A. G. Contract No. KR91-0879-TRD
ECS File: JPA 91-11
Project: H 0875 02D/H 0875 02C
Section: Red Mountain Freeway
(Pima Freeway-
McKellips Road)

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF MESA

THIS AGREEMENT is entered into 13 October, 1994, 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 MESA, acting by and through its CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 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 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 and City Charter Article I, Section 103 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. The City requests, and the State agrees to, the early staged construction of the Red Mountain Freeway (SR 202L), the "Freeway", from the Pima Freeway (SR 101L), to McKellips Road.

4. It is the objective of the parties that the State complete an interim freeway connection at the same time as the programmed completion of the Salt River Viaduct project, (anticipated to be completed by April 30, 1995) from SR 101L to Dobson Road, including access ramps to and from Dobson Road as shown on Exhibit "A", attached hereto and made a part hereof, herein referred to as Project "A".

NO. 19041
FILED WITH SECRETARY OF STATE
Date Filed 10/13/94
Richard Mahoney
Secretary of State
By Vicky Greenwood

5. It is also the objective of the parties that the State complete by July 31, 1997 the ultimate Freeway facility from SR 101L to McKellips Road including a full interchange at both Dobson and Alma School Roads and temporary connector ramps to and from McKellips, as shown on Exhibit "B", attached hereto and made a part hereof, herein referred to as Project "B".

6. The City also requests and the State agrees, to constructing permanent collector-distributor roads between Alma School Road and McKellips Road pending the approval of MAG and/or the securing of a funding source. The State can design and construct the collector-distributor roads only after a funding source is identified.

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

II. SCOPE OF WORK

1. The State has:

a. Advanced construction of Project "A" to the State's fiscal year (FY) 1995. As soon as the Red Mountain Salt River Viaduct is open (scheduled for spring 1995), a two lane ramp access will also be open from SR 202L at the Red Mountain T.I. to Dobson Road.

b. Advanced construction of Project "B" to the State's FY 1996. Project "B" shall include the construction of the ultimate Freeway facility from SR 101L to McKellips Road including a full interchange at both Dobson and Alma School Roads and temporary connector ramps to and from McKellips Road.

c. Programmed $1.4 million in FY 94 for design, $9.9 million in FY 94 for right of way, $8.2 million in FY 95 for right of way and $26.9 million for construction and completion of Project "B" in FY 96. This programming is contingent on this project being approved for Federal-Aid funding and continued MAG approval. With the approval of MAG and the State Transportation Board, elements of Project "B" may be programmed to occur prior to the dates established in this contract and the Arizona Department of Transportation (ADOT) Life Cycle Construction Program for MAG area freeways and expressways.

2. The State will:

a. Design, acquire right of way, call for bids and award one or more construction contracts for Projects "A" and "B", administer same and make all payments to the contractor.

Acquire right of way for the Dobson Road Extension from the Freeway to Eighth Street. Be responsible for any contractor claims for extra compensation due to delays for whatever reason attributable to the State.

b. Design and construct a vehicle access structure for access to the City's percolation ponds. Location and design of access structure to be reviewed and approved by the City prior to construction.

c. Grant the City ingress/egress easement to cross State right of way for vehicular access to the City's percolation ponds.

d. Grant the City, at no cost, permits for existing and future utility lines to cross State right of way to the City's percolation ponds.

e. Grant to the City at no cost, a permit for a future reclaimed water line within the right of way of the Red Mountain Freeway (SR 202L). The reclaimed water line will run from approximately Dobson Road, easterly to a terminus to be determined at a future date and is intended to be used for landscape irrigation along the Red Mountain Freeway.

f. Design and reconstruct the City's percolation ponds to their original operating areas which includes new dikes and drainage facilities. Design plans shall be reviewed and approved by the City prior to construction.

g. Pay to the City the construction cost of Dobson Road extension over and above the cost of the original Dobson Road extension within 30 days of being invoiced by the City. The Estimated cost to the State is $562,000.00.

h. Review and make comments as appropriate for the Dobson Road extension plans.

i. Abandon the Dobson Road extension to the City upon completion of its construction.

j. Proceed in good faith to construct Projects "A" and "B" within the time frames stated. If requested by the City, the State will reconvey unused City property given to the State if construction contracts for Projects "A" or "B" are not awarded as programmed.

