JPA 96-43

Arizona State Parks

GRANT-IN-AID PARTICIPANT AGREEMENT

Attachment A
Approved Project Scope and Special Conditions

PARTICIPANT: Arizona Department of Transportation

PROJECT TITLE: Sunrise to Big Lake

PROJECT NUMBER: 559620

APPROVED PROJECT SCOPE:

Paving (Asphaltic Concrete)
Aggregate Base Course
Grading, site preperation
Mobilization

SPECIAL CONDITIONS:

OTHER:

ADOT ECS File: JPA 96-43

Arizona State Parks

1300 W. Washington, Phoenix, Arizona 85007

GRANT-IN-AID PARTICIPANT AGREEMENT

This Agreement is entered into by and between the Arizona State Parks Board (BOARD) and Arizona Department of Transportation (PARTICIPANT) and becomes effective on the date of the last signature by the signing parties.

PROJECT TITLE: Sunrise to Big Lake	**PROJECT NUMBER:** 559620
THIRD PARTY PARTICIPANT'S NAME:	**FY OF AWARD:** 1995-96

PROJECT PERIOD:
Three years from the date of the last authorized signature.

GRANT PROGRAM:	GRANT AMOUNT:	%	PARTICIPANT MATCH:	TOTAL PROJECT COST:
Off-Highway Vehicle Fund	$101,500.00	0	$0.00	$101,500.00

APPROVED SCOPE OF WORK AND SPECIAL CONDITIONS: **Attachment A**

PRESERVATION SPECIAL CONDITIONS: **Attachment B**

Preservation Agreement [ ]
Preservation Covenant [ ]
Special Conditions/3rd Party [ ]

(Does not apply to LWCF, LRSP, TRAILS, OHV, E.E., BLESF and SLIF.)

AUTHORITIES TO ENTER INTO THIS AGREEMENT:
(statute, resolution, minutes, etc.)
STATUTE: ARS 28-2805.D.4 RESOLUTION: Letter Authorized Signature 11/3/95

AWARDING OFFICIAL ON BEHALF OF THE ARIZONA STATE PARKS BOARD:

Signature: [signature] Date: 5/28/96

KENNETH E. TRAVOUS
Executive Director

ACCEPTANCE OF ALL TERMS OF THIS AGREEMENT AND ITS ATTACHMENTS IS ACKNOWLEDGED BY THE PARTICIPANT'S SIGNATURE BELOW.

Participant's Signature: [signature]
Name (Typed): PETER L. ENO
Title: Contract Administrator, ADOT
Date:

PARTICIPANT ATTORNEY APPROVAL AS TO FORM AND AS BEING WITHIN THE AUTHORITY OF THE PARTICIPANT.

Attorney's Signature: n/a
Name (Typed):
Title:
Date:

General Provisions dated 9/7/93 and Special Conditions are attached and are part of this Participant Agreement.

Rev: 9/21/93

GENERAL PROVISIONS

PART I - DEFINITIONS

For purposes of this agreement,

A. **Advisory Committee** means the Environmental Education Advisory Committee, the Historic Preservation Advisory Committee, the Trails Advisory Committee, or the Off-Highway Vehicle Advisory Group.

B. **AORCC** means the Arizona Outdoor Recreation Coordinating Commission.

C. **BOARD** means the Arizona State Parks BOARD, which is the governing body of Arizona State Parks.

D. **Eligible Costs** means direct costs chargeable to the project grant program such as 1) compensation of hired employees for the time and efforts devoted specifically to the execution of the grant; 2) cost of materials acquired, consumed, or expended specifically for the purposes of the grant; 3) equipment and other capital expenditures; 4) other items of expense incurred specifically to carry out the participant agreement; 5) direct services furnished specifically for the grant program by other agencies.

E. **Facilities** means capital improvements.

F. **Fund** means a grant from the Arizona State Parks BOARD Heritage Fund, the State Lake Improvement Fund, or the Off-Highway Vehicle Recreation Fund.

G. **Guidelines** mean program directives adopted by the BOARD.

H. **Ineligible Costs** are those costs incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives of the grant.

I. **Match** means a specified percentage of the total eligible and direct project cost which may consist of either cash, in-kind contributions, or donations including volunteer time.

J. **Obsolescence** means that an area or facility may be determined obsolete if (1) reasonable maintenance and repairs are not sufficient to keep the facility or equipment operating; (2) changing needs dictate a change in the type of facilities or equipment provided; (3) operating practices dictate a change in the type of facilities or equipment required; or, (4) the facility or equipment is destroyed by fire, natural disaster, or vandalism.

