AG Contract No. KR04-0288TRN
ADOT ECS File No. JPA 03-071
Project: 082 SC 005 H4665 01C
TRACS No.: H4665 01C
Section: State Route 82
Budget Source Item No.: 12602

AGREEMENT

AMONG
THE STATE OF ARIZONA
SANTA CRUZ COUNTY, ARIZONA
KINO SPRINGS RANCH, L.L.C.
AND
KINO SPRINGS GOLF COURSE, L.L.C.

THIS AGREEMENT is entered into 8th of October, 2004, pursuant to the Arizona Revised Statutes, Section 28-401, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and, SANTA CRUZ COUNTY, acting by and through its BOARD OF SUPERVISORS (the "County") and KINO SPRINGS RANCH, L.L.C. and KINO SPRINGS GOLF COURSE, L.L.C. acting by and through their BOARD OF DIRECTORS (the "Developer").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-408 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 11-251 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 County.

3. The Developer is empowered 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 Developer.

4. The State has agreed to incorporate an adjunct project, on behalf of the County, to State's bridge-replacement project Santa Cruz River Bridge #1478 the "State's Project". The County's project requires: 1) Realign Kino Springs Drive and construct Proto Wash Bridge; and 2) Construct new eastbound right turn lane and westbound left turn lane at the intersection of State Route (SR) 82 onto Kino Springs Drive, herein referred to as the "County's Project". The Developer will fund the County's Project, in the amount of $513,467.00 and the State will construct. The construction plans for the County's Project outside of the State's right-of-way will be designed by the Developer, and the construction plans for the State's project will be designed by the State.

NO. 27142
Filed with the Secretary of State
Date Filed: 10/08/04
Janice K. Brewer
Secretary of State
By: Linny D. Graenewold

5. It is understood and agreed to by all parties, that the Developer, upon execution of this agreement, shall deposit $200,000.00 in an escrow account in Phoenix, Arizona as its pledge to totally fund the County's Project referenced herein. Upon receipt of said funds the State shall proceed with incorporating the County's Project into the State's Project. Prior to award of the State's Project, the Developer shall deposit an additional amount of $313,467.00 in the escrow account to complete the construction of the County's Project. However, should the Developer not provide the necessary funds stated herein, nothing shall be construed in this Agreement to impose an obligation on the State in any way to fund the County's Project and the Developer shall be responsible for all costs incurred by the State, up to the time of cancellation.

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

II. SCOPE OF WORK

1. The Developer:

a. Will upon execution and approval of the State Transportation Board, deposit said funds in an escrow account of the Developer's choice in Phoenix, Arizona in an amount of $200,000.00 to proceed with incorporating the design plans into the State's construction project. Prior to award, deposit an additional amount of $313,467.00 to complete the construction of the Project under TRACS No. H4665 01C.

b. Has dedicated the necessary right-of-way, for the right and left turn lanes on SR 82 at Kino Springs Drive, to the State.

c. Has dedicated the necessary right-of-way, for the realigned section of Kino Springs Drive, to the County.

d. Will provide design plans, to County standards, and other such documents required by the State for construction bidding and construction of the Project as described and agreed to in Recital I.4, above.

e. Will provide the proper documents to the State and County for their review and approval. Incorporate or resolve State and County's comments. Once all parties have agreed to the final design plans for the County's Project, the Developer will only be responsible for any and all contractor claims for extra compensation due to Developer design errors, omissions or change orders requested by the Developer and affiliated with the County's Project.

f. Be responsible for all costs incurred by the State in the event the Developer terminates this agreement at any time prior to award of the Project advertisement. Be responsible for said amount due and payable upon notice of cancellation and final accounting by the State.

2. The State will:

a. Withdraw $19,125.00 from the escrow account 15 days after execution of this agreement for the design costs of the new eastbound right turn lane and west bound left turn lane at the intersection of SR 82 onto Kino Springs Drive. After award of the State's Project, withdraw the balance of funds in the escrow account to complete the State's Project under TRACS No. H4665 01C.

b. Upon execution of this agreement, agree to be authorized agent for the County and on behalf of the County, advertise the Developer's prepared design plans for realignment of Kino Springs Drive outside of the State's right-of-way specifications and other documents and services required for construction bidding and construction of the Project, with the State's Project.

c. Upon execution of this agreement, call for bids for one or more construction contract(s) for the Project. Administer same and make all payments to the contractor(s). Reviews all design documents associated with the County's Project and provide timely written comments to Developer and County.

d. Be responsible for any design consultant or contractor claims for extra compensation due to delays or whatever reason, attributable to the State.

e. Upon substantial completion of the County's Project, the Resident Engineer and the County will inspect the Project jointly. Final acceptance will not be made by the State until all construction provided for and contemplated by the contract(s) is found completed to the satisfaction of both the State and the County.

f. Provide a copy of the environmental clearance, all daily inspection diaries, material test reports and as-built construction drawings to the County,

3. The County will:

a. Be responsible for any contractor claims for extra compensation due to design changes requested or approved by the County.

b. As a condition of this agreement, prior to completion but not later than final acceptance of the Project, accepts Kino Spring's Drive into the County's roadway system.

c. Issue a right-of-way use permit for the State to construct the County's Project.

d. Attend the partnering workshop and pre-construction conference.

e. Upon notification by the Resident Engineer, participate in inspections of the County's Project prior to final acceptance.

f. Upon completion and acceptance of Kino Spring Drive realignment and Proto Wash Bridge, provide for at its own cost, perpetual and proper maintenance of the County's Project.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall become effective upon signature of the parties hereto.

