CA-03-12-94-SO-105
A. G. Contract No. KR94-2122-TRN
JPA No.: 94-119
Project: Slate Creek Section
Section: Claypool-Jakes Corner Hwy. (SR 188)
TRACS No.: H 2759 01C
FY 1994-95 Item #234

NO. 19039
FILED WITH SECRETARY OF STATE
Date Filed 10/13/94
Richard Mahoney
Secretary of State
By Vicky Groenewold

AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE TONTO NATIONAL FOREST

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 UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE, TONTO NATIONAL FOREST, acting by and through its Contracting Officer (the "Forest Service").

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 Forest Service is empowered by Title 16 United States Code 532-538 and United States Code 572 Ref: FSM 15184.13 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 Forest Service.

3. The Forest Service manages National Forest lands that include SR 188 highway easement corridor between SR 87 and Sycamore Creek. The State operates and maintains SR 188 highway within the easement, and plans to upgrade the existing highway. Incident to upgrading SR 188, the State requires approximately 100 acres of additional National Forest System lands to implement the highway improvements.Mitigation to compensate for lost habitat is required in the environmental documents for the SR 188 corridor.

4. The State and the Forest Service agree to mitigate the lost habitat value by participating in a prescribed burn, consisting of 2000 acres within the Edwards Burn Area.

5. It is understood by both parties that the work required for the development and operation of the prescribed burn be performed by and under the supervision of the Forest Service.

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

II. SCOPE OF WORK

1. The State will:

Upon receipt of an invoice from the Forest Service, remit $12,000.00 for the Forest Service to conduct the prescribed burn of approximately 2,000 acres within the Edwards Burn Area.

2. The Forest Service will:

Upon execution of this agreement, invoice the State $12,000.00 for the administration of the prescribed burn of approximately 2,000 acres within the Edwards Burn Area.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said prescribed burn; provided, however, that this agreement, may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

2. The period of performance shall be four (4) years from the date of the execution of this agreement.

3. No member of, or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefits that may arise therefrom: but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

4. Confidential business information is considered confidential when disclosure would likely: (1) impair the Government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person or entity who provided the information.

5. This agreement shall become effective upon execution by both parties.

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

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

8. 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.

9. 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

U.S. Forest Service
Tonto National Forest
ATTN: Dennis Ray
P. O. Box 649
Roosevelt, AZ 85545

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

U.S. DEPARTMENT OF AGRICULTURE
Forest Service

By Judith A. Miller
for CHARLES R. BAZAN
Forest Supervisor
Tonto National Forest

STATE OF ARIZONA
Department of Transportation

By Gary L. Robinson
for: ROBERT P. MICKELSON, P.E.
Chief Deputy State Engineer

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JPA 94-119

RESOLUTION

BE IT RESOLVED on this 26th day of August 1994, that I, the undersigned, LARRY S. BONINE, as 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 United States Department of Agriculture Forest Service Tonto National Forest for the purpose of defining respnsibilities to mitigate the loss of a habitat, which is required to implement highway improvements to SR 188 between SR 87 and Sycamore Creek.

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

FOR: LARRY S. BONINE, Director
Arizona Department of
Transportation

JPA 94-119

DETERMINATION

Arizona Contract No. JPA 94-119, which is an agreement between public agencies; to wit; the STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, the UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE, TONTO NATIONAL FOREST has been reviewed by the undersigned authorized officer for the USDA, Forest Service, who has determined that it is in the proper form and within the powers and authority granted to the United States Department of Agriculture, Forest Service.

No opinion is expressed as to the authority of the State of Arizona to enter into said agreement.

DATED this 26th day of September, 1994.

THE UNITED STATES OF AMERICA

By Judith A. Miller

Title for Forest Supervisor

Tonto National Forest
USDA Forest Service

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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. KR94-2122-TRN, 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 5th day of October, 1994.

GRANT WOODS
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:lsr
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