K. **PARTICIPANT** means an eligible applicant that has been awarded a grant.

L. **Project** means an activity, or a series of related activities, which are described in the specific project scope of work and which result in a specific product(s).

M. **Project Period** means the period of time during which all approved work and related expenditures associated with an approved project are to be completed by the PARTICIPANT.

N. **Staff** means employees of Arizona State Parks.

O. **Sub-contract** means a direct contract between the PARTICIPANT and another contractor party whereby labor is supplied or work is performed in furtherance of the PARTICIPANT's responsibilities under this agreement.

P. **Term of Use** means the time required for public use, as specified in the Special Conditions attached to this agreement.

Q. **Third Party PARTICIPANT** means an entity sponsored by an eligible project participant. More specifically, the following applies:

1. Historic Preservation: individuals, religious institutions, and for-profit organizations owning property improved by this agreement

2. Local, Regional, and State Parks, State Lake Improvement Fund, Trails and Off-Highway Vehicle Recreation Fund: governmental, private and non-profit units through the terms of a lease, permit, cooperative agreement, or an intergovernmental agreement (ARS § 11-951).

PART II - PERFORMANCE

A. ADMINISTRATION

1. **Conditions** - This agreement is subject to the availability of grant funds and appropriate approvals, and shall be subject to the Constitution of the State of Arizona, the Arizona Revised Statutes, other acts of the Arizona Legislature, executive orders of the Governor, and policies of the BOARD.

2. **Incorporation of Application** - The PARTICIPANT'S approved application for grant funds is incorporated by reference as part of this agreement; however, the terms of this agreement shall take precedence in the event of conflict or ambiguity.

3. **Use of Grant Funds** - Awarded grant funds shall be used solely for eligible purposes of the funding program as defined by statute and as approved by the Arizona Outdoor Recreation Coordinating Commission (AORCC) and/or the BOARD.

4. **Transfer of Grant Funds** - Awarded grant funds shall be transferred to the PARTICIPANT through reimbursement of approved expenditures for matching grants and through advances, on an as-needed basis, for non-matching grants. Advances may be considered for matching grants on a case by case basis.

5. **Grant Retainage** - Ten percent (10%) of the grant amount will be retained from reimbursement or transfer to the PARTICIPANT's project account until Staff notifies the PARTICIPANT in writing that the project is officially closed and completed.

6. **Grant Accountability** - Received grant funds shall be managed separately within the PARTICIPANT'S accounting system which identifies the name and number of the project. The funds shall be expended only as authorized under the terms of this agreement.

7. **Accomplishment of Project** - The project shall be accomplished according to the terms of this agreement and applicable State laws.

8. **Amendments** - This agreement may be amended in writing by the parties of the agreement upon written request of the PARTICIPANT and good cause shown, to adjust the project period, project costs, specific project scope items, or other specified adjustments to the agreement.

9. **Use of Project** - Project accomplishments shall be open or available to the public as specified in Attachment A or B.

10. **Special Conditions** - Special conditions listed in Attachment A or B to this agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties to this agreement. Breach of any condition shall be enforceable by specific performance or shall justify the BOARD to seek recovery of all funds granted.

11. **Operation and Maintenance** - The PARTICIPANT shall operate and maintain, or cause to be maintained for public use or enjoyment, grant funded capital improvements for at least the period of time specified in Attachment A or B to this agreement.

B. RESPONSIBILITY FOR THIRD PARTY AGREEMENTS

1. **Historic Preservation PARTICIPANTS** - In partial consideration of this agreement, the PARTICIPANT sponsoring a third party to this agreement shall be responsible for enforcing such third party's compliance with the special conditions set forth in Attachment B, or such substitute agreement(s) as approved by the State Historic Preservation Officer (SHPO).

2. **Other PARTICIPANTS** - The PARTICIPANT sponsoring a third party to this agreement shall be responsible for compliance with provisions of this agreement in the event of third party default.

C. RELATIONSHIP OF PROJECT COSTS TO THE PROJECT PERIOD

Except for pre-agreement costs approved by AORCC or the BOARD, only those costs associated with approved project work incurred during the project period shall be eligible for matching assistance. Approved design and engineering costs shall not exceed 10% of the approved total project cost.

