A. G. Contract No.: KR00-2369TRN
ADOT ECS File No.: JPA 00-205
Project No.: RRP-STP-000-6(129)P
Section: Cutter Road @ AERR
TRACS No.: SR148 01C
AAR/DOT No. 742-339-R

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE UNITED STATES DEPARTMENT OF INTERIOR,
BUREAU OF INDIAN AFFAIRS

THIS AGREEMENT is entered into 14th September, 2004, 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 Officer (the "Bureau").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Bureau is authorized by 23 U.S.C. 204(a)-(f) and 308(a) to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Bureau.

3. The Arizona Corporation Commission is empowered by Arizona Revised Statutes Section 40-337 to participate in the funding of this project, and has authorized funds for this project.

4. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances.

5. Such project within the boundary of the Bureau jurisdiction has been selected by the Bureau; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.

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

NO. 27079
Filed with the Secretary of State
Date Filed: 09/14/04
Janice K. Brewer
Secretary of State
By: Diana D. Greenewald

7. The work embraced in this agreement and the estimated cost are as follows: Upgrade Railroad Crossing-Install Flashing Lights and Gates (by railroad forces) located at Cutter Road @ AERR **(AAR/DOT No. 742-339-R)**

Preliminary and Construction Engineering	$ 7,000.00
Install Flashing Lights and Gates (by railroad forces)	$ 153,335.00
Total Project Cost	**$160,335.00**
Federal Aid Funds @ 94.3% of $160,335.00	$ 151,196.00
AZ Corp. Comm. Funds @ 5.7% of $160,335.00	$ 9,139.00
Bureau Funds	**$ 0.00**

8. The parties hereto agree and acknowledge to the following conditions: 1) The amounts referenced in this agreement are subject to change; 2) The estimated amounts can change substantially; and, 3) Both parties will perform their responsibilities consistent with the agreement.

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

II. SCOPE OF WORK

1. The State shall:

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

b. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

c. 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 excess of the amount of the Bureau's deposit unless and until so authorized in writing by the Bureau.

2. The Bureau shall:

a. Acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired.

b. Once acquired, the Bureau shall remove from the Bureau right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom.

c. Not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the Bureau right of way. In the event of any unauthorized encroachment or improper use, the Bureau shall take all necessary steps to remove or prevent any such encroachment or use.

d. Upon completion of construction, the Bureau shall provide for, at its own cost and as an annual item in its budget, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities) to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

e. The Bureau shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work.

f. By such regulation as it may by ordinance provide, the Bureau shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The Bureau, in regard to the Bureau's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the Bureau for the benefit of the State in no way acts as a waiver by the Bureau for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction 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 Bureau.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA, Arizona Corporation Commission and the Bureau, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the Bureau agrees to furnish and provide the State with Bureau 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. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

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

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

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

7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding" Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. 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. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to select a process acceptable to the State and the Bureau to resolve such disputes. Such process shall include a provision for arbitration.

10. 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

Bureau of Indian Affairs
Civil Engineering Supervisor
Box 209
San Carlos, AZ 85550

11. 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.

UNITED STATES DEPARTMENT OF THE INTERIOR, Bureau Of Indian Affairs

By Acting
FOR JANICE STAUDTE, Superintendent
San Carlos Agency

STATE OF ARIZONA
Department of Transportation

By
SUSAN TELLEZ
Contract Administrator

CONCURRENCE:

By
KATHY W. KITCHEYAN,
Tribal Chairwoman
San Carlos Apache Tribe

ATTEST:

By
OPHELIA T. JAMES
Tribal Secretary

G:00-205-U&RR-BIA-SanCarlosApache Tribe
resubmited-18Sep2003-lg/03June2004-IH

SAN CARLOS APACHE TRIBE
SAN CARLOS APACHE INDIAN RESERVATION
SAN CARLOS, ARIZONA

RESOLUTION

NO: APR-04-052

WHEREAS, The San Carlos Apache Tribe is a Federally recognized Indian Tribe organized pursuant to the provisions of Section 16 of the Indian Reorganization Act of June 18, 1934, (48 Stat, 984); and

WHEREAS, The San Carlos Apache Tribe requests that the Bureau of Indian Affairs coordinate with the Arizona Department of Transportation ("ADOT") to install flashing lights and gates at the railroad crossing located at Cutter, Arizona on Route Number 200-Apache Gold Casino Entrance and on Route Number 6-Cutter Road per the attached Inter-Governmental Agreement; and,

WHEREAS, The San Carlos Apache Tribe is making this request because these existing roads are part of the Indian Reservation Road System and the roadways are in need of safer railroad crossings; and,

WHEREAS, It is of benefit to the Tribe and its members that these activities take place in order to provide for efficient transportation within the reservation, to enhance future development, and to provide for the safety of the motoring public.

NOW THEREFORE BE IT RESOLVED THAT:

1. The San Carlos Tribal Council hereby requests that the Bureau of Indian Affairs enter into a Inter-Governmental Agreement with the Arizona Department of Transportation to construct automatic railroad crossings on Route Number 200-Apache Gold Casino Entrance and on Route Number 6-Cutter Road.

