No. 4021
FILED WITH SECRETARY OF STATE
Date Filed 12-19-77
Secretary of State

19012

AGREEMENT FOR THE RECONSTRUCTION OF JOINT USE STORM DRAINAGE AND IRRIGATION WASTE FACILITIES

RECEIVED
JAN - 1 1978
DISTRICT ONE OFFICE

THIS AGREEMENT, made and entered as of the 19th day of December, 1977, by and between the State of Arizona, acting by and through its Department of Transportation, hereinafter called "STATE", and the City of Tempe, Arizona, a municipal corporation, acting by and through its Mayor, hereinafter called "TEMPE", and the City of Phoenix, Arizona, a municipal corporation, acting by and through its City Manager, hereinafter called "PHOENIX", and the Salt River Valley Water User's Association, an Arizona corporation, hereinafter called "ASSOCIATION", and the Flood Control District of Maricopa County, a political subdivision of the State of Arizona and a municipal corporation, hereinafter called "DISTRICT".

W I T N E S S E T H :

WHEREAS, the parties hereto, with the exception of PHOENIX, have previously entered into an Intergovernmental Agreement for the reconstruction of joint use storm drainage and irrigation waste facilities on February 9, 1966, as amended by Addendum dated November 24, 1969, and

WHEREAS, the parties to this Agreement (including PHOENIX) desire to set forth their understanding and agreements relating to the reconstruction and maintenance of said storm drainage and irrigation waste facility, and

WHEREAS, the aforementioned facilities accommodating storm, flood and irrigation waste waters will hereinafter be referred to as "The Channel", and

WHEREAS, TEMPE, PHOENIX and DISTRICT desire to reconstruct The Channel, commonly referred to as Tempe Drainage District No. 2 -- Ditch, and generally commencing at the West right-of-way line of the Hohokam Expressway and terminating at or near 34th Street and the Salt River, as shown on Exhibit B of the Agreement of February 9, 1966, which includes a combination irrigation waste ditch, storm drain and flood control channel, to reduce flood damage to the citizens of PHOENIX and TEMPE, and

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25TH FLOOR
11 NORTH FIRST AVENUE
IOENIX, ARIZONA 85003
LEPHONE (602) 271-0505

WHEREAS, TEMPE, PHOENIX and DISTRICT are desirous of entering into an agreement whereby TEMPE will design and supervise the reconstruction of The Channel with the cost of reconstruction to be shared among TEMPE, PHOENIX and DISTRICT at their sole and joint expense, and

WHEREAS, the parties hereto are desirous of setting forth the maintenance responsibilities of The Channel when reconstructed, and

WHEREAS, the parties hereto are desirous of redefining the maximum drainage discharge of water, measured in cubic feet per second (c.f.s.), through The Channel.

WHEREAS, the public agencies, which are parties hereto are empowered to enter into and perform this Agreement as follows:

STATE, pursuant to A.R.S. § 28-108;
TEMPE, pursuant to Article I, Section 1.03, Tempe City Charter;
PHOENIX, pursuant to Chapter 4, §2 Paragraph 45; and Chapter 2, §2, Paragraph i of the Phoenix City Charter.
DISTRICT, pursuant to A.R.S. §45-2360, as amended.

WHEREAS, attached to this Agreement are certified or authenticated copies of appropriate ordinances, resolutions or motions authorizing the respective public agencies to this Agreement and the association to enter into same.

NOW THEREFORE, in consideration of the mutual promises and covenants, as more particularly set forth below, the parties hereby agree as follows:

1. By indenture of even date herewith, attached hereto as Exhibit C, the Salt River Project Agricultural Improvement and Power District, without warranty of the right, title and interest held by it, grants and conveys to the City of Phœnix, an easement and the right to construct, reconstruct, maintain and use portions of the Salt River Project Agricultural Improvement and Power District's existing right-of-way (more particularly described in Exhibit C attached hereto and incorporated herein by reference) for a combination storm drain, irrigation waste ditch and flood control channel, such use to be in common with that of the Salt River Project Agricultural Improvement and Power District in carrying out is irrigation and electrical functions.

