A. G. Contract No. KR94 2107TRN
ECS File: JPA 94-144
Project No.: RS-282(4)P
TRACS No.: 0282 CH CCH SS011 01C
Section: Buffalo Soldier Trail
SR-92 - 7th Street

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SIERRA VISTA

THIS AGREEMENT is entered into 5 OCTOBER, 1994, 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 SIERRA VISTA, 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. 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 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.

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FILED WITH SECRETARY OF STATE
Date Filed 10/05/94
Richard Mahoney
Secretary of State
By Vicky Greenewold

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 City, in order to obtain federal funds for the construction of the project, is willing to provide the State with the City funds to match federal funds in the ratio required or as finally fixed and determined by FHWA.

7. The work embraced by this agreement and the estimated cost are as follows: Roadway widening, reconstruction and paving.

Estimated Project Cost (incl. 15% CE cost)	$2,325,459.00
Federal Aid Funds @ 94.3%	$2,192,908.00
Non Federal Aid Funds	$ 55,630.00
City of Sierra Vista Funds @ 5.7% of $2,325,459.	$ 132,551.00
Six percent surcharge	$ 139,528.00
Total City of Sieraa Vista Funds	$ 327,709.00*

* This includes a six percent surcharge per Local Government Engineer memo of 4 April 1994.

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 City, 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 City with a copy of the proposed Project Agreement to be entered into by the State and FHWA. Upon approval of the terms and conditions of the Project Agreement, the agreement 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.

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

2. Prior to the solicitation of bids, the City 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 City any part of the funds deposited by City remaining after City's pro rata share of the cost, as finally fixed and determined by FHWA, has been paid.

3. 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.

4. 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.

5. 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.

6. Upon completion of construction, the City 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 City 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 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 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 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 design, construction and construction engineering work covered by this agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, the City agrees to furnish and provide 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 become effective upon filing with the Secretary of State.

4. 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.

5. This agreement shall 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 agreement.

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:

Department of Transportation Joint Project Administration 205 S. 17th Avenue - 616E Phoenix, AZ 85007	City of Sierra Vista City Manager 2400 E. Tacoma Street Sierra Vista, AZ 85635

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 SIERRA VISTA

By Richard F. Archer
RICHARD F. ARCHER
Mayor

STATE OF ARIZONA
Department of Transportation

By Peter L. Eno
PETER L. ENO
Contract Administrator

ATTEST:

By Sandra L. Kenny
SANDRA L. KENNY
City Clerk

JPA 94-144

RESOLUTION

BE IT RESOLVED on this 22nd day of August 1994, 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 Sierra Vista for the purpose of defining responsibilities for the design, construction and maintenance of a roadway reconstruction improvements to Buffalo Soldier Trail, SR-92 to 7th Street in the City.

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

Gary K. Johnson

FOR: LARRY S. BONINE
Director

JPA 94-144

APPROVAL OF THE SIERRA VISTA CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the CITY OF SIERRA VISTA 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 22nd day of September, 1994.

City Attorney Stuart L. Fauver

RESOLUTION 3286

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; REAFFIRMING THE TRANSPORTATION GOAL OF THE VISTA 2000 GENERAL DEVELOPMENT PLAN; REAFFIRMING SETTLED POLICY TO AUTHORIZE AND DIRECT THE STAFF TO SEEK, MAKE APPLICATION FOR, AND ACCEPT FUNDING ASSISTANCE FROM OTHER AGENCIES; AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION (ADOT), FOR THE IMPROVEMENT OF BUFFALO SOLDIER TRAIL BETWEEN STATE ROUTE 92 AND SEVENTH STREET; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, in 1984, Cochise County constructed Buffalo Soldier Trail from State Route 92 to Seventh Street as a two-lane roadway with funds derived from the County-issued bonds in 1983; and

WHEREAS, traffic volumes and development increased along the Buffalo Soldier Trail corridor immediately after construction; and