2. Funding for the project is to be derived from Federal Funds and the Arizona Corporation Commission. Any difference in actual and projected costs will be borne by the Bureau of Indian Affairs pursuant to the terms of the IGA.

3. The San Carlos Tribal Council hereby grants the Bureau of Indian Affairs and Arizona Department of Transportation permission to enter the San Carlos Apache Indian Reservation to conduct archeological/environmental and right-of-way/design surveys on tribal land in order to successfully accomplish the railroad crossing upgrades. The Tribe reserves the right to re-examine the issue of permission if questions arise.

CERTIFICATION

I, the undersigned Secretary of the San Carlos Apache Tribal Council hereby certify that the Tribal Council is presently composed of 11 members, of whom 10 constituting a quorum were present at a Regular Council Meeting hereto held on the 6th day of April 2004, and that the foregoing Resolution No. APR-04-052 was duly adopted by a vote of 9 for; 0 opposed 0 abstained; of the Tribal Council pursuant to Article V, Section 1 (a) of the Amended Constitution and Bylaws of the San Carlos Apache Tribe effective February 24, 1954.

Ophelia T. James, Tribal Secretary
SAN CARLOS APACHE TRIBAL COUNCIL

SAN CARLOS APACHE TRIBE

San Carlos Avenue
P.O. Box 0
San Carlos, Arizona 85550
(928) 475-2361
FAX (928) 475-2567

Kathy W. Kitcheyan
Tribal Chairwoman

Robert E. Howard
Vice-Chairman

February 10, 2004

Titla & Parsi
San Carlos Apache Tribe General Counsel
Attn: Steve M. Titla
P. O. Box 1143
Globe, Arizona 85502

Re: Resolution and IGA for Railroad Crossings

Dear Mr. Titla:

The Tribal Transportation Committee at its January 9th meeting reviewed the attached Resolution and Intergovernmental Agreement regarding two railroad crossings on the San Carlos Apache Reservation. The Bureau of Indian Affairs is requesting that the Tribe adopt the resolution and approve the IGA, which will begin the process for providing railroad crossing arms, flashing lights and other improvements for the railroad crossings at Apache Gold Casino and Route 6. The Committee voted to forward the documents to your office for review and comment. If the documents are acceptable, they will be placed on the agenda for the next available Tribal Council meeting. Please review the attached documents and provide comments as soon as possible. Your cooperation is greatly appreciated. If you have questions or need additional information, please contact Felipe Sanchez in the Tribal Planning Office.

Sincerely,

Harding Burdette, Chairman
Tribal Transportation Committee

c: Tribal Council
Transportation Committee Members
Terry Jones, Director, Planning & Economic Development

TITLA & PARSI
ATTORNEYS AT LAW

COPY

STEVE M. TITLA

Admitted in :
Arizona
San Carlos Reservation

P.O. Box 1143
Globe, Arizona 85502
(928) 425-8137
Fax (928) 425-9048
E-Mail: Steve.Titla@azbar.org

General Counsel for the
San Carlos Apache Tribe

Also serving the
Phoenix Metropolitan area

March 23, 2004

Mr. Harding Burdette, Chairman
Tribal Transportation Committee
San Carlos Apache Tribe
PO Box 0
San Carlos, AZ 85550

RE: Resolution and IGAs for Railroad Crossings

Dear Mr. Burdette:

At your request, our office has reviewed and approved the IGAs between the Bureau of Indian Affairs ("BIA") and the Arizona Department of Transportation ("ADOT") for the improvement of two railroad crossings in Cutter, Arizona.

Per my conversation with Felipe Sanchez of the Tribal Planning Office, it is my understanding that the railroad crossings are specifically under the jurisdiction of the BIA even though they lie within the exterior boundaries of the reservation.

Because the agreements are technically between the BIA and ADOT, it is important to be aware that the San Carlos Apache Tribe will have no recourse if a legal dispute arises between these two parties. The role of the Tribal Council is exclusively limited to authorizing the BIA to proceed with the IGAs via the enclosed resolution.

As written, the IGAs present no legal issues for the tribe. On the other hand, I have made some slight modifications to the proposed resolution, and with the addition of these minor changes, the issue may be presented to the Tribal Council at its next meeting. According to Mr. Sanchez, the BIA is the appropriate agency to request that the matter be placed on the Council's agenda.

If you have further questions, comments or concerns, please feel free to call me at 425-8137. Thank you.

Sincerely,

Diana A. Lopez
Attorney at Law

cc: Felipe Sanchez

JPA 00-205

DETERMINATION

Arizona Contract No : JPA 00-205, 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 INTERIOR, BUREAU OF INDIAN AFFAIRS, has been reviewed by the undersigned for the United States Department of Interior who has determined that it is in the proper form and within the powers and authority granted to the United States Department of Interior.

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

DATED this 2 day of September, 2004.

THE UNITED STATES OF AMERICA,
DEPARTMENT OF INTERIOR

By William W. Quinn
William Quinn

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR00-2369TRN (**JPA 00-205**), 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: September 9, 2004.

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:dgr
Attachment
865572

1275 WEST WASHINGTON, PHOENIX, ARIZONA 85007-2926 • PHONE 602.542.1680 • FAX 602.542.3646