The State, City of Tempe, and the District are the grantees of an easement dated the 25th day of February, 1977, from the Salt River Project

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Agricultural Improvement and Power District. The easement is more particularly described in the indenture attached to the Agreement dated the 9th day of February, 1966, and entitled "State-City-Water Users' and Maricopa County Flood Control District Agreement for the Construction of Joint Use Storm Drainage and Irrigation Waste Facilities, 279-66-1, Interstate Project 1-10-3-133, 40th Street-Broadway." The State, City of Tempe, and District do hereby consent to the City of Phoenix' joint use of the storm drainage and irrigation waste facilities as described in this agreement, and hereby grant the City of Phoenix the right to use said facilities in common with the District, Tempe and State.

2. Upon the execution of a construction agreement between TEMPE, PHOENIX and DISTRICT, the respective parties pursuant to the terms of said construction agreement and at their sole and joint expense, shall reconstruct The Channel in accordance with those certain plans and specifications on file with the Tempe Public Works Director and captioned, "City of Tempe Project No. 75032." All parties to this Agreement agree that the Plans and Specifications for Project No. 75032 will be reviewed and approved prior to actual reconstruction of the aforementioned Channel.

3. STATE, DISTRICT, ASSOCIATION and PHOENIX assume no liability for the engineering and reconstruction of The Channel by TEMPE and any damage arising out of any aspect of the work embraced in said engineering and reconstruction shall be solely the liability of TEMPE. TEMPE agrees to totally save, hold harmless and indemnify the other parties to this Agreement and any of their departments, agencies, officers or employees from all costs and damages, direct or indirect, incurred by any engineering and reconstruction of the aforesaid Channel and, in addition, TEMPE agrees to totally save, hold harmless and indemnify the other parties to this Agreement from any and all costs and damages whatsoever which may be incurred by said other parties to any person or property whatsoever, by virtue of any activity, condition or event arising out of the performance or non-performance of any aspect of the engineering and reconstruction of the aforesaid Channel by TEMPE, any of its agents, or any of its independent

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contractors. The aforementioned costs which may be incurred by STATE, DISTRICT, ASSOCIATION or PHOENIX shall include, but not be limited to, court costs, expenses of litigation and reasonable attorney's fees.

4. The parties hereto mutually agree that each party will limit its maximum discharge of water, measured in cubic feet per second (c.f.s.), through The Channel as follows:

A. STATE 93.0 c.f.s.

B. TEMPE 1268.0 c.f.s.

C. PHOENIX 332.0 c.f.s.

D. ASSOCIATION 32.5 c.f.s.

5. The DISTRICT agrees, upon completion of all work called for under Project No. 75032, in accordance with Chapter 10, Article 5, Section 45-2360, as amended, Arizona Revised Statutes, and subject to the liability restrictions of Paragraph 3 of this Agreement, to declare, accept and maintain that portion of The Channel beginning at the West right-of-way line of Hohokam Expressway and extending to approximately the intersection of 34th Street and the Salt River. The DISTRICT thereafter agrees to assume and pay for all future maintenance to said Channel, structures and culverts, as shown in those certain Plans and Specifications bearing Project No. 75032, at no expense to the ASSOCIATION, STATE, TEMPE or PHOENIX; provided, however, if the interest acquired by the DISTRICT to the property in question shall at some future time prevent the DISTRICT from carrying out its obligations under the terms and conditions of this Agreement, then the parties to this Agreement agree to use their collective best efforts to resolve such insufficiency of interest. Any liability to third persons incurred by the DISTRICT as a result of its obligations aforesaid and directly attributable to insufficiency of its interest acquired shall be independent of this Agreement and subject to resolution at that time.

