SPA-77-05

LANDSCAPE MAINTENANCE AGREEMENT

ARIZONA PROJECT F-028-1-503

Superstition Freeway

(Price Road to Mesa Drainage Channel)

THIS AGREEMENT, made this 31st day of August, 1977, pursuant to A.R.S. Sec. 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 Tempe, a municipal corporation, thereunto duly authorized, hereinafter designated as City of Tempe.

WITNESSETH:

WHEREAS, it is to the mutual advantage of the Department of Transportation and the City of Tempe to landscape the Superstition Freeway from Price Road, approximate roadway Station 215+00 to the Mesa Drainage Channel, approximate Roadway Station 266+89.25, in the City of Tempe, a distance of approximately .98 miles.

NOW, THEREFORE, it is hereby mutually agreed by and between the Department of Transportation and the City of Tempe, 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. The City of Tempe shall furnish and install water meters, and the cost of which shall be paid by the Department of Transportation.

4. The City of Tempe 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.

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

6. The City of Tempe 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 Tempe, 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 Tempe assumes the burden of proof that the activity, condition, or event did not cause such cost, damage or other damage.

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

8. This agreement shall be filed with the Secretary of State and shall become effective upon filing.

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

By _____

Attest:

_____
City Clerk

I, Virginia S. Thompson, the duly appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby the following to be a true and exact excerpt of the Minutes of the Regular Council Meeting of June 2, 1977 of the City Council, Tempe, Arizona.

DATED: June 10, 1977

Virginia S. Thompson, CMC
City Clerk

C. Miscellaneous

(1) Auth Arizona DOT Landscape Agreements: a) Apache Blvd. Rural/Terrace; b) Superstition Freeway, Price Road/Mesa Drainage Channel

Councilman Hatton moved that the City Council authorize future execution of the documents by the Mayor following determination by the Attorney General's office that they are "in proper form and are within the powers and authority granted by law"; Council man Phillips seconded; roll call vote 7-0.

R E S O L U T I O N

Be it resolved on this date, July 3, 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 TEMPE, 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.

Francis A. Boyle
for WILLIAM A. ORDWAY, Director
Department of Transportation

STATE OF ARIZONA)
: SS
County of Maricopa)

I, Virginia S. Thompson, City Clerk

of the City of Tempe, Arizona, do hereby certify that the following is a true and correct extract of the minutes of the City Council meeting held June 2, 1977:

C. Miscellaneous

* (1) Auth Arizona DOT Landscape Agreements: a) Apache Blvd Rural/Terrace; b) Superstition Freeway, Price Road/Mesa Drainage Channel

Councilman Hatton moved that the City Council authorize future execution of the documents by the Mayor following determination by the Attorney General's office that they are "in proper form and are within the powers and authority granted by law"; Councilman Phillips seconded; roll call vote 7-0.

In Witness Whereof, I have hereunto set my hand and affixed the Official Seal of the City of Tempe, Arizona. Done in Tempe, Arizona, this 11th day of August, 1977.

Virginia S. Thompson

Virginia S. Thompson, CMC
City Clerk

OFFICE OF THE

Attorney General

BRUCE E. BABBITT
ATTORNEY GENERAL

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. 77-571 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 23 day of August, 1977.

BRUCE E. BABBITT
The Attorney General

RICHARD KAMPS
Assistant Attorney General

3815

9-2-77

APPROVAL OF TEMPE 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 TEMPE, 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 10th day of August, 1977.

DAVID R. MERKEL
City Attorney

David R. Merkel