AG Contract No. KR99 1098TRN
ADOT ECS File: JPA 99-83
Project: STP-000-6(099)P
TRACS: SR113 01C
Section: 2nd Street @ UPRRC
AAR/DOT No. 741-892-P

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF CLIFTON, ARIZONA

THIS AGREEMENT is entered into 25 AUGUST, 1999, 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 CLIFTON, ARIZONA acting by and through its MAYOR AND TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 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. 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. 23512
Filed with the Secretary of State
Date Filed: 08/25/99
Betsey Bayless
Secretary of State
By Vicky V. Greenwood

5. 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 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 Town 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	$ 7,000.00
Furnish and install flashing light and gates (by railroad forces)	$ 127,955.00
Total Protection Work	$ 134,955.00
Install Concrete Crossing Surface (by railroad forces)	$ 44,715.00
Total Project	$ 179,670.00
Federal Aid Funds @ 94.3% of $179,670.00	$ 169,429.00
AZ Corp. Comm. Funds @ 5.7% of $134,955.00	$ 7,692.00
Clifton Town Funds @ 5.7% of $44,715.00	$ 2,549.00

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

2. 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 or will be acquired.

3. Once acquired, the Town shall remove from the Town 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 or will be removed therefrom.

4. The Town shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the Town 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.

5. Upon completion of construction, the Town 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 Town 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 Town.

7. 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.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The Town, in regard to the Town'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 Town for the benefitof the State in no way acts as a waiver by the Town 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 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 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 Town, 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 Town agrees to furnish and provide the 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 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

Town of Clifton
Town Manager
210 N. Coronado Blvd.
Clifton, AZ 85533

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 OF CLIFTON, ARIZONA

By _____
MICHAEL L. MITCHELL
Mayor

STATE OF ARIZONA
Department of Transportation

By _____
PETER L. ENO
Contract Administrator

ATTEST:

By _____
ESPERANZA CASTANEDA
Town Clerk

JPA 99-83

RESOLUTION

BE IT RESOLVED on this 17th day of May 1999, that I, the undersigned MARY E. PETERS, 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 the Town of Clifton for the purpose of defining responsibilities for improvements to 2nd Street at the UPRR 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 R. ALLOCCO, P.E.
Assistant State Engineer
Engineering Technical Group
for Mary E. Peters, Director

RESOLUTION NO. 99-05

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF CLIFTON, ARIZONA, APPROVING INTERGOVERNMENTAL AGREEMENT NO. JPA 99-83 BETWEEN THE ARIZONA DEPARTMENT OF TRANSPORTATION AND THE TOWN OF CLIFTON TO PROCEED WITH RAILROAD IMPROVEMENTS AT SECOND STREET AND UNION PACIFIC RAILROAD.

WHEREAS, the Railroad Crossing at Second street needs gates, flashers and crossing improvements; and

WHEREAS, the total estimated costs shall be $179,670.00, and the Town of Clifton agrees to expend $2,549.00 as 5.7% costs of installing concrete crossing surface (by railroad forces); and

NOW, THEREFORE, BE IT RESOLVED that the Clifton Town Council does hereby instruct the Mayor to sign ADOT IGA Agreement JPA 99-83 and expedite the upgrade of the Second Street Railroad Crossing.

PASSED AND ADOPTED THIS 12th Day of June, 1999, by the Mayor and Council of the Town of Clifton, Arizona.

APPROVED:

MICHAEL L. MITCHELL, MAYOR

ATTEST:

ESPERANZA CASTANEDA, TOWN CLERK

THIS IS CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT

TOWN CLERK

DATE Aug. 13, 1999

JPA 99-83

APPROVAL OF THE CLIFTON TOWN ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the TOWN OF CLIFTON 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 3rd day of August, 1999.

GUST ROSENFELD P.L.C.

By Frank Cassidy
Town Attorney

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ 85007-2926

JANET NAPOLITANO
ATTORNEY GENERAL

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INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR99-1098TRN, 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 August 19, 1999.

JANET NAPOLITANO
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/84214

Enc.