

RESOLUTION NO. 08-20

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, APPROVING AND ADOPTING THE INTERGOVERNMENTAL AGREEMENT BETWEEN PINAL COUNTY, CITY OF MARICOPA, CITY OF CASA GRANDE AND CITY OF ELOY TO IMPLEMENT THE CONSTRUCTION AND FUNDING OF GRADE SEPARATIONS.

WHEREAS, pursuant to A.R.S. §11-952, et seq., Pinal County, City of Maricopa, City of Casa Grande and City of Eloy have agreed enter into an Intergovernmental Agreement in the form which is attached to this Resolution and by this reference made a part hereof; and

WHEREAS, the City Council acknowledges that transportation is an important pillar to assist the City with development and assist residents with their daily activities; and

WHEREAS, each of the parties to the Intergovernmental Agreement has statutory authority to construct and improve roadways within its jurisdiction; and

WHEREAS, grade separated railroad/roadway crossings are highway improvements which significantly enhance public safety and welfare; and

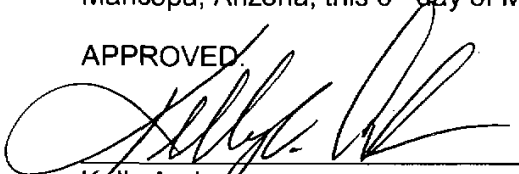
WHEREAS, the City of Maricopa believes that it is in the best interest of the City to enter into this Intergovernmental Agreement in order to implement the construction and funding of grade separations.

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

The City of Maricopa by the requisite vote of its City Council hereby approves and adopts, and authorizes and instructs its Mayor on behalf of the City of Maricopa to enter into the Intergovernmental Agreement with Pinal County, City of Casa Grande and City of Eloy in the form attached to and made a part of this Resolution.

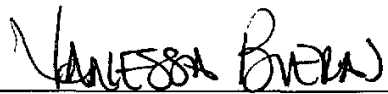
PASSED AND ADOPTED by the Mayor and City Council of the City of Maricopa, Arizona, this 6th day of May, 2008.

APPROVED:



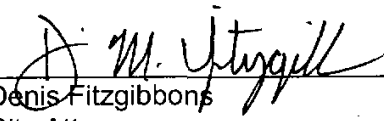
Kelly Anderson
Mayor

ATTEST:



Vanessa Bueras, CMC
City Clerk

APPROVED AS TO FORM:



Denis Fitzgibbons
City Attorney

INTERGOVERNMENTAL AGREEMENT

BETWEEN

PINAL COUNTY, CITY OF MARICOPA, CITY OF CASA GRANDE AND THE CITY OF ELOY TO IMPLEMENT AGREEMENT FOR CONSTRUCTION AND FUNDING OF GRADE SEPARATIONS

This Agreement is made and entered into this 6TH day of MAY, 2008, between Pinal County, a political subdivision of the State of Arizona ("Pinal"), the City of Maricopa, a municipal corporation of the State of Arizona ("Maricopa"), the City of Casa Grande, a municipal corporation of the State of Arizona ("Casa Grande") and the City of Eloy, a municipal corporation of the State of Arizona ("Eloy").

RECITALS

- A. Each of the parties hereto is authorized to enter into intergovernmental agreements for joint or cooperative action pursuant to A.R.S. § 11-952 et seq., and each of the parties have by resolution of their governing bodies resolved to enter into this intergovernmental agreement. Copies of said resolutions are attached hereto as Exhibits A through D.
- B. Each of the parties hereto is authorized to construct and improve roadways within its jurisdiction. Pinal's statutory authority is set forth in A.R.S. § 11-251 and 28-6701 et seq., and the municipal entities' statutory authority is set forth in A.R.S. §§ 9-240, 9-276 and 9-499.01.
- C. Grade separated railroad/roadway crossings are highway improvements which significantly enhance public safety and welfare and greatly benefit the citizens of each of the parties to the agreement.
- D. The Union Pacific Railroad ("UPRR") and each of the parties hereto have agreed to and have executed an Agreement for Construction and Funding of Grade Separations, a fully executed copy of which is attached hereto as Exhibit E (hereinafter referred to as the "Master UPRR Agreement.")
- E. The Agreement for Construction and Funding of Grade Separations provides in part that UPRR shall contribute up to Thirty-five Million Dollars (\$35,000,000.00) as its maximum contribution for the construction of four grade separated crossings. The Agreement also provides that the identity of and the amount of the contribution to be applied to any specific grade separated crossing shall be determined by the parties hereto.
- F. This intergovernmental agreement defines the responsibilities of the parties hereto concerning implementation of the Agreement for Construction and Funding of Grade Separations.