3. The City will:

a. Deed to the State, at no cost, City owned property required for Projects "A" and "B" located between SR 101L and

McKellips Road, as shown on Exhibits "A" and "B", for its participation in the advanced construction of the Projects. If transfer of title is not complete by the time the State needs the property for construction, the City will provide a construction easement to the State, at no cost.

b. Be involved in contractor claims. If a contractor claims extra compensation for construction delays allegedly caused by the City, the City will be informed of such claims and will meet and confer with the State and the contractor to resolve such claims. The City will be responsible for any contractor claims for extra compensation due to delays or whatever reason, attributable to the City.

c. Be responsible for the removal or remediation of hazardous materials found on City owned property.

d. Accommodate roadway and structural construction through and adjacent to the City's percolation ponds which may consist of but not limited to, installation of earth berms, soffit fills, crane pads, etc., to the best of the City's ability without affecting the operation of the City's treatment plant and percolation ponds.

e. Grant to the State if necessary, a roadway easement for purposes of construction maintenance and operation of the Freeway and freeway facilities, as shown on Exhibit "A".

f. Be responsible for review and approval of all design plans and coordinate with the State the inspection of the relocation of the City facilities constructed by the State. The City will designate a contact person for the project.

g. Upon acceptance of the State's work on the City's facilities, resume all maintenance, system liability and cost associated therewith.

h. Design and administer the construction of Dobson Road extension from 8th Street to the Freeway.

i. Accept abandonment of Dobson Road extension upon completion of its construction.

j. Contribute towards the right of way acquisition of the "Hurley" property in an amount equal to the City's anticipated expenses of the original Dobson Road extension. This estimated right of way cost to the City is $47,250.00.

k. Pay to the State, the costs listed above within 30 days of being invoiced by the State.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said Projects; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the commencement of construction, upon thirty (30) days written notice to the other party. Notwithstanding the foregoing provisions, this agreement may not be cancelled by the State after the City deeds land to the State pursuant to this agreement unless mutually satisfactory arrangements are made respecting such conveyance, such as reconveyance by the State of the land to the City.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. 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.

6. 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

City of Mesa
City Manager
55 N. Center Street
Mesa, AZ 85201

7. 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 MESA

By_____
CHARLES K. LUSTER
City Manager

ATTEST:

By_____
BARBARA HOGUE
City Clerk

STATE OF ARIZONA
Department of Transportation

By_____
ROBERT P. MICKELSON, P.E.
Chief Deputy State Engineer

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JPA 91-11

RESOLUTION

BE IT RESOLVED on this 1st day of April 1991, that I, JAMES S. CREEDON, as Acting Director of the Arizona Department of Transportation, have determined that it is in the best interest of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Mesa, for the purpose of early staged construction of the Red Mountain Freeway (SR 202L) from the Pima Freeway (SR101L), to Dobson Road, at the request of the City.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.

