A. G. Contract No.: KR05-0382TRN
ADOT ECS File No.: JPA 05-021
Project No.: STP-000-6(175)A
Project: Toole Ave./Euclid Ave.
AAR/DOT No.: 742-045-F
TRACS No.: SR195 01C
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF TUCSON

THIS AGREEMENT is entered into December 23, 2005, pursuant to Arizona Revised Statutes §§ 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 TUCSON, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes §§ 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 § 9-240 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 railroad crossing related appurtenances.

4. A 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 State and Federal Highway Administration ("FHWA") for their approval.

5. The 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. 27889
Filed with the Secretary of State
Date Filed: 12/23/05
Secretary of State
By:

EX 1 TO RESOLUTION NO. 20225
CITY OF TUCSON CONTRACT NO. 0127-06

6. The work encompassed in this Agreement is to upgrade railroad crossing by furnishing and installing a concrete crossing surface (by railroad forces) at the intersection of Toole Ave./Euclid Ave. and the railroad tracks. The estimated cost is as follows:

Furnish and Install Concrete Crossing Surface (by railroad forces)	
Federal Aid Funds @ 100%	$134,849.00
Total Cost of the project	**$134,849.00**

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

b. If such project is approved for construction by FHWA and the funds are available for construction of the project, with the aid and consent of FHWA, authorize the Union Pacific Railroad Co. (UP) to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

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, on behalf of the City, 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:

a. Acquire without cost to the State, any necessary right-of-way for this project and hereby certifies that all necessary rights-of-way have been or will be acquired.

b. Once acquired, 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 therefrom.

c. Agree not to 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; 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.

d. Upon completion of construction, be responsible to 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 is not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

e. Be responsible to 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.

f. By such regulation as it may by ordinance provide, be responsible to 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, or for any resulting construction project. 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. 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 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 § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. 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".

8. Non-Availability of Funds. Every payment obligation of the State under this Agreement 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 Agreement, this Agreement 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.

9. 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 § 12-1518.

10. 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 S. 17th Avenue - 616E
Phoenix, AZ 85007
FAX: (602) 712 7424

City of Tucson
ATTN: Department of Transportation - Engineering Division
P.O. Box 27210
Tucson, AZ 85726-7210

11. Pursuant to Arizona Revised Statutes § 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 TUCSON

By _____
BOB WALKUP
Mayor

STATE OF ARIZONA
Department of Transportation

By _____
SUSAN TELLEZ
Contract Administrator

ATTEST

By _____
KATHLEEN DETRICK
City Clerk

G: 05-021-Tucson-RR
16/30Mar2005-IH

JPA 05 - 021

APPROVAL OF THE CITY OF TUCSON ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF TUCSON, an agreement among public agencies which, has been reviewed pursuant to A.R.S. §§ 11-951 through 11-954 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 19 day of Oct, 2005.

City Attorney

ADOPTED BY THE
MAYOR AND COUNCIL

November 22, 2005

RESOLUTION NO. 20225

RELATING TO INTERGOVERNMENTAL AGREEMENTS; AUTHORIZING AND APPROVING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TUCSON AND THE STATE OF ARIZONA THROUGH ITS DEPARTMENT OF TRANSPORTATION (ADOT) FOR THE INSTALLATION OF A NEW CONCRETE SURFACE AT THE EXISTING UNION PACIFIC RAILROAD (UPRR) CROSSING AT TOOLE AVENUE/EUCLID AVENUE/16TH STREET; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Intergovernmental Agreement between the City of Tucson and the State of Arizona through its Department of Transportation (ADOT) for the installation of a new concrete surface at the existing Union Pacific Railroad (UPRR) crossing at Toole Avenue/Euclid Avenue/16th Street, attached hereto as Exhibit "1", is approved.

SECTION 2. The Mayor is authorized and directed to execute the Intergovernmental Agreement on behalf of the City of Tucson, and the City Clerk is authorized and directed to attest the same.

SECTION 3. The various city officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

SECTION 4. WHEREAS, it is necessary for the preservation for the peace, health and safety of the City of Tucson that this resolution become immediately effective, an emergency is hereby declared to exist, and this resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, November 22, 2005.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED BY:

CITY MANAGER

EU/tme
10/19/2005 2:04 PM

TERRY GODDARD
Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
Writer's Direct Line:
602.542.8855
Facsimile: 602.542.3646
E-mail: Susan Davis@azag.gov

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR05-0382TRN (**JPA 05-021**), an Agreement between public agencies, i.e., The State of Arizona and The City of Tucson, 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: December 14, 2005

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:938837
Attachment