ADOT JPA File No.: 05-070
AG Contract No.: KR05-0933TRN
Project No.: STP-000-6 (184) A
Project: Concrete Surface
TRACS No.: SR200 01C
Section: B19-B, MP 48.11
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF SAHUARITA

THIS AGREEMENT is entered into this date November 10, 2005, pursuant to the 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 TOWN OF SAHUARITA, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statues § 28-401and § 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 Town is empowered by Arizona Revised Statues § 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. 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 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 State and Federal Highway Administration ("FHWA") for their 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 Town by reason of Federal Law and regulations under which funds for the project are authorized to be expended.

NO. 27829
Filed with the Secretary of State
Date Filed: 11-10-05
Janice K. Brewer
Secretary of State
By:

6. The work encompassed in this Agreement is to upgrade the railroad crossing (AAR/DOT No. 742-123K), by installing a concrete crossing surface (by railroad forces) at B-19, Milepost (MP) 48.11, hereinafter referred to as the "Project". The estimated cost of the Project is as follows:

Furnish and Install concrete crossing surface (by railroad forces)	
Federal Aid Funds @ 100%	$87,907.00
Total Cost of the Project	***$87,907.00***

THEREFORE, in consideration of the mutual Agreements expressed herein, this Agreement is amended 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, the State with the aid and consent of FHWA will authorize the Union Pacific Railroad Company 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 Work called for in this Agreement, the State shall not be obligated to incur any expenditure, on behalf of the Town, in excess of the amount referenced herein, unless and until so authorized in writing by the Town and approved by the FHWA.

2. The Town shall:

a. Acquire 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 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 there from.

c. Agree not to permit or allow any encroachments, except those authorized by permit, upon, or private use of, the Town's 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.

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 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 benefit of 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 or the improvements contemplating, 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 to the extent permitted by law, 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, 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 Town, any of its agents, officers and employees, or any of its independent contractors. Cost 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 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 FHWA, 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, if applicable.

3. This Agreement shall remain in full 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, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7524
(602) 712-7424 (FAX)

Town of Sahuarita
Attn: Town Engineer
P.O. Box 879
Sahuarita, Arizona 85629
(520) 648-1972
(520) 648-1404 (FAX)

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 law of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITHNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TOWN OF SAHUARITA

By _____
CHARLES E. OLDHAM
Mayor

ATTEST:

By _____
SANDRA OLIVAS
Town Clerk

STATE OF ARIZONA
Department of Transportation

By _____
SUSAN TELLEZ
Contract Administrator

G:05-070-Sahurita-Railroad Crossings-B19-DRAFT-14Aug2005-slc

JPA 05-070

APPROVAL OF THE TOWN OF SAHUARITA

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF SAHUARITA, 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 TOWN 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 10 day of OCTOBER, 2005.

Town Attorney

SAHUARITA RESOLUTION NO. 2005-101

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF SAHUARITA, ARIZONA, AUTHORIZING THE TOWN TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION, TO SECURE GRANT FUNDING FOR THE UPGRADE OF THE RAILROAD CROSSING AT SAHUARITA ROAD.

WHEREAS, the staffs of the Town and the Arizona Department of Transportation (ADOT) have developed an Intergovernmental Agreement for Improvements on the Railroad Crossing at Sahuarita Road, which is attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, A.R.S. § 48-572 grants the Town the authority to enter into intergovernmental agreements; and

WHEREAS, the Mayor and Council have determined that approval of the Intergovernmental Agreement is in the best interest of the Town and its residents.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Sahuarita, Arizona, as follows:

Section 1. The Town is hereby authorized to enter into the Intergovernmental Agreement between the State of Arizona Department of Transportation and the Town of Sahuarita for Improvements on the Railroad Crossing at Sahuarita Road, attached hereto Exhibit "A" and incorporated herein by this reference.

Section 2. The Mayor of the Town of Sahuarita is hereby authorized to execute said intergovernmental agreement.

Section 3. The Town staff is hereby authorized to take all steps necessary to implement said intergovernmental agreement and give it effect.

Section 4. That all orders or resolutions in conflict be and the same are, to the extent of such conflict, hereby repealed, and that this resolution be in full force and effect immediately upon its adoption.

COPY

PASSED AND ADOPTED by the Mayor and Council of the Town of Sahuarita, Arizona, this 10th day of October, 2005.

Mayor Charles E. Oldham

ATTEST:

Sandra R. Olivas, CMC
Town Clerk

APPROVED AS TO FORM:

Daniel J. Hochuli
as Town Attorney
and not personally

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. KR05-0933TRN (**JPA 05-070**), an Agreement between public agencies, i.e., The State of Arizona and The Town of Sahuarita, 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: November 3, 2005

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:932971
Attachment