A. G. Contract No. KR96-1712-TRN
ADOT ECS File No. JPA 96-109
BIA Agreement No. GTH009046
Project: STP-TEA-0(1)/SL402 01D
STP-TEA-0(1)/SL402 01C
Section: San Xavier Road

**INTERGOVERNMENTAL AGREEMENT**
AMONG
THE STATE OF ARIZONA,
THE UNITED STATES DEPARTMENT OF INTERIOR,
THE BUREAU OF INDIAN AFFAIRS

THIS AGREEMENT is entered into 25 AUGUST, 1999, 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"), the UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS, acting by and through its Contracting Office (the "BIA").

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 BIA is empowered by Section 23 and 204 (b), (c) and (d) U.S.C. 308 (a) and 23 U.S.C. Section 132 to enter into this agreement and has resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the BIA.

3. Congress has authorized appropriations for, but not limited to, the design of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.

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NO 23514
Filed with the Secretary of State
Date Filed: 08/25/99
Betsey Bayless
Secretary of State
By Vicky V. Greenwood

4. Such project within the boundary of the BIA has been selected by the BIA and has been submitted to the Federal Highway Administration ("FHWA") for approval.

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the BIA by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The work embraced by this agreement and the estimated project costs are as follows: Design and Construct Roadway Realignment.

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|---|---|
| STP FUNDS | |
| Estimated Construction Cost (inc.CE Cost) | $ 181,000.00 |
| Federal Funds @ 100% | $ 181,000.00 |
| BIA Funds | $ 0.00 |
| | |
| ENHANCEMENT FUNDS | |
| Estimated Design Cost | $ 36,900.00 |
| Estimated Construction Cost (inc. CE Cost) | $ 260,500.00 |
| Subtotal | $ 297,400.00 |
| Federal Funds @ 80% | $ 237,920.00 |
| BIA Funds @ 20% | $ 59,480.00 |
| Total BIA Funds | $ 59,480.00 |

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

## II. SCOPE OF WORK

1. The cost of the project covered by this agreement is to be borne by FHWA and the BIA, each in the proportion prescribed and determined by FHWA. Reimbursement will be made in accordance with 23 U.S.C. Section 132.

2. Therefore, the BIA agrees to provide funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. The BIA will provide any required preliminary engineering and planning studies, the environmental analysis and design of the project. As required by the FHWA, the State will provide design review of the project plans, studies and related documents, and when appropriate provide comments which will be incorporated into the design documents.

4. The BIA may request the State, as authorized agent for the BIA, and all at BIA expense, to perform certain work and prepare certain documents required by the Federal Highway Administration to qualify certain highway, bridge and railroad grade crossing projects for and to receive Federal funds. Such work may consist of, but is not specifically

limited to, the review and approval of the BIA prepared environmental documents, the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way related activities (when specifically authorized by, for and on behalf of the BIA, and at no cost to the State) and such other related tasks essential to the achievement of the objectives of this agreement.

5. Should some unforeseen conditions or circumstances increase the cost of said work required, by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in the project.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The BIA assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the BIA and that the BIA hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the BIA, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. This agreement shall remain in force and effect until completion of the work and related deposits or reimbursements.

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

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511 as regards conflicts of interest on behalf of State employees.

5. The provisions of Arizona Revised Statutes Section 35-214 pertaining to 5 year record retention for audit purposes are applicable to this contract.

6. Applicable laws and regulations of the State and the Federal government shall govern the rights of the parties with respect to the performance of this agreement. The parties hereto shall select a process for the resolution of claims or disputes relating to this agreement, compliant with applicable laws and regulations of the State and the Federal government, and acceptable to the State and the Federal government. Such process shall include a provision for arbitration.

7. 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

US Bureau of Indian Affairs
Phoenix Area Office Attn: BOR
PO Box 10
Phoenix, AZ 85001

8. Attached hereto and incorporated herein is the written determination of legal counsel that the parties are authorized under their respective laws 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.

US BUREAU OF INDIAN AFFAIRS

By _____
Contracting Officer

STATE OF ARIZONA
Department of Transportation

By _____
PETER L. ENO
Contract Administrator

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RESOLUTION

BE IT RESOLVED on this 29th day of July 1999, that I, the undersigned MARY E. PETERS, as Director of the 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 Intermodal Transportation Division, to enter into an agreement with the Bureau of Indian Affairs for the purpose of defining responsibilities for the design, construction and maintenance of improvements to the San Xavier Mission Road.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

DAVID R. ALLOCCO, P.E.
Assistant State Engineer
Engineering Technical Group
for Mary E. Peters, Director

JPA 96-109

DETERMINATION

Arizona Contract No. JPA 96-109, which is an agreement between public agencies; to wit; the STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, has been reviewed by the undersigned for the United States who has determined that it is in the proper form and within the powers and authority granted to the United States.

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

DATED this 12th day of August, 1999.

THE UNITED STATES OF AMERICA

By

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ. 85007-2926

JANET NAPOLITANO
ATTORNEY GENERAL

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FACSIMILE: (602) 542-4085

# INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR96-1712TRN, 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 August 18, 1999.

JANET NAPOLITANO
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/84010

Enc.