2. The State assumes financial obligation or liability under this agreement for only those items that they have had full responsibility for the design, plans, specifications, reports and the engineering in connection with the project within the State's right-of-way. The Developer assumes full responsibility for the design, plans, specifications, reports and the engineering in connection therewith; the construction of the improvements contemplated, cost over-runs and construction claims due to design errors or omissions of its agents, or changes requested by the Developer. EXCEPT AS OTHERWISE AGREED TO HEREIN, 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 Developer and the County and that the Developer and the County hereby agree 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 Developer and the County, 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, and expenses of litigation or attorneys' fees.

3. This Agreement shall remain in full force and effect until final payment from the Developer and acceptance of the Project by the parties herein.

4. Should Developer and/or the County fail to fulfill the obligations set forth in this Agreement or withdraw its proposed plans for whatever reason, the Developer and/or the County shall be responsible for all costs incurred by the State up to the time of withdrawal, unless the reason for Developer's or County's failure or cancellation is due to the State's failure to comply with its obligations hereunder.

5. Should the State cancel this Agreement and if no charges or expenditures have been issued, the Developer will be refunded 100% of the deposited money.

6. This Agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

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

8. 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".

9. 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.

10. In the event of any controversy which may arise out of this Agreement, the parties hereto agreed to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

11. 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 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007

KINO SPRINGS GOLF COURSE, L.L.C.
C/O Steven B. Buchanan
8475 E. Hartford Drive, Ste 201
Scottsdale, AZ 85255

KINO SPRINGS RANCH, L.L.C.
C/O Steven B. Buchanan
8475 E. Hartford Drive, Ste 201
Scottsdale, AZ 85255

SANTA CRUZ COUNTY
Victor Gabilondo
Public Works Director
2150 N. Congress Dr.
Nogales, Arizona 85621

12. Attached hereto and incorporated herein are 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.

KINO SPRINGS RANCH, L.L.C.

By:_____
STEVEN B. BUCHANAN
Manager

STATE OF ARIZONA
Department of Transportation

By: Douglas A. Forstie
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer

KINO SPRINGS GOLF COURSE, L.L.C.

By:_____
STEVEN B. BUCHANAN
Manager

SANTA CRUZ COUNTY

By: 7/6/04
JOHN MAYNARD
Chairman of the Board

ATTEST:

By Melinda Meek
MELINDA MEEK
Clerk of the Board

G: 03-071 Kino Springs LLC
Revised-28-June 2004-ly

RESOLUTION # 2004-21

A RESOLUTION OF THE BOARD OF SUPERVISORS, SANTA CRUZ COUNTY, ARIZONA PROVIDING FOR APPROVAL OF JOINT PROJECT AGREEMENT FOR IMPROVEMENTS TO KINO SPRINGS DRIVE

WHEREAS, Kino Springs Ranch L.L.C. and Kino Springs Golf Course, L.L.C. are the principal property owners and developer of the subdivision and surrounding area known as Kino Spings, a development located within the unincorporated area of Santa Cruz County;
WHEREAS, Kino Springs Ranch L.L.C. and Kino Springs Golf Course, L.L.C. are desirous of making certain improvements to Kino Springs Drive, a county road that is the principle means of ingress and egress to Kino Springs, and has prepared engineering plans describing such improvements;
WHEREAS, the State of Arizona through the Department of Transportation (ADOT) will administer and fund a bridge replacement project for State Route 82 at the Santa Cruz River and is willing to administer as part of that project the additional work to make improvements to Kino Springs Drive near its intersection with State Route 82;
WHEREAS, the County, Kino Springs Ranch L.L.C. and Kino Springs Golf Course, L.L.C. and ADOT have negotiated a Joint Project Agreement that sets forth the responsibilities of Kino Springs Ranch L.L.C. and Kino Springs Golf Course, L.L.C. to fund and prepare plans for the improvements to Kino Springs Drive, ADOT to administer the work as part of the Santa Cruz River Bridge replacement project, and the County to accept the improvements and provide for their future maintenance.

NOW, THEREFORE, THE BOARD OF SUPERVISORS, SANTA CRUZ COUNTY, ARIZONA RESOLVES AS FOLLOWS:

Section 1. That the Chairman of the Board of Supervisors is authorized to execute the Joint Project Agreement between the County, ADOT, and Kino Springs Ranch L.L.C. and Kino Springs Golf Course, L.L.C., attached hereto as Exhibit A, that provides for funding and construction of certain improvements to Kino Springs Drive, a county road.

PASSED AND APPROVED by majority vote of the Board of Supervisors at their regular meeting of ~~June~~ 7/6, 2004.

John Maynard
Chairman

Robert Damon
Vice-Chairman

Manuel Ruiz
Member

Attest:

Melinda Meek
Clerk of the Board

Approved As To Form:

Michael Massee
Deputy County Attorney, Civil

JPA 03-071

ATTORNEY APPROVAL FORM FOR

SANTA CRUZ COUNTY, ARIZONA.

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the COUNTY, an agreement among public 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 the COUNTY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 6 day of July, 2004.

County 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. KR04-0288TRN (**JPA 03-071**), 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 30, 2004

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf
869599