A.G. CONTRACT NO. KR-88-0165-TRD

ECS FILE: IGA-87-58

PROJECT: M-951-5-402PE, -502C
SECTION: U.S. 89A at Milton Road

AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
WOODLANDS VILLAGE

THIS AGREEMENT entered into this 22nd day of March, 1988, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter called "State", and First State Service Corporation, an Arizona Corporation as successor in interest to WOODLANDS VILLAGE, hereinafter called "Woodlands Village";

WHEREAS, State is empowered by Sections 28-108 and 28-1865 Arizona Revised Statutes 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 the Director of the Arizona Department of Transportation has delegated to the undersigned the authority to execute same on behalf of State; and

WHEREAS, Woodlands Village desires to enter into this agreement and has, by its letter of authority, 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 same on behalf of Woodlands Village; and

WHEREAS, State seeks to improve the safety of the public traveling the state roadway system and desires to improve the I-17 ramp configuration at its intersection with U.S. 89A; and

WHEREAS, Woodlands Village desires to provide access to the proposed development of Woodlands Village off a realigned U.S. 89A from 494 feet north of its intersection with Lake Mary Road to a relocated intersection with Milton Road; and

WHEREAS, State agrees to construct a realigned section of U.S. 89A from 494 feet north of its intersection with Lake Mary Road to a relocated intersection with Milton Road, to construct new ramps for Interstate 17 at the intersection of U.S. 89A and I-17, and to construct sewer and water improvements to facilitate the orderly development of the roadway improvements; and

WHEREAS, the total cost to construct said improvements is estimated to be TWO MILLION SEVENTY-FIVE THOUSAND NINE HUNDRED SIXTY-FOUR DOLLARS ($2,075,964) and State and Woodlands Village agree to share in the cost of the project as set forth below:

1. State and Woodlands Village shall contribute agreed upon proportionate amounts for the construction of a realigned section of U.S. 89A from 494 feet north of its intersection with Lake Mary Road to its relocated intersection with Milton Road and for the construction of I-17 ramps at the intersection of U.S. 89A and I-17. State shall contribute 35.09% of these project costs; said costs estimated to be $657,034. Woodlands Village shall contribute 49.12% of these costs; said costs estimated to be $919,736. The City of Flagstaff shall contribute the remaining 15.79% of these project costs; said costs estimated to be $295,656. Estimates include five percent for construction contingency.

2. State and Woodlands Village shall contribute agreed upon proportionate amounts for the construction of signal improvements at the intersection of Forest Meadows Drive and Milton Road. State shall contribute 50% of these costs; said costs estimated to be $59,769. Woodlands Village shall contribute 50.00% of these costs; said costs estimated to be $59,769. Estimates include five percent for construction contingency.

3. State, City and Woodlands Village shall contribute agreed upon proportionate amounts for the construction of signal improvements at the intersection of Beulah Boulevard with Highlands Avenue and McConnell Circle. State shall contribute 35.09% of these costs; said costs estimated to be $29,476. Woodlands Village shall contribute 49.12% of these costs; said costs estimated to be $41,260. The City of Flagstaff shall contribute the remaining 15.79% of these costs; said costs estimated to be $13,264. Estimates include five percent for construction contingency.

4. Both parties to this agreement concur that State shall award a construction contract in accordance with standard State procedures should the actual lowest responsive construction bid not exceed the estimated construction costs plus seven percent.

5. In the event that actual construction bids exceed the estimated construction costs by seven percent thereby increasing the agreed upon monetary contribution for either party to this agreement, both parties to this agreement shall concurrently review the bids received to determine if a construction contract shall be awarded and agree upon responsibility for the increased project costs. Upon concurrence of the parties to award a contract for the increased contract amount, the proportionate costs listed herein for construction of the improvements shall be amended to reflect new agreed upon monetary contributions to the project cost. This Agreement shall be amended to reflect the agreed upon monetary contributions prior to commencement of construction.

THEREFORE, the parties hereto agree as follows:

STATE SHALL:

1. Be responsible for the preparation of plans for all project improvements.

2. Review and approve plans prepared by Woodlands Village for improvements for a realigned section of U.S. 89A from 494 feet north of its intersection with Lake Mary Road to a relocated intersection with Milton Road, for new ramps for Interstate 17 at the intersection of U.S. 89A and I-17 and for new sewer and water improvements along the realigned section of U.S. 89A.