- G. Twenty-seven (27) at grade crossings have been identified within Pinal and are listed in Exhibit F attached hereto and incorporated herein. Exhibit F also sets forth the jurisdiction in which each of these grade separated crossings is located.

AGREEMENT

ADMINISTRATION

1. Pinal shall establish an agency account to be used exclusively for the purposes of this agreement. Pinal shall act as agent, in a purely custodial capacity, for the distribution of funds deposited into said agency account. Disbursements from this account shall require written notification and authorization from the Assistant County Manager of the Pinal County Development Services Department to the Pinal County Finance Department.

INITIAL UPRR CONTRIBUTION

2. Within one year following the date of execution of the Master UPRR Agreement, UPRR shall pay Three Million Dollars (\$3,000,000.00) to Pinal which contribution shall be immediately disbursed by Pinal in equal amounts of One Million Five Hundred Thousand Dollars (\$1,500,000.00) to Maricopa and Casa Grande to be used by Maricopa and Casa Grande exclusively for design, engineering and administrative costs for grade separated crossings.

CONTRIBUTION CALCULATION

3. UPRR's remaining contribution after reduction by the amounts set forth in paragraph (2) shall be apportioned based upon the following calculation:

$$\frac{\$32,000,000 \text{ (remaining contribution)}}{27 \text{ (total grade crossing in Pinal)}} = \$1,185,185 \text{ per grade crossing (hereinafter referred as the contribution factor)}$$

APPORTIONMENT OF REMAINING \$32,000,000 UPRR CONTRIBUTION

4. a. Sixteen Million Dollars (\$16,000,000.00) shall be paid by UPRR to Pinal within thirty (30) days after notification from Pinal that one or more of the parties hereto has executed a construction contract for the first grade separated crossing.
4. b. The contribution in the amount of Sixteen Million Dollars (\$16,000,000.00) referenced above in paragraph 4(a) shall be disbursed by Pinal to Maricopa and Casa Grande respectively in amounts determined by multiplying the contribution factor (\$1,185,185.00) by the total number of at grade crossings in Maricopa and Casa Grande at the time of distribution. At the time of execution of this Agreement, that distribution would be as set forth below:
 - i. $8 \times \$1,185,185.00 = \$9,481,480.00$ to Casa Grande;
 - ii. $4 \times \$1,185,185.00 = \$4,740,740.00$ to Maricopa; and

- iii. \$1,777,780.00 to be held in trust by in the Pinal agency account for future distribution.
5. The remaining Sixteen Million Dollar (\$16,000,000.00) contribution shall be paid by UPRR to Pinal within thirty (30) days of notification by Pinal of execution of a *construction contract for a second qualified grade separated crossing*. Pinal shall distribute to the parties this second contribution by multiplying the contribution factor by the remaining at grade crossings within the jurisdiction of each of the parties at the time of distribution. At the time of execution of this Agreement, those amounts would be as set forth below:
 - i. $7 \times \$1,185,185.00 = \$8,296,295.00$ to Eloy; and
 - ii. $8 \times \$1,185,185.00 = \$9,481,480$ to Pinal, which includes the amounts held in trust from Paragraph 4 above.

Any interest that has accrued in the agency account shall be distributed equally among the entities receiving any portion of the second sixteen million dollar distribution.

