JP4-78-03

LANDSCAPE MAINTENANCE AGREEMENT

ARIZONA PROJECT F-028-1-908

(McClintock Road)

THIS AGREEMENT, made this 10th day of January 1978, 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 Tempe, a municipal corporation, thereunto duly authorized, hereinafter designated as City of Tempe.

WHEREAS, it is to the mutual advantage of the DEPARTMENT and the CITY OF TEMPE to landscape the west right of way of McClintock Road from Station 13+00 to 18+00 on the north side of the freeway overpass and Station 22+00 to 26+50 on the south side of the freeway overpass, a distance of approximately .18 net miles.

NOW, THEREUNTO, 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 City of Tempe for approval.

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

3. 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.

4. After completion of the aforementioned project the CITY will maintain the aforementioned area in a healthy and neat appearance.

5. This agreement will become a supplement to the maintenance agreement between the CITY OF TEMPE and the DEPARTMENT for the Superstition Freeway Junction I-10 and Rural Road.

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Date Filed 1-12-78
Secretary of State

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, conditions, 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 on the date of such 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 W A Ordway

CITY OF TEMPE

By William J. Lohano
Mayor

Attest:
Virginia J Thompson
City Clerk

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 November 3, 1977:

C. Miscellaneous

* (1) Landscape Maintenance Agreement with ADOT - McClintock and the Freeway

Councilman Ream moved that the Mayor be authorized to execute the proposed landscaping maintenance agreement with the Arizona Department of Transportation; Councilman Hatton 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 14th day of November, 1977.

Virginia S. Thompson

Virginia S. Thompson, CMC
City Clerk

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 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 20th day of October, 1977.

David R. Merkel

DAVID R. MERKEL
The City Attorney

~~Assistant City Attorney~~

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 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 20th day of December, 1977.

BRUCE E. BABBITT
The Attorney General

Albert Wyer
Assistant Attorney General

R E S O L U T I O N

Be it resolved on this date, January 10, 1978, 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 City of Tempe, 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