A. G. Contract No.: KR00-0132TRN
ADOT ECS File: JPA 00-24
Project: RRP-STP-000-6(098)P
TRACS: SR112 01C
Section: 75th & Olive Aves. @ BNSFRR
AAR/DOT No. 025-408-U & 025-409-B

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

THIS AGREEMENT is entered into 13 February, 2001, 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") the CITY OF PEORIA acting by and through its MAYOR and CITY COUNCIL (the "City").

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 City is empowered by Article 1, Section 3, paragraph 15 of the Peoria City Charter 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.

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 for the project, have been prepared by the City 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.

NO 24456
Filed with the Secretary of State
Date Filed: 02/13/2001
Betsey Bayless
Secretary of State
By Vicky V. Graenewald

L con 14100

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

Preliminary and Construction Engineering	$ 2,000 00
Upgrade Existing roundels from 8" diameter to 12" diameter (by railroad forces)	$ 19,110 00
Total Project Work	$ 21,110 00
Federal Aid Funjds @ 90% of $2,000 00	$ 1,800 00
Federal Aid Funds @ 94.3% of $19,110	$18,021 00
AZ Corp Comm. Funds @ 10% of $2,000 00	$ 200 00
AZ Corp Comm. Funds @ 5.7% of $19,110 00	$ 1,089 00
City of Peoria 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 federal funds.

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 City shall be obligated to incur and will be responsible for any overage.

2. The City shall acquire the necessary right of way for this project and hereby certifies that all necessary rights of way have been or will be acquired prior to advertisement for bid.

3. Once acquired, the City shall remove from the City right of way all unauthorized obstructions or unauthorized encroachments, 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 City shall not permit or allow any encroachments upon, or private use of, the City right of way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the City shall take the reasonably necessary steps to remove or prevent any such encroachment or use.

5. Upon completion of construction, the City shall provide (exclusive of maintenance by the Railroad Company of its facilities), 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 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.

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, nor for any resulting construction project The City, in regard to the City'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 City for the benefit of the State in no way acts as a waiver by the City 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 City and that the City hereby agrees to save and hold harmless and indemnify from loss to 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, 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 embraces; 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, Room 293E, Mail Drop 616E
Peoria, AZ 85007

City of Peoria
Public Works Director
8401 West Monroe Street
Peoria, AZ 85345

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 PEORIA

By_____
JOHN KEEGAN
Mayor

ATTEST:

By_____
JANICE GRAZIANO
City Clerk

STATE OF ARIZONA
Department of Transportation

By_____
CATHERINE J HEGEL
Contract Administrator

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TRACS No. STP SW VAR SR112 01C
Project No. RRP-STP-000-6(098)P
Agreement No. 1531-91-ATSF
EXHIBIT "B"
Sheet 4 of 5

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ATTACHMENT 2

JPA 00-24

RESOLUTION

BE IT RESOLVED on this 4th day of February 2000, 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 City of Peoria for the purpose of defining responsibilities for the acquisition of federal funds for the use and benefit of the City for the 75th and Olive Avenues @ BNSFRR.

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

DAVID R. ALLOCCO, P.E.
Assistant State Engineer
Engineering Technical Group

for MARY E. PETERS, Director

L CON 14100

City of Peoria

Office of the City Clerk

8401 West Monroe Street, Peoria, Arizona 85345
Phone: 623-773-7340 *Fax:* 623-773-7304

CERTIFICATION OF RECORDING OFFICER

I, Janice L. Graziano, the duly appointed, qualified, and acting City Clerk of the City of Peoria, Maricopa County, Arizona, do hereby certify the attached document, November 21, 2000 Regular Meeting Minutes was approved by the Mayor and Council at a City Council Regular Meeting held on December 12, 2000. I further certify that this is a true and exact copy of the original November 21, 2000 Regular Meeting Minutes document on file and of record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the Seal of said City of Peoria, Arizona this 18th day of December, 2000.

CITY OF PEORIA SEAL

Janice L. Graziano

Janice L. Graziano, CMC, City Clerk

CITY OF PEORIA, ARIZONA
COUNCIL CHAMBER
November 21, 2000

A **Regular Meeting** of the City Council of the City of Peoria, Arizona was convened at 8401 W. Monroe Street in open and public session at 7:05 p.m.

Following a moment of silence, Councilman LaRue led the Pledge of Allegiance.