WHEREAS, in January 1988, the City and County, recognizing the need to accommodate future traffic volumes anticipated on Buffalo Soldier Trail, entered into an Intergovernmental Agreement to jointly plan and design a widening project for Buffalo Soldier Trail; and

WHEREAS, in October of 1989, City annexed the entire Buffalo Soldier Trail Project and amended the 1988 Intergovernmental Agreement with the County to assume the responsibility for completing the design of said Buffalo Soldier Trail Project; and

WHEREAS, in July of 1991, City submitted final design documents to ADOT and FHWA for review and final approval; and

WHEREAS, on March 26, 1992, City Council adopted Resolution 2799, requesting that the Buffalo Soldier Trail Street Improvements Project be placed on SEAGO's Five-Year Construction Program for funding assistance beginning in Fiscal Year 1997, and committed to allocating local matching funds towards constructing said project in accordance with Federal, ADOT, and SEAGO policies, provided said project received at least two full years worth of federal aid apportionment from SEAGO to construct said project; and

WHEREAS, SEAGO staff has been directed by the SEAGO Executive Board to seek funding from other COG's who may have funds to advance to SEAGO for the Buffalo Soldier Trail Project before the scheduled funding in Fiscal Year 1997; and

WHEREAS, SEAGO has secured a loan of Intermodal Surface Transportation Efficiency Act (ISTEA) funding from the Maricopa Association of Governments (MAG) for the Buffalo Soldier Trail Project, with the understanding that the funds be paid back, by SEAGO, from Fiscal Year 1997 and 1998 ISTEA apportionments; and

WHEREAS, the City has obtained final approval of construction drawings and specifications for the widening of Buffalo Soldier Trail from State Route 92 to Seventh Street from ADOT and FHWA, at an estimated project cost of $2,325,459, of which $327,709 (14%) would be the City of Sierra Vista's share; and

WHEREAS, the City Council desires to cause the construction of the Buffalo Soldier Trail Widening Project from State Route 92 to Seventh Street, and commit to allocating local match funds for City's share of funding said project by executing an Intergovernmental Agreement with ADOT to administer construction of said project and expend FHWA funds through SEAGO as a loan from MAG, with the understanding that the loan will be repaid to MAG by SEAGO with FHWA ISTEA funding allocations during Fiscal Year 1997 and 1998; and

WHEREAS, the proposed action is consistent with VISTA 2000 Transportation Goal 02; and

WHEREAS, the proposed action is consistent with the settled policy of the City Council, most recently affirmed by Resolution 2959, to authorize and direct the Staff to seek, make application for, and accept any available Federal and State funding assistance for improvements to our community that are beyond the funding capability of City revenues when it is determined by the City Council to be in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

SECTION 1

A. That the VISTA 2000 Transportation Goal 02, Planning Policies 1 through 4 thereof, and Objectives 1, 4, 6, 10, 11, 15, 17, and 19 thereof, be, and hereby are, reaffirmed.

B. That the settled policy of the City Council, most recently affirmed by Resolution 2959, to apply for and accept any available Federal and State funding assistance for improvements to our community that are beyond the funding capability of City revenues, be, and hereby is, reaffirmed.

SECTION 2

That the desire of the City Council of the City of Sierra Vista, Arizona, to enter into an Intergovernmental Agreement with the Arizona Department of Transportation for the construction and funding of the Buffalo Soldier Trail Widening Project, as outlined in Exhibit "A," attached hereto and made a part hereof, be, and hereby is, affirmed.

SECTION 3

That the Mayor, City Manager, City Clerk, City Attorney or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 22ND DAY OF SEPTEMBER, 1994.

RICHARD F. ARCHER
Mayor

ATTEST:

SANDRA L. KENNY
City Clerk

APPROVED AS TO FORM:

STUART L. FAUVER
City Attorney

PREPARED BY:

SCOTT W. DOOLEY, P.E.
Civil Engineer II

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. KR94-2107-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 29th day of September, 1994.

GRANT WOODS
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:lsr
8577G