6. The DISTRICT agrees to totally save, hold harmless and indemnify the ASSOCIATION, STATE, TEMPE and PHOENIX and any of their departments, agencies, officers or employees, against any and all liability by virtue of subsequent injuries, losses or damages, direct or indirect, occurring through the use and operation of said Channel, structures and rights-of-way in

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connection with the operation of The Channel; provided however, the parties mutually agree that the DISTRICT'S obligation to totally save, hold harmless and indemnify the other parties to this Agreement shall be contingent upon the parties seeking enforcement of the hold harmless and indemnification provision not being in breach of this Agreement at the time the obligation or responsibility arose.

The DISTRICT further agrees to totally save, hold harmless and indemnify all other parties to this Agreement and any of their departments, agencies, officers or employees from any and all costs and damages, direct or indirect, to any person or property whatsoever, which is caused by any activity, condition or event arising out of the performance on non-performance of any maintenance obligation assumed hereunder by the DISTRICT, any of its agents, or any of its independent contractors. Costs which may be incurred by STATE, ASSOCIATION, PHOENIX or TEMPE, or any of their departments, agencies, officers or employees, shall include, but not be limited to, court costs, expenses of litigation and reasonable attorney's fees.

7. Execution of this Agreement shall in no way be construed to in any way impair or relinquish the rights, obligations and possible liabilities, known or unknown, arising between the parties by virtue of the terms of the Intergovernmental Agreement of February 9, 1966, as amended by Addendum dated November 24, 1969.

8. The obligation of TEMPE, PHOENIX and DISTRICT, as more particularly set forth in Paragraphs 2 and 3 above, with respect to the reconstruction of The Channel shall terminate upon completion of all work called for under City of Tempe Project No. 75032 and acceptance by TEMPE. The duration of this Agreement shall be until such time as same is partially or completely terminated by the consent of all parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and same shall become effective as of the date it is filed with the Secretary of State pursuant to A.R.S. §11-952 (E) (33rd Legislature, Chapter 133, Section 2).

DATE FILED WITH THE SECRETARY OF STATE December 19, 1977.

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STATE OF ARIZONA

By _____

Title Director, Arizona Department of Transportation

ATTEST:

_____

CITY OF PHOENIX, a municipal corporation
MARVIN A. ANDREWS
City Manager

By BY _____
DEVELOPMENT SERVICES MGR.
Marvin A. Andrews, City Manager

ATTEST:

_____
City Clerk

CITY OF TEMPE, a municipal corporation

By _____
Mayor

ATTEST:

_____
Deputy City Clerk

SALT RIVER VALLEY WATER
WATER USERS' ASSOCIATION

By _____
President

ATTEST AND COUNTERSIGN

_____

FLOOD CONTROL DISTRICT OF
MARICOPA COUNTY

By _____

Title Chairman, Board of Directors

ATTEST:

_____

8-15-77

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1 NORTH FIRST AVENUE
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LEPHONE (602) 271-0305

KNOW ALL MEN BY THESE PRESENTS:

That the SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, a political subdivision of the State of Arizona, for and in consideration of the sum of One Dollar, and other valuable consideration, receipt of which is hereby acknowledged, without warranty of the right, title and interest held by it do hereby grant to the CITY OF PHOENIX, a municipal coporation, the right, easement, and privilege to construct, reconstruct, operate, maintain and use for a combination storm drain, irrigation waste ditch and flood control channel that portion of a certain drainage ditch known as Drainage Ditch of Drainage District No. 2, Maricopa County which lies within the North half of Section 19, Township 1 North, Range 4 East and within Section 24, Township 1 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

It being understood that the Grantor herein reserves unto itself the right to continue its use of said drainage ditch for irrigation and electric utility purposes.

The GRANTEE shall at all times have the right of full and free ingress and egress to said easement for the purpose heretofore specified.

In the event the right, privilege and easement herein granted shall be abandoned and permanently cease to be used for the purpose herein granted, all rights herein granted shall cease and revert to the grantors, their heirs or assigns.