6. a. Upon annexation by a municipality of any area including an at grade crossing, except those vested pursuant to Paragraph 6(b), the crossing area so annexed shall be considered to be a crossing within the jurisdiction of the annexing party for purposes of this agreement, including the distribution provisions of Paragraphs 4 and 5 above. Subject to Paragraph 6(b), to the extent Pinal has previously received all or part of a distribution for a crossing that is later annexed, Pinal shall pay the contribution factor for each crossing annexed to the jurisdiction annexing a crossing during the term of this Agreement. Such payment shall occur as promptly as possible, but shall be paid no later than December 31 of the fiscal year following the date of annexation.
6. b. Notwithstanding the provisions of Paragraph 6(a) above, if Pinal has expended funds in furtherance of a substantial effort toward: (1) the closing of an at grade crossing, or (2) the design, construction or both of a Grade Separated crossing either within or outside the planning area of another party to this Agreement, one-third (1/3) of Pinal's total distribution shall immediately vest for each such closing or Grade Separation.
7. Casa Grande and Maricopa shall each identify in writing to Pinal and Eloy one grade separation crossing within their respective jurisdictions for which they shall commence engineering and design within twelve months of the date of execution of this agreement. Any change in the identification of the grade separated crossings referenced above shall be promptly given, in writing, to Pinal and Eloy.
8. Pursuant to the Master UPRR Agreement, the parties to this agreement are required to begin construction of the first qualifying Grade Separated Crossing within ten (10) years of execution of that Agreement. By executing this Agreement, each party agrees to work with the other jurisdictions to ensure that construction of such a Grade Separated Crossing may be commenced within that time, but no party shall be deemed individually responsible or required to commence work on such a crossing.

9. Pursuant to the Master UPRR Agreement, the parties to this agreement are required to begin construction of at least three grade separated crossings within twenty-five (25) years of execution of that Agreement. By executing this Agreement, each party agrees to work with the other jurisdictions to ensure that construction of such Grade Separated Crossings may be commenced within that time, but no party shall be deemed individually responsible or required to commence work on such crossings.
10. For purposes of this Agreement, it is agreed that commencement of construction means that a grade separated construction project has been bid and construction contract has been awarded.
11. Each of the parties hereto (Pinal, Maricopa, Casa Grande and Eloy), within ten (10) years of execution of this agreement, shall identify one grade separated crossing to be considered for construction hereunder, and one at grade crossing to be closed within its jurisdiction. The parties shall notify UPRR and the remaining parties of any changes to these identified crossings. Each of the parties hereto shall, within twenty-five years after execution of the Master UPRR Agreement, close at least one at-grade crossing within its jurisdiction.

For purposes of this Paragraph and the parties' obligation to close an at-grade crossing, if Pinal closes an at-grade crossing while under its primary jurisdictional control and such crossing is later annexed by a municipality, Pinal, and not the annexing municipality, shall be credited with the closing of the crossing.

12. If there is no reasonable possibility of construction of at least three grade separated crossings within twenty-five (25) years after execution of the Master UPRR Agreement, that Agreement provides that UPRR shall be entitled to a refund of any remaining funds previously contributed by UPRR. The parties agree that for purposes of such refund, any party that has not constructed a Grade-Separated Crossing, and only parties that have not constructed a Grade-Separated Crossing, shall be liable for any refund under the UPRR Master Agreement.
13. The portion of the contribution assigned to Pinal in 5.b. above will not be subject to the expenditure limits for counties until those funds have been distributed from the agency account to another Pinal account (capital or special revenue account), according to the contribution schedule in this agreement. Until said distribution occurs, all such amounts will be held in the Pinal agency account, in a custodial capacity for UPRR, in accordance with the terms of the Master agreement.

MISCELLANEOUS PROVISIONS

14. The foregoing recitals are hereby incorporated into this Agreement by referenced as if more fully stated herein.

15. This Agreement shall become effective upon filing with the Office of the Pinal County Recorder.
16. This Agreement may be canceled for conflict of interest without further obligation or penalty in accordance with A.R.S. § 38-511.
17. All notices or demands required under this agreement from either party to the other shall be in writing and shall be deemed to have been given when the notice is delivered in person or deposited in a U.S. Mailbox in a postage prepaid envelope addressed as follows:

Clerk, Pinal County Board of Supervisors
 Post Office Box 827
 Florence, AZ 85232

City Manager, City of Casa Grande
 510 E. Florence Boulevard
 Casa Grande, AZ 85222

City Manager, City of Eloy
 628 North Main Street
 Eloy, AZ 85231

City Manager, City of Maricopa
 P.O. Box 610
 Maricopa, AZ 85239

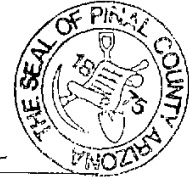
or to such other addresses as any party hereto may from time to time designate in writing and deliver in a like manner.