Members Present: Vice Mayor Ken Forgia (Mayor Pro Tem); Councilmembers Patricia Dennis, Ella Makula, Michael Patino, Joe LaRue, and Carlo Leone

Members Absent: Mayor John Keegan was absent due to an illness.

Other Municipal Officials Present: Terrence Ellis, City Manager; Meredith Flinn, Deputy City Manager; Prisila Ferreira, Deputy City Manager; Steve Kemp, City Attorney; Janice L. Graziano, City Clerk; Donna Griffith, Deputy City Clerk; Grady Miller, Debra Stark, Kevin Kadlec, J.P. de la Montaigne, and John Wenderski

Audience: Approximately 15

Note: The order in which items appear in the minutes is not necessarily the order in which they were discussed in the meeting.

PRESENTATION: Dr. Bruce Merrill presented results of a Customer Satisfaction Survey conducted by his office in October 2000. Dr. Merrill's group interviewed 500 registered voters living in Peoria. The survey results showed that 92% are very satisfied living in Peoria. Dr. Merrill told Council that with the high percentage of satisfaction this was a tribute to Staff and the political leadership of the City.

***CONSENT AGENDA:** *All items listed with an asterisk (*) are considered to be routine by the City Council, and were enacted by one motion. There was no separate discussion of these items during this meeting.*

Mayor Pro Tem Forgia asked if any Councilmember wished to have an item removed from the Consent Agenda. A motion was made by Councilman LaRue to approve the Consent Agenda Items as submitted. The motion was seconded by Councilman Patino and, upon vote, carried unanimously.

***MINUTES:** Approved the minutes of a Special Meeting held on November 6, 2000.

***299-0C** **Intergovernmental Agreement, City of Phoenix**

Approved an Intergovernmental Agreement with the Public Transit Department, City of Phoenix, and the City of Peoria for the purchase and associated capital maintenance of three replacement Dial-A-Ride buses. (LCON14000)

***300-0C** **Intergovernmental Agreement, Burlington Northern & Santa Fe Railroad, 75th Av & Olive Av**

Approved an Intergovernmental Agreement between the City and the State of Arizona for the purpose of defining responsibilities for the acquisition of federal funds for the use and benefit of the City of Peoria for railroad improvements at 75th and Olive Avenues at the Burlington, Northern, and Santa Fe Railroad crossing. (Project P-0009) (LCON14100)

***301-0C** **Settlement, Injuries Sustained, 80th Avenue and Grant**

Authorized the City Attorney's Office to complete the necessary documents for the settlement and compromise for the total sum of $35,000, for the personal injury action filed on February 22, 2000 in Maricopa County Superior Court by Plaintiff Darel Childers for injuries sustained by Mr. Childers in an accident involving a City Sanitation truck at 80th Avenue and Grant on March 30, 1999. (LCON14200)

***302-0C** **Contract, Regional Public Transit Authority, Transit Service**

Approved a Transit Service Agreement with the Regional Public Transit Authority for Fiscal Year 99-00 and Fiscal Year 00-01. (LCON09892G & LCON09892H)

***303-0C** **Contract, Brown & Caldwell Consulting Engineers, Consulting Services**

Awarded a consulting service contract for an amount not to exceed $431,877 to Brown and Caldwell Consulting Engineers for design and bidding phase services for Phase One of a 10-Million Gallon Regional Hillside Reservoir and Williams Road Booster Station. (Project No. W-0008) (LCON13900)

***304-0C** **Contract, Burgess and Niple, Inc., ROW Study & Construction Estimate, 83rd Av & Pinnacle Peak**

Awarded a contract in an amount not to exceed $69,896 to Burgess and Niple, Inc. for the Right-of-Way Study and Construction Estimate for the unimproved streets Improvement District No. 0001 in the area of Pinnacle Peak and 83rd Avenue. (Project No. ID-0001) (LCON08100)

JPA 00-24

APPROVAL OF THE PEORIA CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the CITY OF PEORIA 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 November, 2000.

City Attorney

L CON 14100

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ. 85007-2926

JANET NAPOLITANO
ATTORNEY GENERAL

TRN Main: (602) 542-1680
Direct: (602) 542-8837
Fax: (602) 542-3646

MAIN PHONE: (602) 542-5025
FACSIMILE: (602) 542-4085

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR00-0132TRN, 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 February 3, 2001.

JANET NAPOLITANO
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/667136

Enc.