The covenants and agreements herein set forth shall extend and inure in favor and to benefit of and shall be binding on the heirs, successors in ownership and estate, assigns and lessees of the respective parties hereto.

IN WITNESS WHEREOF, the SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, has caused its corporate name to be signed and its corporate seal to be affixed by the undersigned officers thereunto duly authorized this 8th day of November, 1977.

ATTEST: Paul D. Rice
Secretary

Karl H. Abel
President

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the 8th day of November, 1977, before me DON E. SMITH the undersigned officer, personally appeared KARL H. ABEL and PAUL D. RICE, who acknowledged themselves to be the President and Assistant Secretary of the Salt River Project Agricultural Improvement and Power District and that they as such officers respectively being authorized so to do, executed the same for the purpose therein contained by signing the name of said corporation by themselves as such officers respectively.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Don E. Smith
Notary Public

My Commission Expires:
My Commission Expires May 3, 1979

EXHIBIT C

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

GENERAL COUNSEL

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

The Flood Control District of Maricopa County Agreement No. C-3881 which is an agreement between public agencies has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned General Counsel who has determined that it is in proper form and is within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

DATED this 10 day of August, 1977.

LARRY J. RICHMOND
General Counsel

by [illegible]

OFFICE OF THE BOARD OF SUPERVISORS

MARICOPA COUNTY
602 County Administration Bldg. 111 S. 3rd Avenue, Phoenix, Arizona 85003

HENRY H. HAWS District 1 | GEORGE L. CAMPBELL District 2 | BOB CORBIN District 3 | HAWLEY ATKINSON District 4 | ED PASTOR District 5

MEMO TO: Herbert Donald, Chief Engineer and General Manager of the Flood Control District

FROM: Rhea Woodall, Clerk of the Board

DATE: August 17, 1977

The Board of Supervisors in formal session August 15 approved Intergovernmental Agreement No. C-3881 with the State of Arizona, Cities of Tempe and Phoenix, and the Salt River Valley Water Users' Association providing for the City of Tempe to increase the capacity of 48th Street Drain.

Accordingly, we are returning 6 executed copies of said agreement for further processing, after which please return a fully executed copy for recording and our permanent file.

Rhea Woodall, Clerk

lb

AGREEMENT FOR THE RECONSTRUCTION OF JOINT USE STORM DRAINAGE AND IRRIGATION WASTE FACILITIES.

APPROVED AS TO FORM and within the powers and authorities granted to the City of Phoenix, under the laws of the State of Arizona.

ACTING City Attorney

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 the Minutes of the meeting of the Council of the City of Phoenix held on the 6th day of September, 1977, authorizing the execution of an Agreement for reconstruction of joint use storm drainage and irrigation waste facilities 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 14th day of October, 1977.

Deborah Paglia
DEPUTY CITY CLERK

(SEAL)

NEW BUSINESS

There being no one present in opposition, MOTION was made by Mr. Gutierrez, SECONDED by Mr. Donahue, that the following requests be approved as recommended and the date of September 26, 1977, at 7:00 p.m. be set as the date for public hearing on the rezoning applications considered by the Planning Commission on August 24, 1977. MOTION CARRIED UNANIMOUSLY.

CANCELLATION OF LEASE NO. 18945 - RENTAL OF HILLTOP RESIDENCE AT 11659 NORTH 16TH STREET - F-3263

The Council heard request to authorize the mutual cancellation of Lease No. 18945 for rental of the City-owned residence at 11659 North 16th Street. Ordinance No. S-10008, adopted August 2, 1977 authorized lease of the property by auction or by direct negotiations.

Mrs. Carter expressed her concerns about hilltop residence rentals. She said this is the second time this month that a lease was broken, and she hoped that situation would improve.

