JPA-77-03

LANDSCAPE MAINTENANCE AGREEMENT

ARIZONA PROJECT I-17-1(80)

(Camelback to Arizona Canal)

THIS AGREEMENT, made this 2nd day of December, 1977, pursuant to A.R.S. Sect. 11-951 through Sec. 11-954, by and between the Department of Transportation, Highways Division, an agency of the State of Arizona, thereunto duly authorized, hereinafter designated Department of Transportation and the City of Phoenix, a municipal corporation, thereunto duly authorized, hereinafter designated as City of Phoenix.

WITNESSETH:

WHEREAS, it is to the mutual advantage of the Department of Transportation and the City of Phoenix to landscape certain sections of Interstate Route 17 from centerline Station 353+51.99 to 596+50 in the City of Phoenix, a distance of approximately 4.58 miles.

NOW, THEREUNTO, it is hereby mutually agreed by and between the Department of Transportation and the City of Phoenix, pursuant to the authority contained in A.R.S. Sec. 28-108, as follows:

1. The Department of Transportation will prepare plans for the landscaping and irrigation project and submit them to the Federal Highway Administration for approval.

2. Upon approval, the project will be constructed by the Department of Transportation using federal funds apportioned to the State of Arizona.

3. If the project is not approved by the Federal Highway Administration, this agreement and all rights and duties hereunder shall terminate.

4. The City of Phoenix shall furnish and install water meters, and the cost of which shall be paid by the Department of Transportation.

5. The City of Phoenix shall furnish all water during construction phase, and all water hereafter necessary to properly maintain the landscaping between the right of way lines, all at city expense.

6. The Department of Transportation shall maintain landscaping and irrigation system, including plant replacement and irrigation systems repairs as needed.

7. The City of Phoenix hereby agrees to save and hold harmless the Department of Transportation, or any of its departments, agencies, officers or employees from all cost and 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 non-performance of any provision of this agreement by the City of Phoenix, any of its agents, or any of its independent contractors. The above cost incurred by the Department of Transportation or any of its departments, agencies or employees shall include in the event of an action, court costs, expenses of litigation and reasonable attorneys' fees. When any above cost, damage or other damage occurs as aforesaid, the City of Phoenix assumes the burden of proof that the activity, conditions, or event did not cause such cost, damage or other damage.

8. This agreement will remain in effect until such time that the State relinquishes ownership of the right of way or discontinues the landscaped areas.

9. This agreement shall be filed with the Secretary of State and shall become effective on the date of such filing.

10. Attached hereto are resolutions of the Department of Transportation and the City of Phoenix authorizing both entities to enter into this agreement, and a written determination by the City Attorney of Phoenix that this agreement is in proper form and within the powers and authority granted to the City of Phoenix under the laws of this State.

IN WITNESS WHEREOF the parties have executed two copies of this agreement on the day and year herein written.

ARIZONA DEPARTMENT OF TRANSPORTATION

By _____

CITY OF PHOENIX

By _____

APPROVAL OF THE ATTORNEY GENERAL

I hereby state that I have reviewed the proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, STATE ENGINEER and the CITY OF PHOENIX, and declare the agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona.

DATED this 16th day of November 1977.

NO. 3990
FILED WITH SECRETARY OF STATE
Date Filed 12-5-77
Secretary of State

BRUCE E. BABBITT
The Attorney General

Albert Morgan
Assistant Attorney General

OFFICE OF THE

# Attorney General

BRUCE E. BABBITT
ATTORNEY GENERAL

## INTERGOVERNMENTAL AGREEMENT

## DETERMINATION

A. G. Contract No. 77-790 which is 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 proper form and is within the powers and authority granted to the State or its agencies under the laws of 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 contract.

DATED this 21st day of November, 1977.

NO. 3990
FILED WITH SECRETARY OF STATE
Date Filed 12-5-77
Secretary of State

BRUCE E. BABBITT
The Attorney General

ALBERT MORGAN
Assistant Attorney General

R E S O L U T I O N

Be it resolved on this date, December 1, 1977, I, WILLIAM A. ORDWAY, the below undersigned Director, Department of Transportation, have determined that it is to be to the advantage of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, and the CITY of PHOENIX, acting by and through its CITY COUNCIL, enter into the intergovernmental agency agreement for the purpose of entering in a landscape maintenance agreement for certain projects which have been selected by the State and subject to the approval of the Federal Highway Administration, as by law required; and request the City to perform certain work and supply necessary materials required to maintain the specified areas in the manner specified in the attached agreement.

