A. G. Contract No.: KR04-0660TRN
ADOT ECS File No.: JPA 03-133
Project: Middle Verde Road
TRACS No.: H650601C
Budget Source Item No.: 22905
(Reference: 73305)

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
YAVAPAI -APACHE NATION

THIS AGREEMENT is entered into August 13, 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 YAVAPAI- APACHE NATION, acting by and through its TRIBAL COUNCIL (the "Nation").

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 Nation is empowered to enter into this Agreement and has by Resolution No. 65-04, 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 Nation.

3. The State and the Nation desire to participate in the design and construction of improvements to Middle Verde Road at the Interstate 17 (I-17) Traffic Interchange as shown on Exhibit "A" The proposed improvements will construct a roundabout at the intersection of Middle Verde Road and the I-17 Northbound (NB) on and off ramps **not to exceed $419,562.50**, of which the State will pay for the final construction documents, design of the improvement and all construction costs for the I-17 NB on and off ramp and Middle Verde Road Intersection improvements. The Nation shall pay for the preliminary design concepts of the roundabout as part of the design verification for the construction of the roundabout at Middle Verde Road and I-17 northbound on and off ramp, hereinafter collectively referred to as the "Project". The parties agree the Nation shall be the lead agency for the Project.

4. The Nation currently has a permit to construct a roundabout at the intersection of Middle Verde Road and Casino Drive. A portion of this intersection utilizes the present I-17 right of way on Middle Verde Road as shown on Exhibit "A".

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

NO. 27012
Filed with the Secretary of State
Date Filed: 08/13/04
Janice K. Brewer
Secretary of State
By: Lindy D. Graenewald

II. SCOPE OF WORK

1. The Nation will:

a. Acquire a construction permit for work within the State rights-of-way; be responsible for acquiring any additional right-of-way required for the Project outside the State's right-of-way.

b. Provide to State standard design plans, specifications and such other documents and services required for construction bidding and construction of the Project. Incorporate the State's review comments.

c. Be responsible for all administrative costs associated with construction of the Project.

d. Call for bids and award one or more construction contract(s) for the Project. Administer same and make all payments to the contractor(s). Confer with the State on any Project-related contract modifications and any additional Project costs. Be responsible for any contractor claims for extra compensation attributable solely attributed to the actions by the Nation.

e. Prior to award of a Project construction contract, invoice the State for its share of the cost of the Project, in an amount **not to exceed $419,562.50**. If no additional improvements are requested by the Nation, the State shall pay for 100 percent of the Project costs **not to exceed $419,562.50**.

f. Upon completion, approve and accept the Project, provide maintenance to the Project outside the State right-of-way and within the State's right-of-way at the intersection of Casino Drive and Middle Verde Road.

g. Pay for electrical costs associated with any necessary lighting of the roundabouts shown in Exhibit "A".

2. The State will:

a. Be responsible for the total cost of the Project in an amount **not to exceed $419,562.50**.

b. Review the Project design documents and provide comments.

c. Within thirty (30) days upon receipt and approval of an invoice, pay the Nation in an amount **not to exceed $419,562.50** for the State's total participation in the costs of the Project.

d. Be responsible for any contractor claims for extra compensation attributable to the State, and its proportionate share of any Project modification.

e. Upon completion and acceptance of the Project by the State, provide maintenance to the Project inside State's right-of-way, excluding the intersection of Casino Drive and Middle Verde Road.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in force and effect until completion of said Project and final payments; provided, however, that this Agreement, except any provisions herein for maintenance, which shall be perpetual, may be canceled at any time prior to the advertisement of the Project construction contract, with thirty (30) days written notice to the other party.

2. This Agreement shall become effective upon filing with the Secretary of State.

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

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

5. 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".

6. 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.

7. 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 for public works contracts in Arizona Revised Statutes Section 12-1518.