18. The failure to exercise any right, power or privilege under this Agreement shall not operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of that or any right, power or privilege. The acceptance by any party of sums less than may be due and owing to it at any time shall not be construed as an accord and satisfaction.
19. Nothing in this Agreement shall be construed as either limiting or extending the lawful jurisdiction of either party hereto other than as expressly set for herein.
20. This Agreement contains the entire agreement between the parties, and no statements, promises or inducements made by any of the parties, their agents or employees that are not contained herein shall be valid or binding. This Agreement may not be altered except in writing and signed by each of the parties hereto.
21. This Agreement shall remain in force and effect until the earlier of (i) completion of all required closing and construction of grade crossings and the distribution of funds related thereto, (ii) termination of the UPRR Master Agreement, or (iii) termination of this Agreement pursuant to its terms.

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

City of Eloy, Municipal Corporation
of the State of Arizona

Pinal County, a political subdivision
of the State of Arizona



By: _____
Mayor

By: David Snide
Chairman of the Board of Supervisors

Date: _____

Date: 5-14-08

Attest:

Attest:

By: _____

By: Shirley Clegg

Approved as to form:

Approved as to form:

By: _____
City Attorney

By: [Signature]
County Attorney

City of Casa Grande, Municipal Corporation
of the State of Arizona

City of Maricopa, Municipal Corporation
of the State of Arizona

By: _____
City Mayor

By: _____
City Mayor

Date: _____

Date: _____

Attest:

Attest:

By: _____

By: _____

Approved as to form:

Approved as to form:

By: _____
City Attorney

By: _____
City Attorney

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

City of Eloy, Municipal Corporation
of the State of Arizona

Pinal County, a political subdivision
of the State of Arizona

By: _____
Mayor

By: _____
Chairman of the Board of Supervisors

Date: _____

Date: _____

Attest:

Attest:

By: _____
City Clerk

By: _____

Approved as to form:

Approved as to form:

By: _____
City Attorney

By: _____
County Attorney

City of Casa Grande, Municipal Corporation
of the State of Arizona

City of Maricopa, Municipal Corporation
of the State of Arizona

By: _____
City Mayor

By: _____
City Mayor

Date: _____
City Clerk

Date: 5-14-2008
City Clerk

Attest:

Attest:

By: _____

By: Vanessa Burns

Approved as to form:

Approved as to form:

By: _____
City Attorney

By: _____
City Attorney

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

City of Eloy, Municipal Corporation
of the State of Arizona

By: [Signature]
Mayor

Date: 5/13/08

Attest:

By: [Signature]

Approved as to form:

By: [Signature]
City Attorney

Pinal County, a political subdivision
of the State of Arizona

By: _____
Chairman of the Board of Supervisors

Date: _____

Attest:

By: _____

Approved as to form:

By: _____
County Attorney

City of Casa Grande, Municipal Corporation
of the State of Arizona

By: _____
City Mayor

Date: _____

Attest:

By: _____

Approved as to form:

By: _____
City Attorney

City of Maricopa, Municipal Corporation
of the State of Arizona

By: _____
City Mayor

Date: _____

Attest:

By: _____

Approved as to form:

By: _____
City Attorney

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

City of Eloy, Municipal Corporation
of the State of Arizona

Pinal County, a political subdivision
of the State of Arizona

By: _____
Mayor

By: _____
Chairman of the Board of Supervisors

Date: _____

Date: _____

Attest:

Attest:

By: _____

By: _____

Approved as to form:

Approved as to form:

By: _____
City Attorney

By: _____
County Attorney

City of Casa Grande, Municipal Corporation
of the State of Arizona

City of Maricopa, Municipal Corporation
of the State of Arizona

By: Robert Johnson
City Mayor

By: _____
City Mayor

Date: 10/13/08

Date: _____

Attest:

Attest:

By: Dona Ly

By: _____

Approved as to form:

Approved as to form:

By: Brett Walsh
City Attorney

By: _____
City Attorney