3. Acquire all rights-of-way for the project.

4. Prepare bid-ready documents for the project, delineating construction quantities for the purpose of determining the associated costs for the water and sewer improvements on the Johnson property (for the purpose of a recapture agreement among Woodlands Village and the City of Flagstaff), for the water and sewer improvements on the Woodlands Village property associated with the U.S. 89A roadway improvements, and for the remaining project improvements.

5. Immediately after a construction contract is awarded, proceed with the construction of the project.

6. Contract for construction of all improvements, supervise construction, make all payments to the contractor, and approve and accept the new facilities.

7. Within 10 days of receipt of the monthly pay estimate from the construction contractor, submit to Woodlands Village an itemized bill for their proportionate costs and a copy of the contractor's monthly pay estimate.

8. Upon completion of construction, recommend through the District Engineer to the Arizona Transportation Board that all right-of-way no longer needed for highway purposes inside the boundaries of the project be abandoned and revert to the underlying fee holders, as provided in the vesting instruments.

WOODLANDS VILLAGE SHALL:

1. Prepare plans and special provisions for improvements for the realigned section of U.S. 89A from 494 feet north of its intersection with Lake Mary Road to a relocated intersection with Milton Road, for new ramps for Interstate 17 at the intersection of U.S. 89A and I-17 and for new sewer and water improvements along the realigned section of U.S. 89A.

2. Provide necessary right-of-way and easements for construction of improvements on Woodlands Village property at no cost to State.

3. Upon approval of the plans and special provisions by the State, deposit with State, an irrevocable letter of credit in a form acceptable to State in the amount of ONE MILLION TWENTY THOUSAND SEVEN HUNDRED SIXTY-FIVE DOLLARS ($1,020,765) which is equal to Woodlands Village's estimated total contribution for the construction of said improvements plus five percent for construction contingencies.

4. Upon award of a construction contract, amend the letter of credit to conform to Woodlands Village's proportionate amount of the successful bidder's estimated cost of construction.

5. During construction, deposit on a monthly basis an amount of money for payment to the contractor equal to the monthly pay estimate prepared by the State for the amount of proportionate construction costs assigned to Woodlands Village as outlined above. Said deposit shall be made by Woodlands Village within ten days after receipt of monthly pay estimate and bill from State.

7. In addition to all costs as heretofore mentioned, pay the specified proportionate amount of all reasonable costs related to construction change orders, delays, or valid claims for extra compensation made by the contractor. Except in case of extreme emergencies where construction delays would lead to claims for extra compensation, Woodlands Village will be given 24 hours notice prior to execution of any construction change orders.

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

If payment by Woodlands Village is not made within 20 days following delivery of a copy of the monthly pay estimate to Woodlands Village, State may draw the delinquent monthly pay estimate amount from the letter of credit deposited by Woodlands Village.

THIS AGREEMENT shall remain in full force and effect until completion of said construction project as aforesaid; provided, however, that this agreement may be canceled at any time prior to the commencement of the construction upon 30 days' written notice to the other party.

THIS AGREEMENT shall become effective the day and year first above written, upon execution by both parties hereto.

Both parties hereto acknowledge that this agreement is subject to cancellation by the Governor pursuant to the provisions of Section 38-511 Arizona Revised Statutes.

Both parties further recognize that the provisions of Arizona Revised Statutes 35-214 are applicable to this contract.

Attached hereto and incorporated herein by reference is a copy of State's Resolution authorizing entry into this agreement, and a copy of Woodlands Village's letter of authority signed by its designated representatives authorizing entry into this agreement and stating that said agreement is in proper form.

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

First State Service Corporation
an Arizona Corporation as
successor in interest to
WOODLANDS VILLAGE

BY: _____

TITLE: Pres

STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION

BY: _____
W. O. Ford
State Engineer

ATTEST: _____

PROJECT: M-951-5-402PE, -502C

SECTION: U.S. 89A at Milton Road

RESOLUTION

BE IT RESOLVED on this 25th day of September, 1987, that I, CHARLES L. MILLER, as Director, 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 Highways Division, enter into an Agreement with Woodlands Village for construction of a realigned section of U.S. 89A from its intersection with I-40 to a relocated intersection with Milton Road, for construction of new ramps at the intersection of I-40 and I-17, and for construction of sewer and water improvements to facilitate the orderly development of the roadway improvements.

THEREFORE, authorization is hereby given to draft said Agreement which, upon completion, shall be submitted for approval and execution by the State Engineer.

Charles L. Miller

Charles Miller, Director
Arizona Department of Transportation