REPAIR AND MAINTENANCE OF CHILLER UNITS - AGREEMENT NO. 19006 - F-3140

The Council heard request to authorize the City Manager to enter into agreements with Westinghouse Electric Corporation, Phoenix, Arizona, for the repair and maintenance of Westinghouse 550-ton chiller units located at the Phoenix Civic Plaza.

TRANSMITTER-COMBINERS - F-2488

The Council heard request to authorize the Acting Purchasing Agent to purchase two transmitter-combiners for use in the Police Department Communications Network.

CIVIC PLAZA SIGN REPAIR - F-3140

The Council heard request to authorize the City Manager to enter into agreements with American Sign and Indicator Corporation, Spokane, Washington, for the repair and upgrading of four automated display signs and three hundred sign modules at the Civic Plaza at a price of $14,904, and for their one-year maintenance at a price of $3,420, the latter to be paid in installments of $285 per month.

PURCHASE OF THREE EXECUPORT TERMINALS - F-2834

The Council heard request to authorize the City Manager to exercise the purchase option on three (3) Execuport Terminals currently leased from Computer Transceiver Corp. This further authorizes the City Controller to disburse the necessary funds. This request bears the approval of the MIS Director and the City Manager's office.

PURCHASE OF ONE EXECUPORT TERMINAL - F-2834

The Council heard request to authorize the City Manager to exercise the purchase option on one Execuport Terminal currently leased from Execuport Leasing. This further authorizes the City Controller to disburse the necessary funds. This request bears the approval of the MIS Director and the City Manager's office.

September 6, 1977

AUTHORIZATION TO EXECUTE AN AGREEMENT FOR RECONSTRUCTION OF JOINT USE STORM DRAINAGE AND IRRIGATION WASTE FACILITIES - AGREEMENT NO. 19012 - F-4697 AND F-1917

The Council heard request to authorize the City Manager to execute an agreement for the reconstruction of joint use storm drainage and irrigation waste facilities located between 48th and 30th Streets along Superior Street alignment. This agreement has been negotiated among the State, the City of Tempe, the Flood Control District, the Salt River Project and Phoenix to give Phoenix a legal right to discharge storm water into an enlarged channel.

MAJOR STREET PROJECT NO. P-72-225.01 - AGREEMENT NO. 19013 - F-4775

The Council heard request to authorize the City Manager to enter into a letter agreement for the installation of a new pipeline in Central Avenue from Grand Canal to Highland Avenue. This is a cooperative project between the City and Salt River Project to replace a badly leaking pipeline which is causing damage to the pavement along the west side of Central Avenue. The Salt River Project will do the installation and the costs will be shared on a 50-50 basis.

AIRPORT PROJECT NO. A-72-249.00 - AGREEMENT NO. 14158 - F-4496

The Council heard request to authorize the City Manager to execute a supplemental agreement with Wadsworth, Jensen & Associates, Consulting Engineers, to revise the project documents for Sky Harbor Boulevard West and provide project documents for the signing and graphics for the entire roadway system.

AIRPORT PROJECT NO. A-76-128.00 - AGREEMENT NO. 18222 - F-4297

The Council heard request to authorize the City Manager to execute a supplemental agreement with Magadini-Alagia Associates, Structural Engineers, Inc., for design of nine additional pre-engineered metal executive hangars and one large hangar to be located at the northwest corner of Sky Harbor International Airport. The work also includes review and approval of shop drawings submitted by the building manufacturer, relocation of one existing "T" hangar, site survey and review of buildings adjacent to proposed hangars for effect of added seismic and vertical loads.

MAJOR STORM SEWER PROJECT - 23RD AVENUE, MCDOWELL ROAD TO CAMPBELL AVENUE - PROJECT NO. ST-74-205.02 - AGREEMENT NO. 19014 - F-4695

The Council heard request to authorize the City Manager to enter into a license agreement with Atchison, Topeka & Santa Fe Railway Company, for the right to install a 78" storm sewer across railroad property at 23rd Avenue and Encanto Boulevard. This license also authorizes the City's future contractor to work within the railroad right of way.

