JPA-80-04

LANDSCAPE MAINTENANCE AGREEMENT

ARIZONA PROJECT I-19-1(78)

(NOGALES CITY STREETS)

THIS AGREEMENT, made this 17th day of April, 1980, 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 Nogales, a municipal corporation, thereunto duly authorized, hereinafter designated as City.

WITNESSETH:

WHEREAS, it is to the mutual advantage of the Department of Transportation and the City to landscape areas on the control of access within the right-of-ways on Interstate 19 from West Street Roadway Station 109+32.19, including medians and right-of-ways northerly to the Mariposa Traffic Interchange Roadway Station 230+00. There will also be landscaping installed on certain median islands, including sections of right-of-way with noncontrol of access in the City of Nogales on Crawford Street, Sonoita Avenue and Compound Street from Terrace Avenue to West Street.

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

1. The Department of Transportation will prepare plans with reviews and concurrence by the City for the

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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 shall furnish and install necessary water services from existing water mains to the designated locations within the right-of-way at the City established water service schedule rates, all at Department of Transportation expense.

4. The City shall furnish all water during construction phase, and all water hereafter necessary to properly maintain the landscape between the right-of-way lines at the above mentioned locations, all at City expense.

5. The Department of Transportation shall maintain the landscaping and irrigation system in the control of access right-of-ways previously mentioned, except for supplying water. Water will be supplied by the City of Nogales, at no cost to the Department of Transportation.

6. The City of Nogales shall maintain the landscaping and irrigation systems, at the locations indicated for construction, in the noncontrol of access roadway right-of-ways as previously mentioned and as noted on the plans, including plant replacement and irrigation systems repairs as needed to maintain the landscaped areas of the above mentioned project, in the same manner as on the date of project acceptance.

7. The City will furnish all electrical power necessary to maintain the landscaping within the right-of-way lines, in the noncontrol of access roads, at the above

mentioned locations during construction phase and thereafter all at city expense.

8. The City 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 an activity, condition, or event arising out of the performance or non-performance of any provision of this agreement by the City, 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 assumes the burden of proof that the activity, condition, or event did not cause such cost, damage or other damage.

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 authorizing both entities to enter into this agreement, and a written determination by the City Attorney of Nogales that this agreement is in proper form and within the powers and authority granted to the City under the laws of this State.

11. The effective date of this agreement shall be upon filing with the Secretary of State and shall remain in full force and effect for a period of five (5) years from

the effective date unless terminated earlier by mutual consent of the parties hereto or unless this agreement violates any Arizona law, rule or regulation, either now enacted or which may be enacted in the future. This agreement will be automatically renewed for successive periods of five (5) years unless the parties hereto mutually agree by formal amendment reflected herein to this agreement not less than one (1) month prior to the initial or renewed expiration date.

12. All parties are hereby put on notice that this Contract (Agreement) is subject to cancellation by the Governor, pursuant to Arizona Revised Statutes, Section 38-511.

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

ARIZONA DEPARTMENT OF TRANSPORTATION

BY _____
Chief Deputy State Engineer

CITY OF NOGALES

BY _____
F. D. FONTES, MAYOR

RESOLUTION

Be it resolved on this date, April 17, 1980, 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 NOGALES, 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 Nogales 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

OFFICE OF THE
Attorney General
1801 WEST JEFFERSON STREET
FOURTH FLOOR
PHOENIX, ARIZONA 85007

ROBERT K. CORBIN
~~XXXXXXXXXXXX~~
ATTORNEY GENERAL

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. 79-853 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 agreement.

DATED this 14th day of November, 1979.

ROBERT K. CORBIN
Attorney General

Albert Morgan
ALBERT MORGAN
Assistant Attorney General

STATE OF ARIZONA)
: SS
COUNTY OF SANTA CRUZ)

I, FIDEL A. ENCISO, ASS'T ADMINISTRATOR of the City of Nogales, Arizona, do hereby certify that the following is a true and correct extract of the minutes of the City Council meeting held APRIL 2, 1980.

In Witness Whereof, I have hereunto set my hand and affixed the Official Seal of the City of Nogales, Arizona. Done in Nogales, Arizona this THIRD day of APRIL 1980., ~~1979~~

FIDEL A. ENCISO
ASSISTANT ADMINISTRATOR
CITY OF NOGALES

The meeting was called to order by Mayor F. D. Fontes.

Present were Aldermen Antonio Serino, George Franklin, Albert Kramer, Ben Teyechea and Eduardo Acosta; Assistant Administrator Fidel A. Enciso and City Attorney E. Leigh Larson.

City Attorney Larson confirmed that he had reviewed the proposed Landscape Maintenance Agreement for Arizona Project I-19-1(78) between the Arizona Department of Transportation, Highway Division, and the City of Nogales and had found it in order.

Alderman Kramer made a motion authorizing Mayor Fontes to sign the Landscape Maintenance Agreement, and Alderman Serino seconded the motion which was unanimously approved by the Council.

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 NOGALES and declare this agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona.

DATED this THIRD day of APRIL, 1980.,
XXXXX

E. LEIGH LARSON
The City Attorney