8. 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, AZ 85007-3212
FAX: (602)-712-7424

The Yavapai-Apache Nation
Economic Development Authority
2400 W. Datsi Street
Camp Verde, AZ 86322

9. 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 and the Nation 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.

YAVAPAI -APACHE NATION

By Fred Sanchez
FRED SANCHEZ, Vice-Chairman
Yavapai-Apache Tribal Council

STATE OF ARIZONA
Department of Transportation

By Douglas A. Forstie
DOUGLAS A. FORSTIE
Deputy State Engineer

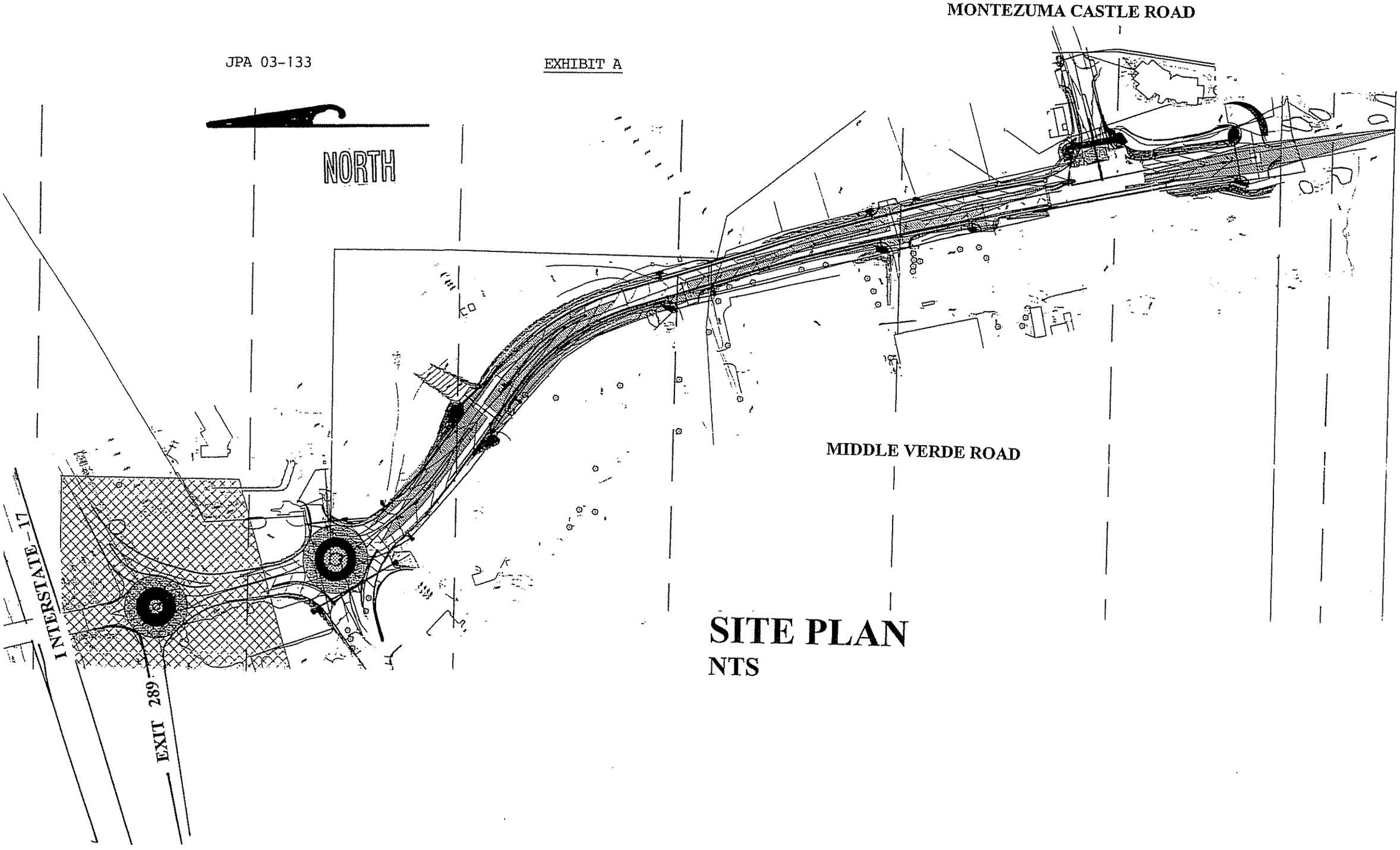
Attest:

By Karla Reimer
Karla Reimer, Tribal Secretary

Revised 7-26—04 YAN AG

JPA 03-133

EXHIBIT A



SITE PLAN

NTS

RESOLUTION NO. 65 -04
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION

Approving the ADOT Roundabout Intergovernmental Agreement
For I-17 and Middle Verde Road Interchange

WHEREAS: The Yavapai-Apache Tribal Council ("Council") is empowered to represent the Yavapai-Apache Nation ("Nation") and act on all matters that concern the health and welfare of the Nation, and to make decisions not inconsistent with or contrary to the Constitution of the Yavapai-Apache Nation; and

WHEREAS: The Council is the legislative body of the Nation empowered to enact laws, ordinances and resolutions incidental to the exercise of legislative powers as provided by Article V (v) of the Nation's Constitution, is the branch of government to negotiate with the federal and state governments pursuant to Article V(b) of the Nation's Constitution, and is the branch of government that has the authority to allocate funds for tribal road projects pursuant to Article V(k) of the Nation's Constitution; and

WHEREAS: The Arizona Department of Transportation, in the interest of safety and saving time and money, desires to enter into an Inter-Governmental Agreement (IGA) with the Yavapai-Apache Nation in the amount of **Four Hundred Nineteen Thousand Five Hundred Sixty-two & 50/100 Dollars ($419,562.50),** a copy of which is attached hereto for the engineering (Shephard-Wesnitzer), administration, inspection and construction utilizing Eagle Mountain Construction Company for the construction for the Roundabout at the I-17 and Middle Verde Road Interchange, as the final part of the already authorized Middle Verde Road Construction Project already underway; and

WHEREAS: The Arizona Department of Transportation, upon approval of design work and on a reimbursement basis, shall pay for this improvement to the I-17, Exit No. 289, Access, which constructs a Roundabout with no bypass lanes at the Interchange of I-17 and Middle Verde Road on the East side of Exit No. 289; and

WHEREAS: The Yavapai-Apache Nation's Economic Development Authority (EDA) is currently the Project Manager for the Middle Verde Road Project and will continue in that capacity, and can serve as the Project Manager for this additional Roundabout Project; thereby, controlling the Contractor's construction procedures in building this Rounabout, and

WHEREAS: The Nation's EDA Department is the Project Manager and should continue to administer this ADOT/IGA; thereby, providing the Nation with the ability to keep the most advantageous traffic routes flowing to the Cliff Castle Casino as opposed to ADOT being in charge of the project and potentially closing or substantially restricting traffic to the Casino for a period of 45 days.

NOW, THEREFORE, BE IT RESOLVED that the Yavapai-Apache Nation Tribal Council approves the IGA for the I-17/Middle Verde Road Interchange at Exit No. 289, and hereby authorizes the Chairman, or Vice-Chairman in the Chairman's absence, to execute said IGA Agreement; and

BE IT FURTHER RESOLVED that the Chairman shall take all reasonable and necessary actions to ensure that the IGA is fully implemented; and

BE IT FINALLY RESOLVED that the Project Manager for this IGA shall be the Director of the Nation's Economic Development Authority or his Designee.

CERTIFICATION

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, presented for approval on July 29, 2004, by a vote of 7 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation.