MAJOR STREET PROJECT NO. P-74-241.00 - AGREEMENT NO. 19015 - F-4760

The Council heard request to authorize the City Manager to enter into a letter agreement with the Salt River Project (Power) for the relocation of certain power poles along 19th Avenue between Glendale Avenue and Dunlap Avenue.

RESOLUTION

BE IT RESOLVED on this date November 22, 1977, I, W. 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, to enter into an agreement with the City of Tempe, the City of Phoenix, the Salt River Valley Water User's Association and the Flood Control District of Maricopa County, for the Reconstruction of Joint Use Storm Drainage and Irrigation Waste Facilities (48th Street Drain).-

for W. A. ORDWAY, Director
Arizona Department of Transportation

OFFICE OF THE

Attorney General

BRUCE E. BABBITT
ATTORNEY GENERAL

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. 77-823 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 7th day of ~~November~~ DECEMBER, 1977.

BRUCE E. BABBITT
The Attorney General

James L. Hohnbaum

JAMES L. HOHNBAUM
Assistant Attorney General

CONSENT AGENDA

Mayor LoPiano announced that the following items would be considered under the Consent Agenda; that this is a public hearing and if members of the City Council or the public wish to have an item deleted from the Consent Agenda, please ask to be recognized immediately after the items have been read:

5C (1) Auth to Execute Irrigation Agreement - Carver Road
5C (2) Auth to Execute Cost-Sharing Agreement - 48th Street Drain
5C (3) Ratification of Leased Property - Chipman Building, 409 Mill
5C (4) Agreement for ECHO Program
6A Apache Boulevard Medians
6B Co-op/Phoenix - Aerial Mapping
8A Ord. 371.2)
8B Ord. 495.8) - Tempe Bicycle Ordinance
8C Ord. 808.40 - Century Plaza Investment Corp Rezoning AG to R1-6, 660' West of SWC Kyrene & Guadalupe (Z-77.25)
10A Res 1468 - Modifying Assessments for I.D. 117 - Martin Lane
10B Res 1469 - Committment to Street Abandonment and overhead power line extension in Eaton Industrial Park
13 Miscellaneous Departmental Reports, etc.

Vice-Mayor Mitchell moved that Council approve the Consent Agenda Items: 5C (1), 5C (2), 5C (3), 5C (4), 6A, 6B, 8A, 8B, 8C, 10A, 10B, 13; Councilman Hatton seconded; roll call vote 7-0.

B. Manager's Announcements

C. Miscellaneous

* (1) Auth to Execute Irrigation Agreement - Carver Road
Vice-Mayor Mitchell moved that the City Council authorize the Mayor to execute an irrigation agreement for Carver Road; Councilman Hatton seconded; roll call vote 7-0.

* (2) Auth to Execute Cost-Sharing Agreement - 48th Street Drain (Phoenix, Maricopa County Flood Control District).
Vice-Mayor Mitchell moved that the City Council authorize the Mayor to execute the cost-sharing agreement for the 48th Street Drain; Councilman Hatton seconded; roll call vote 7-0.

I, Virginia S. Thompson, the duly appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the above to be a true and exact excerpt of the Minutes of the Regular Council Meeting of December 1, 1977 of the City Council, Tempe, Arizona.

DATED: December 6, 1977

Virginia S. Thompson

Virginia S. Thompson, CMC
City Clerk

APPROVAL OF TEMPE CITY ATTORNEY

I hereby state that I have reviewed the proposed intergovernmental agreement, between the STATE OF ARIZONA, CITY OF PHOENIX, SALT RIVER VALLEY WATER USER'S ASSOCIATION, FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, and the CITY OF TEMPE, and declare the agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the City, to enter into said agreement.

DATED this 6th day of December, 1977.

David R. Merkel

DAVID R. MERKEL
City Attorney