D. ACQUISITION

Values of property purchased with grant assistance shall be appraised by a State Certified Appraiser according to the Uniform Standards of Professional Appraisal Practice. This appraisal shall be prepared within one year prior to the acquisition. Grant participation shall be according to the grant award amount, the approved market value, or the purchase price, whichever is less.

E. PROCUREMENT AND DEVELOPMENT

If the PARTICIPANT is a governmental entity, procurement transactions, including those involving professional services, materials, and construction, shall be accomplished according to the PARTICIPANT's procurement standards. State procurement standards shall apply to all non-governmental entities to the fullest extent possible.

In addition, *Historic Preservation* PARTICIPANTS agree to submit Requests for Proposals or Invitations to Bid to the State Historic Preservation Office (SHPO) for review and comment before their release, and agree to incorporate comments and revisions into the final procurement document. The PARTICIPANT will notify SHPO in writing of the selected proposal, why it was selected, and the names of other bidders on the project. Consultants must submit documentation of qualifications to perform professional services in work related to the project which meet the applicable professional requirements in the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation. These conditions must be met before reimbursements are processed to the PARTICIPANT by Staff.

F. SUB-CONTRACTS

1. Sub-contracts awarded to accomplish approved project work shall incorporate, by reference, in each sub-contract the provisions of this agreement. The PARTICIPANT shall bear full responsibility for acceptable performance under each sub-contract.

2. The PARTICIPANT shall pay any claim of a sub-contractor or other employed individual performing work on this project for services pursuant to this agreement when due. If the PARTICIPANT is subject to A.R.S §34-221, payment is due when required pursuant to A.R.S. §34-221.

3. Unless the PARTICIPANT is a State agency, the PARTICIPANT shall indemnify and hold the State of Arizona and the BOARD harmless from any claim for services pursuant to this agreement, or damages relating thereto, of a sub-contractor or other employed individual performing work on this project.

4 Any sub-contract for employment by the PARTICIPANT shall be in writing and shall contain a provision whereby a person so employed or with whom a sub-contract has been entered, acknowledges that the State of Arizona and the BOARD shall not be liable for any costs, claims, damages, reimbursement, or payment of any kind relating to such sub-contract.

G. PROJECT REPORTING, REVIEWS, AND ON-SITE INSPECTIONS

The PARTICIPANT agrees to submit a project status report to Staff with each billing statement or advance request, but not less than quarterly. The billing statement applies to all Heritage grants. The advance request applies to State Lake Improvement Fund grants and Off-Highway Vehicle Recreation Fund grants. The status report will include at a minimum the following: (1) progress in completing approved scope of work; (2) budget report; and (3) anticipated delays and problems preventing expeditious completion of the project. Failure to submit the reports will result in delays in grant reimbursement or advance processing. The PARTICIPANT further agrees to consult with Staff, as needed, to review progress. The Staff reserves the right to review the progress of the project and to conduct on-site inspections, as applicable and as needed, at any reasonable time during the project period or required Term of Use to assure compliance with the terms of this agreement.

H. PROJECT INCOME AND EARNED INTEREST

Income and/or interest generated from funds transferred to the PARTICIPANT during the project period shall be used to further the purposes of the approved project. Funds advanced, but not spent to complete the project, shall be returned to the BOARD at the completion of the project. Pursuant to paragraph II-I of this agreement, the PARTICIPANT shall own all rights in the materials produced with project funds.

I. PRODUCT OR PUBLISHABLE MATTER OWNERSHIP

The PARTICIPANT shall have ownership of products or publishable matter produced with grant assistance with the understanding that the BOARD reserves nonexclusive license to use and reproduce, without payment, such materials. This paragraph is not applicable to architectural or engineering plans produced with grant assistance.

J. FUND SOURCE RECOGNITION

The PARTICIPANT agrees to publicly acknowledge grant program(s) used to assist project accomplishments (including, but not limited to, final documents, audio-visual recordings, photographs, plans, drawings, publications). At a minimum, this acknowledgement shall include the following: "This project is (was) financed in part, or in full, with a grant from (name of grant program) administered by the Arizona State Parks Board."

K. PROJECT COST VERIFICATION

The PARTICIPANT agrees to submit project expenditure documents to Staff for verification or audit purposes upon request during the project period.

L. TRANSFER OF CONTRACTUAL RESPONSIBILITY

The PARTICIPANT may transfer contracted responsibilities under the terms of this agreement to another eligible participant provided that approval has been granted by the BOARD prior to the transfer.