Fred Sanchez, Vice-Chairman

ATTEST:

Karla Reimer, Council Secretary

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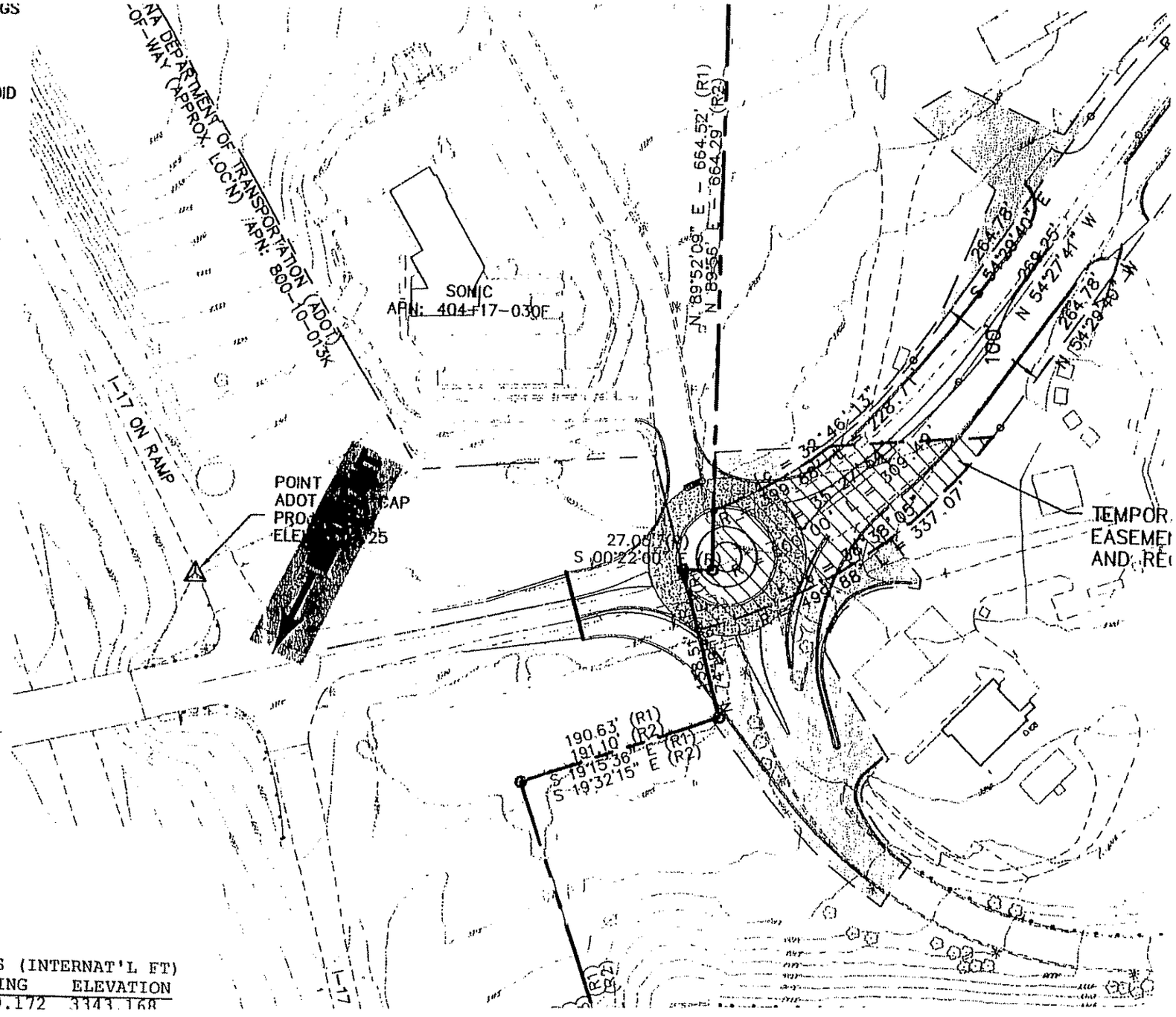
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