12th day of August, 1993.

Harry E. Mitchell
MAYOR

ATTEST:

Helen R. Fowler
CITY CLERK

APPROVED AS TO FORM:

David K. Meskel
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. KR93-1375-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 8th day of September, 1993.

GRANT WOODS
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

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