01-04-A-125465-1298

A. G. Contract No. KR97 2384TRN
ADOT ECS File: JPA 97-170
Project: STP-000-6(110)P
TRACS: SR125 01C
Sect.: Mission Road @ SPICRR
AAR/DOT No. 742-171-A

Please on all correspondence and pertaining to this contract

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
PIMA COUNTY, ARIZONA

THIS AGREEMENT is entered into 31 December, 1998 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 PIMA 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 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 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 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.

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NO. 22900
Filed with the Secretary of State
Date Filed: 12/31/98
Betsey Bayless
Secretary of State
By: Vicky V. Groenewald

5. Such project within the boundary of the County has been selected by the County; 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 County 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	$ 6,000.00
Furnish and Install Flashing Lights and Automatic Gates (by railroad forces)	$ 105,117.00
Total Project	$ 111,117.00
Federal Aid Funds @ 94.3% of 111,117.00	$ 104,783.00
AZ Corp. Comm. Funds @ 5.7% of $111,117.00	$ 6,334.00
Pima County 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 County's deposit unless and until so authorized in writing by the County.

2. The County shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired.

3. Once acquired, the County shall remove from the County 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 r will be removed therefrom.

4. The County shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the County right of way. In the event of any unauthorized encroachment or improper use, the County 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 County.

5. Upon completion of construction, the County 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 County 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, within 45 days after the railroad has completed its work; failing that, the State may proceed with the marking and signing thereof, the cost of which shall be borne by the County.

7. By such regulation as it may by ordinance provide, the County 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, nor for any resulting construction project. The County, in regard to the County's relationship with the State only, 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. Such assumption of the responsibility by the County for the benefitof the State in no way acts as a waiver by the County for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns 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 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.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA, Arizona Corporation Commission and the County, 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 County agrees to furnish and provide the State with County 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, unless assumed by another competent governmental entity.

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

Pima County
Transportation Engineering Division
201 N. Stone - 3rd floor
Tucson, AZ 85701-1207

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.

PIMA COUNTY, ARIZONA

By _____
MIKE BOYD, Chairman
Board of Supervisors
DEC 6 1993

STATE OF ARIZONA
Department of Transportation

By _____
PETER L. ENO
Contract Administrator

ATTEST:

By _____
LORI GODOSHIAN
Clerk of the Board

Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law, 101-336, 42 U.S.C. 12101 12213) and all applicable Federal Regulations under the Act including 28 CFR Parts 35 & 36.

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JPA 97-170

RESOLUTION

BE IT RESOLVED on this 30th day of September 1997, 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 Intermodal Transportation Division, to enter into an agreement with Pima County for the purpose of defining responsibilities for construction of improvements to Mission Road at the SPTCRR crossing.

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

DAVID ALLOCCO, Manager
Engineering Technical Group
for Larry S. Bonine, Director

RESOLUTION NO. 1998_254____

RESOLUTION OF PIMA COUNTY BOARD OF SUPERVISORS APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN PIMA COUNTY AND THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION (ADOT), WHICH AGREEMENT PROVIDES FOR NEEDED SAFETY IMPROVEMENTS AT THE MISSION ROAD RAILROAD CROSSING UTILIZING FUNDS PROVIDED BY THE FEDERAL HIGHWAY ADMINISTRATION (FHWA) AND THE ARIZONA CORPORATION COMMISSION, AND FURTHER DEFINES OTHER RESPONSIBILITIES OF THE PARTIES, (ADOT JPA 97-170).

(DISTRICT 5)

WHEREAS, Pima County has determined it to be in the best interest of the public to enter into an intergovernmental agreement with ADOT for the purpose of constructing, and defining the responsibilities of the parties for warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances, to be placed at the Southern Pacific Railroad intersection at Mission Road, and

WHEREAS, ADOT agrees to fund the cost of the design, construction and construction engineering work from the FHWA and the Arizona Corporation Commission, and

WHEREAS, Pima County will, upon completion of construction provide for, at its own cost and as an annual item in its budget, proper maintenance exclusive of maintenance by the Railroad Company.

NOW, THEREFORE, UPON MOTION DULY MADE, SECONDED AND CARRIED, BE IT RESOLVED:

THAT, Pima County enter into the intergovernmental agreement (JPA 97-170) with ADOT for the purpose of funding the design, construction, and defining the maintenance responsibilities of the parties for the design and construction of a warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances, at the railroad crossing at Mission Road, and

THAT, the Chairman of this Board is hereby authorized and directed to sign the intergovernmental agreement (JPA 97-170) with the Arizona Department of Transportation, and

THAT, the various Pima County Transportation Department officers and employees be and hereby are, authorized and directed to perform all acts necessary and desirable to give effect to this Resolution.

PASSED, ADOPTED AND APPROVED this 8th day of December 1998.

PIMA COUNTY BOARD OF SUPERVISORS

CHAIRMAN

ATTEST:

CLERK OF THE BOARD

APPROVED AS TO FORM:

DEPUTY COUNTY ATTORNEY

DEPARTMENT APPROVAL

The foregoing Intergovernmental Agreement by and between the Arizona Department of Transportation (ADOT JPA 97-170) and Pima County Transportation and Flood Control District has been reviewed and is hereby approved as to content.

Dorothy C. Dolan

for Brooks A. Keenan
Chief Engineer
Pima County Transportation and Flood Control District

11.18.98

Date

JPA 97-170

APPROVAL OF THE PIMA COUNTY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and PIMA 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 18th day of August, 1998

Hal Gilbreath

County Attorney

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2997

GRANT WOODS
ATTORNEY GENERAL

TRN Main: (602) 542-1680
Direct: (602) 542-8837
Fax: (602) 542-3646
MAIN PHONE : 542-5025
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR97-2384TRN, 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.

DATE December 24, 1998.

GRANT WOODS
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/17581

Enc.