AG Contract No : KR04-0765TRN
ADOT ECS File No.: JPA 03-038
Project No : 093-B(004)
Project: Wetland Mitigation
TRACS No: H4601 01C, H5348 01C, H5999 01C
BUDGET SOURCE ITEM No: 15603, 11102, 75705

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
COCONINO COUNTY

THIS AGREEMENT is entered into this 4th day of October, 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") and COCONINO COUNTY, acting by and through the Chairman Board of Supervisors (the "County").

I. RECITALS

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

2. The County is empowered by Arizona Revised Statutes Section 11-932 and 11-933, and the Code of Federal Regulations 50-CFR17 and the Endangered Species Act of 1973, 16 USC 1361 et seq as amended, Department of the Interior Appropriations, Public Law 107-63 to enter into this agreement, and has authorized the undersigned to execute this agreement on behalf of the County.

3. Wetland habitat under the jurisdiction of the United States Army Corps of Engineers (USACE) will be impacted incident to three (3)-State Projects:

a) US 93, (Highway reconstruction)
b) State Route 160, (Highway reconstruction)
c) State Route 180, (Multi-use pathway enhancement)

The State will pay the County a one-time fee payment totaling an amount of $22,280 00 for wetland acreage for the projects as required by the Corps of Engineers 404 permits. The County has agreed to dedicate this fee payment to supplement existing County funds to purchase wetland acreage along Pump House Greenway located at Pump House Wash in Kachina Village five miles south of Flagstaff, Arizona, collectively referred to as the "Project"

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

NO. 27132
Filed with the Secretary of State
Date Filed: 10/04/04
Janice K. Brewer
Secretary of State
By: Dinny D. Greenewald

II. SCOPE OF WORK

1. The County will:

a. Upon execution of this agreement invoice the State for a total amount of $22,280.00 in accordance with the payment schedule listed below:

(a) US 93 (1.45 acres) under **TRACS No. H5348 01C** for the amount of $18,680.00

(b) State Route 160 (0.71acres) under **TRACS No. H4601 01C** for the amount of $ 1,100.00

(c) State Route 180 (0.25 acres) **TRACS No. H5999 01C** for the amount of $2,500.00

b. Request for payment shall be submitted with the "ADOT Progress Payment" Report Form (attached). Electronic forms can be requested through Joint Project Administration, at the address provided under Section III. Paragraph 5.

c. Be the lead agency for the Project, conduct all necessary negotiations to acquire wetland acreage along Pump House Greenway located at the Pump House Wash in Kachina Village, five miles south of Flagstaff, Arizona.

2. The State will:

a. Upon receipt of the "ADOT Progress Payment" Report Form and approval by the State, pay the County an amount of $22,280.00 as a one-time payment for the Project.

b. Upon execution of this Agreement, under the Special Conditions Permit No. 2002-00290-CJL, ADOT will provide the Corp of Engineers a copy of the check and transmittal letter that shall serve to demonstrate the successful transfer of the mitigation at the following address: US Army Corps of Engineers Regulatory Branch - Arizona Section 3636 N. Central Avenue Suite 900, Phoenix, Arizona 85012-1936.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said Project and final payments, provided; however, either party may cancel at any time prior to the commencement of performance under this agreement, upon thirty-days (30) written notice to the other party.

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

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

4. 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 in Arizona Revised Statutes Section 12-1518.

5. 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
Phœnix, AZ 85007

Coconino County Parks and
Recreation Department
Fort Tuthill, HC 39, Box 3A
Flagstaff Arizona 86001

6. Non-Availability of Funds: Every payment obligation of the 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.

7. 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 therefore; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

8. Pursuant to Arizona Statutes Section 11-952, (D) attached hereto is the written determination of each party's legal counsel 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.

COCONINO COUNTY

By _____
DEBORH HILL
Chairman

STATE OF ARIZONA
Department of Transportation

By _____
SUSAN TELLEZ
Contract Administrator

ATTEST

By _____
Deputy Clerk

G:03-038-Coconino County wetland mitigation
10 August 2004-ly

JPA 03-038

ATTORNEY APPROVAL FORM

FOR COCONINO COUNTY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the COCONINO COUNTY, an agreement among agencies, which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954, and declare this agreement to be in proper form and within the powers and authority granted to Coconino County under the laws of the State of Arizona, Revised Statutes Section 11-932 - 11-933 and Code of Federal Regulations 50-CFR17. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 1ST day of SEPTEMBER, 2004.

Richard S. Vickel

Attorney

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. KR04-0765TRN (**JPA 03-038**), 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 27, 2004

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf
Attachment
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