W. A. Ordway

WILLIAM A. ORDWAY, Director
Department of Transportation

STATE OF ARIZONA )
) ss
COUNTY OF MARICOPA)

I, Deborah Paglia, the duly appointed, qualified and acting Deputy City Clerk of the City of Phoenix, County of Maricopa, State of Arizona, do hereby certify and attest the attached to be a true and correct copy of an excerpt of the minutes of the Council of the City of Phoenix held on the 12th day of April, 1977, adopting Resolution Number 14801, authorizing a Maintenance Agreement with the Arizona Department of Transportation all as appears of record in the office of the City Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Phoenix to be affixed hereunto this 27th day of October, 1977.

Deborah Paglia
DEPUTY CITY CLERK

(SEAL)

RESOLUTION NO. 14801

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE PURPOSE OF PROVIDING NECESSARY WATER TO THE LANDSCAPING PROJECT ON THE BLACK CANYON FREEWAY (INTERSTATE 17) FROM CAMELBACK ROAD TO THE ARIZONA CANAL; AND DECLARING AN EMERGENCY.

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BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. That the City Manager be, and he is hereby, authorized to enter into a maintenance agreement with the Arizona Department of Transportation for purposes of installing water meters and furnishing all water during the construction phase and thereafter to maintain the landscaping on the Black Canyon Freeway (Interstate 17) from Camelback Road to the Arizona Canal, in the City of Phoenix.

SECTION 2. WHEREAS, the immediate operation of the provisions of this resolution is necessary for the preservation of the public peace, health and safety, an EMERGENCY is hereby declared to exist, and this resolution shall be in full force and effect from and after its passage by the Council as required by the City Charter and is hereby exempted from the referendum clause of said Charter.

PASSED by the Council of the City of Phoenix this 12 day of April, 1977.

MARGARET T. HANCE
MAYOR

ATTEST:

DONNA CULBERTSON, City Clerk

APPROVED AS TO FORM:

L. VERDE RHUE, ACTING City Attorney

REVIEWED BY:

MARVIN A. ANDREWS, City Manager

NO. 3990
FILED WITH SECRETARY OF STATE
Date Filed 12-5-77
Secretary of State

BPM/rc
4/7/77

Resolution No. 14801

MOTION was made by Mr. Donahue, SECONDED by Mrs. Worthen, that Ordinance S-9787 be adopted.

Roll Call: Ayes: Donahue, Goode, Gutierrez, O'Dell, Worthen, Carter and Mayor Hance
Nays: None
Absent: None

MOTION CARRIED. Ordinance adopted.

LANDSCAPE MAINTENANCE AGREEMENT - BLACK CANYON FREEWAY (INTERSTATE 17) - CAMELBACK ROAD TO ARIZONA CANAL - AGREEMENT NO. 18404 - F-3809

Resolution 14801 authorizing the City Manager to enter into an agreement with the Arizona Department of Transportation for the purpose of providing necessary water to the landscaping project on the Black Canyon Freeway (Interstate 17) from Camelback Road to the Arizona Canal; and declaring an emergency, was presented to the Council and read by title only.

MOTION was made by Mr. Donahue, SECONDED by Mr. Gutierrez, that Resolution 14801 be adopted.

Roll Call: Ayes: Donahue, Goode, Gutierrez, O'Dell, Worthen, Carter and Mayor Hance
Nays: None
Absent: None

MOTION CARRIED. Resolution adopted.

CLOSE-OUT OF NDP CATEGORICAL GRANT (ARIZ. A-4) - F-4289

Resolution 14802 approving and providing for the City Manager to execute a Close-out Agreement between the City of Phoenix, Arizona (in its capacity as local Public Agency) and the City of Phoenix, Arizona respecting the Booker T. Washington-NDP (ARIZ. A-4); and declaring an emergency, was presented to the Council and read by title only.

MOTION was made by Mr. Donahue, SECONDED by Mr. Gutierrez, that Resolution 14802 be adopted.

Mayor Hance questioned Mr. Andrews regarding pending legislation pertaining to formal closing-out of Categorical Grants. She wanted to know if action on this resolution could affect available close-out money for urban renewal projects. Mr. Andrews said that matter would be investigated.

Mr. Gutierrez asked Mr. Andrews if there was any deadline regarding this matter. Mr. Andrews said he did not believe there was a deadline involved.

At this time Mr. Gutierrez made a substitute MOTION that the Close-out Agreement of NDP Categorical Grant (ARIZ. A-4) be continued until April 19, 1977, at 10:00 a.m. This was SECONDED by Mrs. Worthen. MOTION CARRIED UNANIMOUSLY.

APPROVAL OF THE CITY ATTORNEY

I hereby state that I have reviewed the proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, STATE ENGINEER and the CITY OF PHOENIX, and declare the agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona.

DATED this 12 day of October, 1977.

NO. 3990
FILED WITH SECRETARY OF STATE
Date Filed 12-5-77
Secretary of State

ANDREW BAUMERT
The City Attorney

Assistant City Attorney