A. G. Contract No. KR03-1547-TRN
ADOT ECS File: JPA 03-016
Project No.: STP-000-6(169)A
TRACS: 0940 MA PEO SR189 01C
Section: 75th Avenue/Olive Avenue
BNSF AAR/DOT Nos. 025-408-U
& 025-409-B

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF PEORIA

THIS AGREEMENT is entered into March 17, 2004, 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 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 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 the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances.

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.

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.

NO. 26722
Filed with the Secretary of State
Date Filed: 03/17/04
Janice K. Brewer
Secretary of State
By: Linda Greenewald

L CON 01904

6. The work embraced in this agreement and the estimated cost is as follows: Upgrade Railroad Crossing (75th Avenue and Olive Avenue).

Furnish and Install Flashing Lights and Gates and Cantilevers (By railroad forces) Federal Aid Funds @ 100%	$148,983.00
Total Protection work	$148,983.00

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 Burlington Northern Santa Fe 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 referenced herein, unless and until so authorized in writing by the City and approved by FHWA.

2. The City shall acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired.

3. Once acquired, the City shall remove from the City 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 there from.

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

5. Upon completion of construction, the City shall provide like (exclusive of maintenance by the Railroad Company of its facilities), which may include, but is not 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, 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. The City shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State as an additional indemnitee in the City's contracts with its contractors. 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 to the extent permitted by law, 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, misrepresentation, directives, instruction 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, and 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, in the event that funds to match federal funds are not made available by FHWA, 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, if applicable.

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
(FAX: 602 712-7424)

Mr. Dan Nissen
Assistant City Engineer
City of Peoria
Peoria, Arizona 85345
8401 W. Monroe Street
(623) 773-7212

9. Non-Availability of Funds. Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event

this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

10. This agreement is subject to 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 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

11. In accordance with Arizona Revised Statutes Section 11-952, (D), 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 Bob Barrett

~~Mayor John C. Keegan~~ Vice Mayor

STATE OF ARIZONA
Department of Transportation

By Susan Tellez

SUSAN TELLEZ
Contract Administrator

ATTEST

By Mary Jo Kief

Mary Jo Kief, City Clerk

CITY OF PEORIA

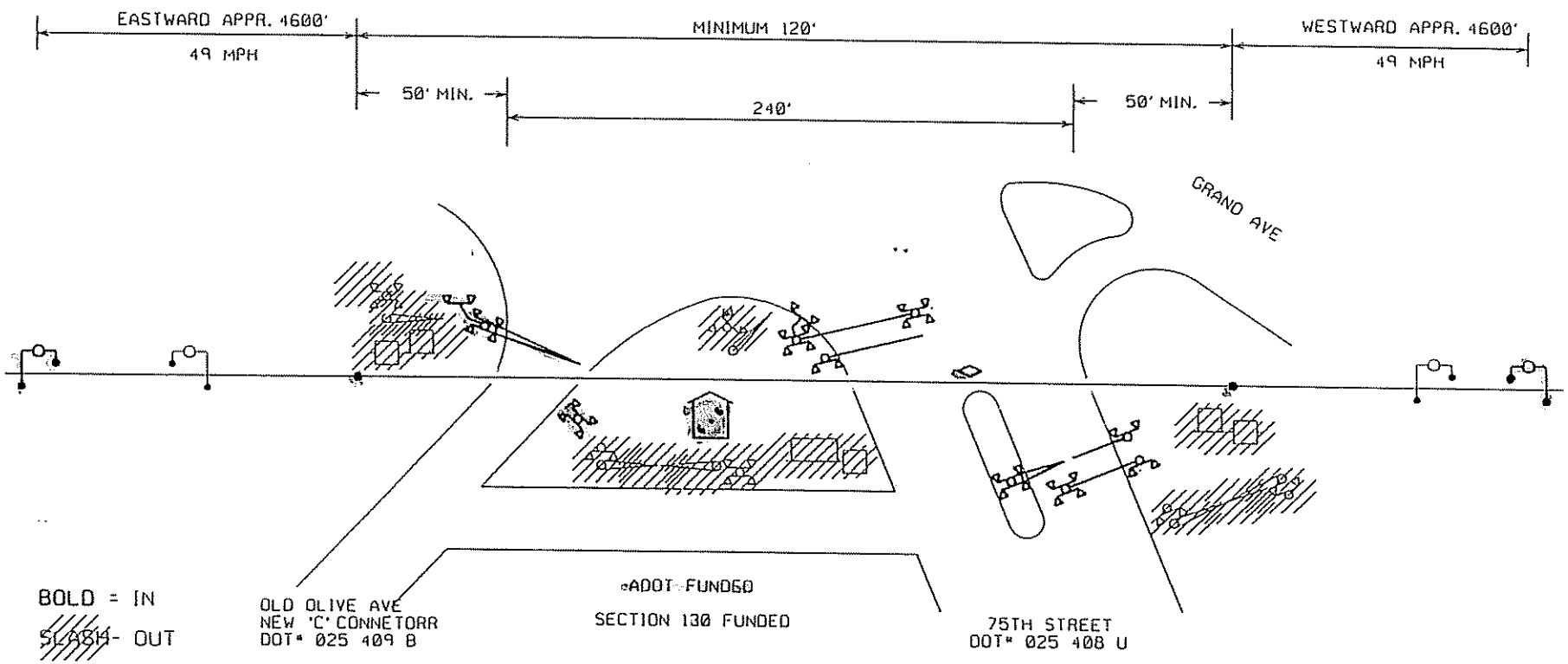
G:03-016-Peoria-U&RR
28Oct2003-apa
Revised-20Nov2003-lg
Revised-27Jan2004-lg