JAMES S.CREEDON, Acting Director
Arizona Department of
Transportation

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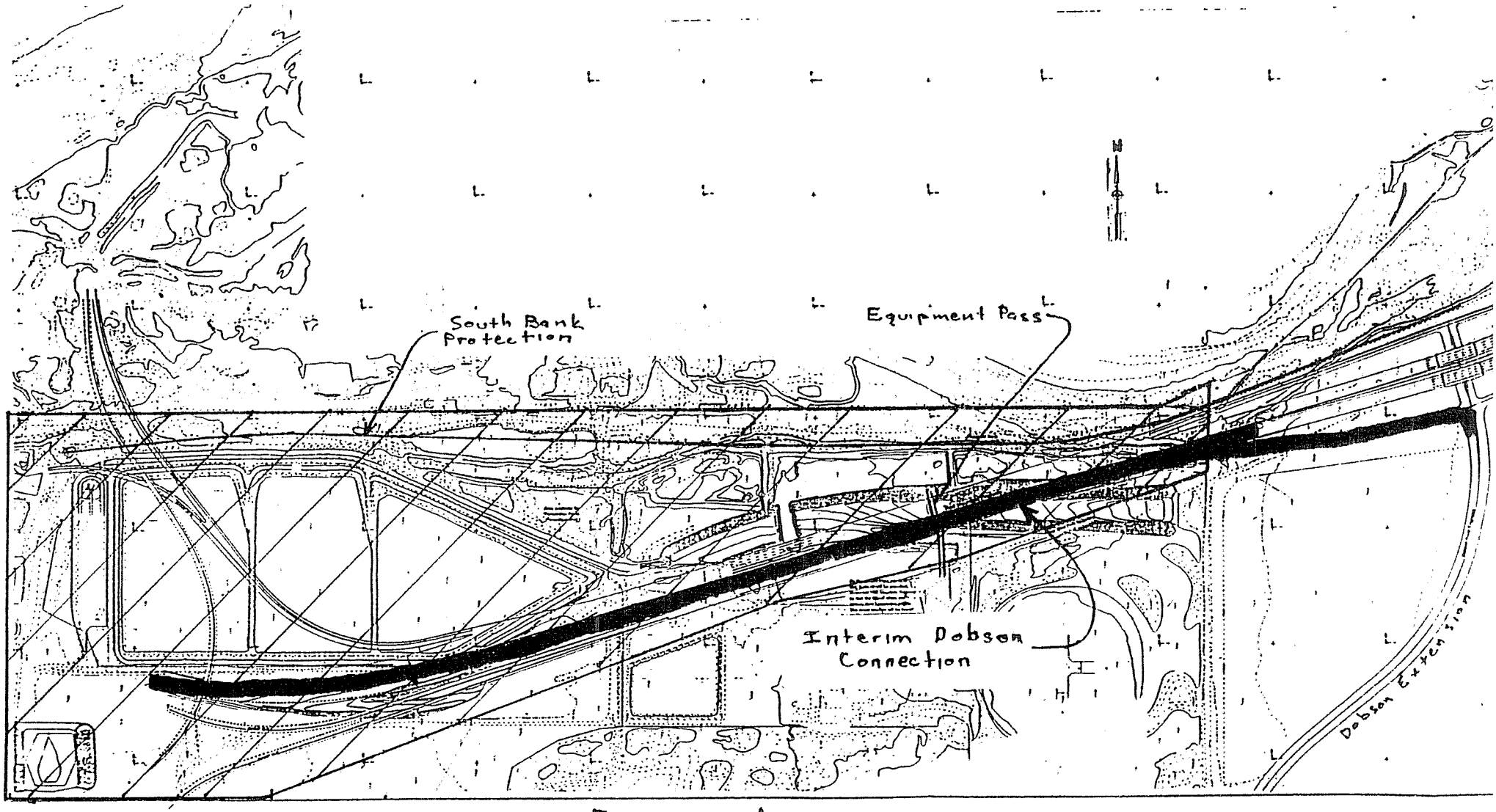

EXHIBIT A

MESA R/W - Available for freeway construction, Percolation Pond reconfiguration, Salt River bank protection and Equipment Pass. Boundary and locations are approximate.

