AG Contract No. KR03-1701TRN
ADOT ECS File No. 03-119
Project No.: S 085-B-400
TRACS No.: H 5955 03D
Section: SR 85, MP 126.08 and MP 130.71
Budget Source Item No.: 70704:

AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE ARIZONA OPEN LAND TRUST

THIS AGREEMENT is entered into March 31, 2004, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE ARIZONA OPEN LAND TRUST, acting by and through its Board of Directors, ("AOLT ").

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 AOLT is authorized by its Board of Directors 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 AOLT.

3. Incident to a roadway improvement project contemplated by the State, on State Route (SR) 85 a portion of the work will impact lands under the jurisdiction of the US Army Corps of Engineers (USACE). The USACE requires mitigation of the project area lands by performing off-site mitigation through an in-lieu fee payment. To meet that requirement, the State and AOLT desire to participate habitat enhancement of the west branch of the Santa Cruz River at a total cost of $11,700.00, all at State expense.

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

NO. 26750
Filed with the Secretary of State
Date Filed: 03/31/04
Janice K. Brewer
Secretary of State
By: Linda J. Greenwald

II. SCOPE OF WORK

1. The AOLT will:

a. Upon execution of this agreement, invoice the State for the cost of the mitigation effort, an in-lieu fee of $11,700.00.

b. Dedicate this in-lieu fee payment for land habitat enhancement of the west branch of the Santa Cruz River as shown on Exhibit attached hereto and made a part hereof.

2. The State will:

a. Within (30) days after receipt and approval of an invoice, pay The AOLT the in-lieu fee of $11,700.000 as the total cost of the mitigation effort.

b. Upon completion of the payment process, through its Statewide Project Management Group, provide a copy of the invoice and payment voucher to the USACE (Permit # 2002-00682-CJL), to document the successful transfer of in-lieu mitigation fees.

III. MISCELLANEOUS PROVISIONS

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

2. The parties to this contract agree that the State of Arizona shall be indemnified and held harmless by AOLT for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

3. This agreement shall become effective upon signature and date by the parties hereto.

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 audit are applicable to this contract.

6. In the event of any controversy that 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.

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. 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
FAX: 602-712-7424

The AOLT
Executive Director
1915 E. Camino Miravel
Tucson, AZ 85718

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written

Arizona Open Land Trust, Inc
An Arizona Nonprofit Corporation

By _____
DIANA BARNES FRESHWATER
Executive Director

3/1/04
DATE

Department of Transportation

By _____
SUSAN TELLEZ
Contract Administrator

3/24/04
DATE

ATTEST

By _____
ALEX HOBSON
Duffield, Young, Adamson, & Alfred, P C

2/27/04
DATE

G:03-119-AOLT
15 Dec 2003 ly

JPA 03-119

APPROVAL OF THE ATTORNEY FOR

ARIZONA OPEN LAND TRUST, INC.

I, Alex Hobson, am legal counsel for the ARIZONA OPEN LAND TRUST, INC I have reviewed the above-referenced agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the ARIZONA OPEN LAND TRUST, INC., and certify that the ARIZONA OPEN LAND TRUST, INC , by and through authority granted by its Board of Directors delegated to its Executive Director, Diana Barnes Freshwater, has authority to enter into the said Agreement

Dated this 27th day of February, 2004

Alex Hobson
Duffield, Young, Adamson & Alfred, P.C.
3430 E. Sunrise Dr., Suite 200
Tucson, Arizona 85718-3210
Legal counsel for the Arizona Open
Land Trust, Inc.

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. KR03-1701TRN (**JPA 03-119**), 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: March 24, 2004.

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED/mjf
Attachment
836418

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