L CON 01904

TO: PHOENIX

The Burlington Northern & Santa Fe Railway Company

TO: ASH FORK



BOLD = IN

SLASH - OUT

SALVAGE: NONE

INSTALL: GATES, FLS, & CANTILEVERS

CONTROL DEVICES: CONSTANT WARNING

- INSTRUMENT HOUSE
- BELL
- METER
- CROSSING CONTROL CONNECTIONS
- UNIDIRECTIONAL CROSSING CONTROL
- BIDIRECTIONAL CROSSING CONTROL
- COUPLER OR TERMINATION
- GUARD RAIL

Warning device placement:
Clearance to C.L. Track = Min. 12', Max. 20'
Edge of Road to C.L. Foundation:
Min. 4'1" with curb.
Max. 8'1" without curb, Max. 12'
House Clearance: 25' Min. to C.L. of Track
30' Min. to Edge of Road
Front Lights: LED
Back and Side Lights: LED
Cantilever Jury Mast: LED

BNSF RAILWAY CO
ESTIMATE SKETCH

DIVISION: SOUTHWEST
SUBDIVISION: PHOENIX

L.S.: 7208 M.P.: 181.15

75TH & OLIVE AVE
GLENDALE, AZ.

DOT NO.: 025 408 U
NO SCALE

DOS: KANSAS CITY
MJ/TLP DATE: 12-10-02

FILE: 7208181_15.dgn

TRACS No. 0940 MA PEO SR189 01C
Project No. STP-000-6(169)P
Agreement No. 1531-91-ATSF
EXHIBIT "B"
Sheet 1 of 1

L CON 01904

City of Peoria
8401 West Monroe Street, Peoria, Arizona 85345

CERTIFICATION OF RECORDING OFFICER

I, Mary Jo Kief, the duly appointed, qualified, and acting City Clerk of the City of Peoria, Maricopa County, Arizona, do hereby certify that included below is an excerpt from the unofficial minutes of the City Council Meeting held on February 17, 2004 regarding Consent Agenda Item 64-4C, Contract, Arizona Department of Transportation, Railroad Improvements, 75th Av & Olive Av.

*CONSENT AGENDA

"Mayor Keegan asked if any Councilmember wished to have an item removed from the Consent Agenda. Mayor Keegan asked that Consent Item 61-4C be removed and carried over. A motion was made by Vice Mayor Barrett to approve the Consent Agenda Items as submitted with the exception of Item 61-4C. The motion was seconded by Councilman Leone and, upon vote, carried unanimously."

*64-4C Contract, Arizona Department of Transportation, Railroad Improvements, 75th Av & Olive Av

Approved an Intergovernmental Agreement with the Arizona Department of Transportation defining responsibilities for the acquisition of federal funds for the use and benefit of the City of Peoria for railroad improvements at 75th Avenue and Olive Avenue. (LCON01904)

I further certify the excerpt is a true and exact copy of the stated portion of the unofficial minutes as referenced above and that said unofficial minutes are on file in the Office of the City Clerk.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the Seal of said City of Peoria, Arizona this 20th day of February, 2004.

(SEAL)

Mary Jo Kief, City Clerk

JPA 03-016

APPROVAL OF THE CITY OF PEORIA, ARIZONA ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION 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. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 18th day of February, 2004.

Stephen D. Burg for
Stephen M. Kemp
City Attorney

L CON 01904

TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TRANSPORTATION SECTION
WRITER'S DIRECT NO: 602.542.8837

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR03-1547-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.

Date: 11 March 2004

Terry Goddard
ATTORNEY GENERAL

James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:780214

1275 WEST WASHINGTON, PHOENIX, ARIZONA 85007-2926 • PHONE 602.542.1680 • FAX 602.542.3646