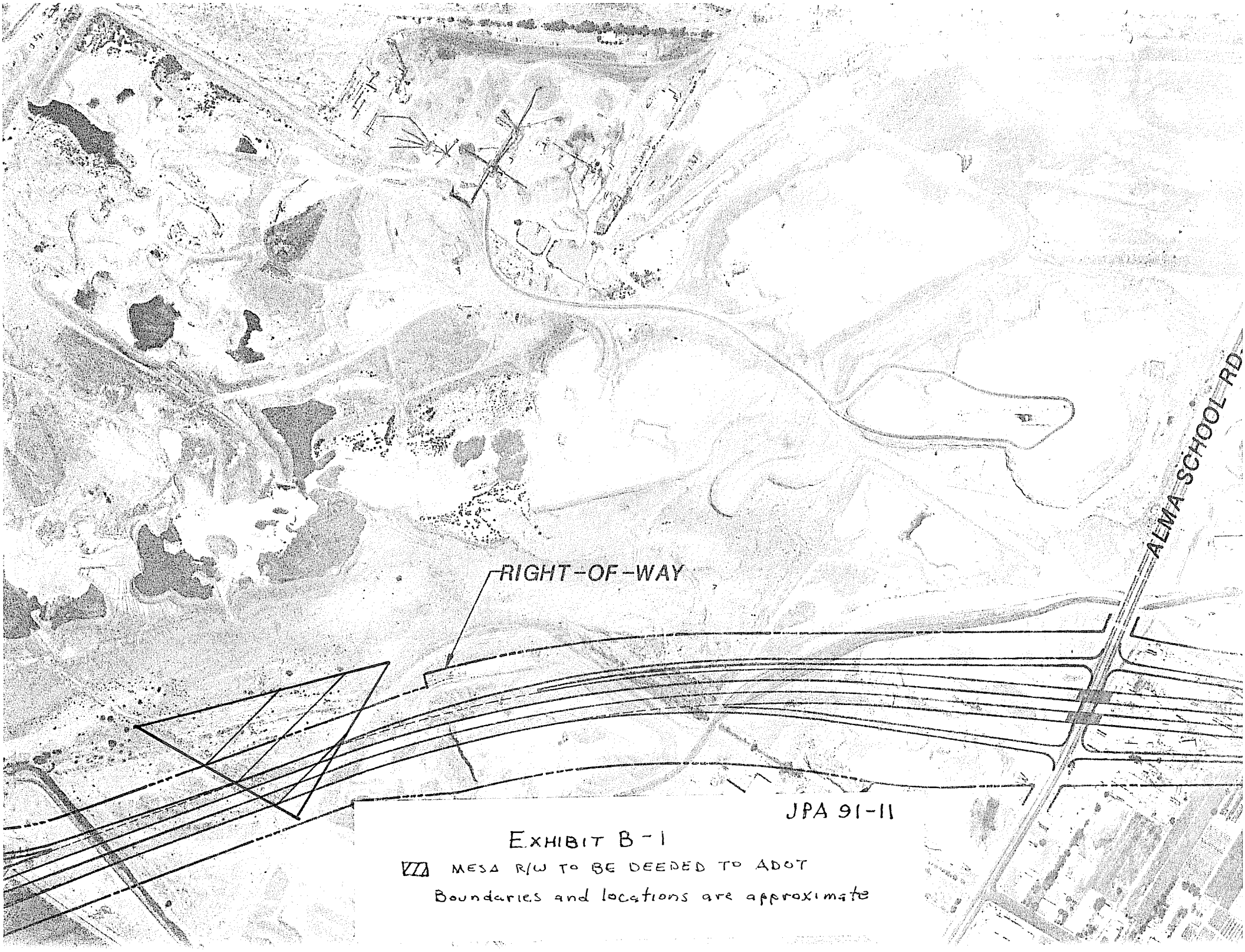

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EXHIBIT B-1

▽▽ MESA R/W TO BE DEEDED TO ADOT

Boundaries and locations are approximate

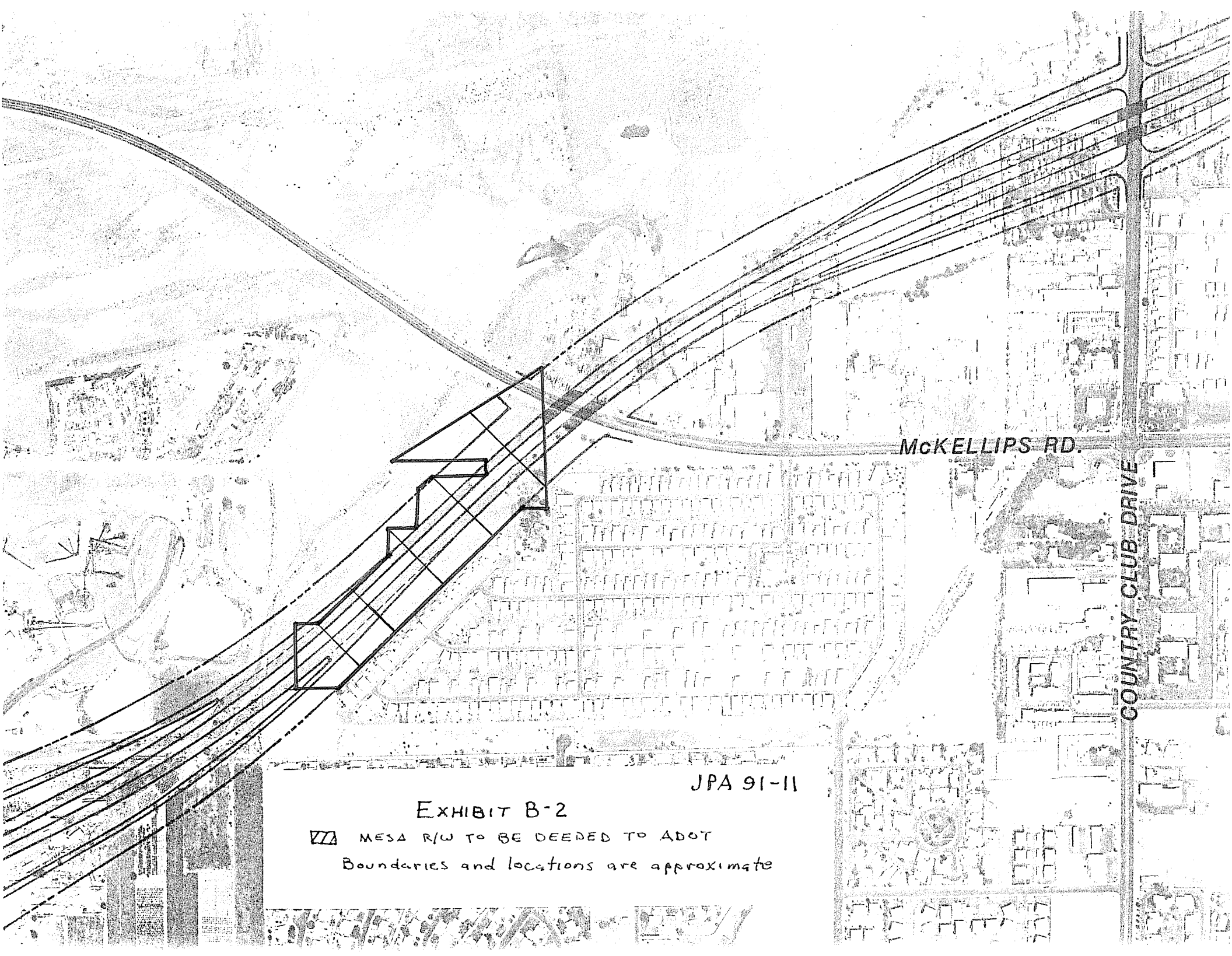

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EXHIBIT B-2

MESA R/W TO BE DEEDED TO ADOT

Boundaries and locations are approximate

JPA 91-11

RESOLUTION

BE IT RESOLVED on this 1st day of April 1991, that I, JAMES S. CREEDON, as Acting Director of the Arizona Department of Transportation, have determined that it is in the best interest of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Mesa, for the purpose of early staged construction of the Red Mountain Freeway (SR 202L) from the Pima Freeway (SR101L), to Dobson Road, at the request of the City.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.

JAMES S.CREEDON, Acting Director
Arizona Department of
Transportation

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JPA 91-11

APPROVAL OF THE MESA CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the CITY OF MESA, 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.

DATED this 30 day of March, 1994.

Mal Beet

City Attorney

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CITY OF
MESA

Certificate of CITY CLERK

I, BARBARA HOGUE, THE DULY APPOINTED, QUALIFIED AND ACTING CITY CLERK OF THE **CITY OF MESA**, MARICOPA COUNTY, ARIZONA, DO HEREBY CERTIFY THAT THE ATTACHED COPY OF RESOLUTION NO. 6628 ENTITLED:

RESOLUTION NO. 6628