PART III - COMPLIANCE

A. ANTI-TRUST

Vendor and purchaser recognize that, in actual economic practice, overcharges from anti-trust violations are borne by purchaser. Therefore, the PARTICIPANT hereby assigns to BOARD any and all claims for such overcharges.

B. ARBITRATION

To the extent required pursuant to A.R.S. § 12-1518 and any successor statute, the parties agree to use arbitration, after exhausting all applicable administrative remedies, to resolve disputes arising out of this Agreement.

C. INDEMNIFICATIONS AND CLAIMS AGAINST THE STATE

Unless the PARTICIPANT is a State agency, the PARTICIPANT shall indemnify, save and hold harmless the BOARD, the AORCC, and the State of Arizona, its agents, departments, officers and employees from all claims, loss, damage, liability, expense, costs, and charges incident to or resulting in any way from any injuries or damage to any person or any damage to any property caused by or resulting from the issuance of or the performance of services rendered as a part of this Agreement, except those claims, losses, damages, liabilities, expenses, costs, and charges arising from the sole negligence of the BOARD, the AORCC, or the State of Arizona, its agents, departments, officers, or employees.

D NON-DISCRIMINATION

Employment: the PARTICIPANT agrees to comply with the provisions of Executive Order Number 75-5, issued by the Governor of the State of Arizona relating to nondiscrimination in employment, which by reference is incorporated herein and becomes a part of this Agreement.

E. ARIZONANS WITH DISABILITIES ACT OF 1992 AND AMERICANS WITH DISABILITIES ACT

The PARTICIPANT shall comply with all applicable provisions of the Arizonans with Disabilities Act of 1992, A.R.S. §41-1492, et. seq. and the Americans with Disabilities Act, (Public Law 101-336, 42 U.S.C. 12101-12213 and 47 U.S.C. §225 and 611), and applicable state rules and federal regulations under the Acts (28 CFR Parts 35 and 36).

F RECORDS RETENTION AND AUDITS

1. Complete financial records and all other documents pertinent to this Agreement shall be retained by the PARTICIPANT and made available to the Staff, if requested, for review and/or audit purposes for a period of five (5) years after project closure.

2. The PARTICIPANT may substitute microfilm copies in place of original records, but only after project costs have been verified.

G. STATE CONTRACT CANCELLATION

The State or its political subdivisions or any department or agency of either may cancel this contract, without penalty or further obligation pursuant to A.R.S. §38-511.

H. REMEDIES

1. The BOARD may temporarily suspend grant assistance under the project pending required corrective action by the PARTICIPANT or pending a decision to terminate the grant by the BOARD.

2. The PARTICIPANT may unilaterally terminate the Project at any time before the first payment on the Project. After the initial payment, the Project may be terminated, modified, or amended by the PARTICIPANT only by written mutual agreement of the parties.

3. The BOARD may terminate the Project in whole, or in part, at any time before the date of completion, whenever it is determined that the PARTICIPANT has failed to comply with the terms or conditions of the grant. The BOARD will promptly notify the PARTICIPANT in writing of the determination and the reasons for the termination, including the effective date. All payments made to the PARTICIPANT shall be recoverable by the BOARD under a Project terminated for cause.

4. The BOARD or PARTICIPANT may terminate the Participant Agreement in whole, or in part, at any time before the date of completion, when both parties agree that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The PARTICIPANT shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The BOARD may allow full credit to the PARTICIPANT for the grant share of obligations properly incurred before the effective termination date and which cannot be cancelled.

5. Termination either for cause or for convenience requires that the Project in question be brought to a state of public usefulness to the terms set forth by the BOARD; otherwise, all funds provided by the BOARD shall be returned to the BOARD.

6. The BOARD may require specific performance of the terms of this agreement or take legal steps necessary to recover the funds granted if the PARTICIPANT fails to comply with the terms of the grant or breaches any condition or special condition of the Participant Agreement.

7. The remedies expressed in this Agreement are not intended to limit the rights of the BOARD. This Agreement shall not in any way abridge, defer, or limit the BOARD's right to any right or remedy under law or equity that might otherwise be available to the BOARD.

I. CULTURAL RESOURCES

1. The PARTICIPANT agrees to meet the requirements of the State Historic Preservation Act (ARS §41-861 to 41-864) before project initiation.

2. All Arizona Heritage Fund historic preservation projects must conform with the Secretary of the Interior's Standards for Archaeology and Historic Preservation.

Acceptance of all terms and conditions of this agreement and its attachments is acknowledged by the PARTICIPANT'S signature on the cover sheet of this agreement.