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MESA AND THE STATE OF ARIZONA, ACTING THROUGH ITS DEPARTMENT OF TRANSPORTATION, PERTAINING TO THE RED MOUNTAIN FREEWAY.

IS A TRUE, CORRECT AND COMPARED COPY OF THE ORIGINAL OF RECORD, AND ON FILE IN THE OFFICE OF THE CITY CLERK OF THE **CITY OF MESA**, ARIZONA.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL OF THE **CITY OF MESA**, MARICOPA COUNTY, STATE OF ARIZONA, THIS 8TH DAY OF MARCH, 1994.

CITY OF MESA CORPORATE SEAL MARICOPA COUNTY, AZ.

BARBARA HOGUE
CITY CLERK

RESOLUTION № 6628

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MESA AND THE STATE OF ARIZONA, ACTING THROUGH ITS DEPARTMENT OF TRANSPORTATION, PERTAINING TO THE RED MOUNTAIN FREEWAY.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Section 1: Approving the Intergovernmental Agreement between the City of Mesa and the State of Arizona (Project H 0875 02D\H 0875 02C).

Section 2: Authorizing the City Manager to execute the Agreement on behalf of the City of Mesa, and authorizing the City Clerk to attest to the signature of the City Manager thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 7th day of March, 1994.

CITY OF MESA CORPORATE SEAL MARICOPA COUNTY, AZ.

APPROVED:

Willie Wong

Mayor

ATTEST:

Barbara Jones

City Clerk

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A. G. Contract No. KR91-0879-TRD, 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.

DATED this 6th day of October, 1994.

GRANT WOODS
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:lsr
8577G