ECS File: JPA-81-09

LANDSCAPE MAINTENANCE AGREEMENT

ARIZONA PROJECT F-028-1(17)

SUPERSTITION FREEWAY

(Junction State Route 87 to Gilbert Road, Unit I)

THIS AGREEMENT, made this 22nd day of July, 1981, 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 Mesa, 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 certain areas within the right-of-way on Superstition Freeway from Junction State Route 87, approximate Roadway Station 399+50 to Stapley Drive, approximate Roadway Station 497+00, a net distance of approximately 1.85 miles.

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 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.

NO. 7288
FILED WITH SECRETARY OF STATE
Date Filed 7/24/81
Secretary of State

3. The City shall furnish and install necessary water services from existing water mains to the designated locations within the right-of-way from Junction State Route 87, approximate Roadway Station 399+50 to Stapley Drive, approximate Roadway Station 497+00 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 from Junction State Route 87, approximate Roadway Station 399+50 to Stapley Drive, approximate Roadway Station 497+00, all at City expense.

5. The Department of Transportation shall maintain the landscaping and irrigation system within the right-of-way from Junction State Route 87, approximate Roadway Station 399+50 to Stapley Drive, approximate Roadway Station 497+00.

6. The Department of Transportation shall furnish all electrical power necessary to maintain the landscaping within the right-of-way from Junction State Route 87, approximate Roadway Station 399+50 to Stapley Drive, approximate Roadway Station 497+00.

7. 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.

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

10. 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.

11. 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 MESA

By _____

STATE OF ARIZONA)
: SS
COUNTY OF MARICOPA)

I, Grace M. Cokeley, Deputy Clerk of the City of Mesa, Arizona, do hereby certify that the following is a true and correct extract of the minutes of the City Council meeting held May 18, 1981:

In Witness Whereof, I have hereunto set my hand and affixed the Official Seal of the City of Mesa, Arizona. Done in Mesa, Arizona this 22nd day of May, 1981.

Grace M. Cokeley
Deputy Clerk

Certificate of CITY CLERK

I, DORTHE M. DANA, THE DULY APPOINTED AND QUALIFIED CITY CLERK OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, DO HEREBY CERTIFY THAT THE ATTACHED COPY OF RESOLUTION NO. 4629, ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE A LANDSCAPE MAINTENANCE AGREEMENT, ARIZONA PROJECT F-028-1(17), SUPERSTITION FREEWAY

IS A TRUE, CORRECT AND COMPARED COPY OF THE ORIGINAL OF RECORD, AND ON FILE IN THE OFFICE OF THE CITY CLERK OF THE CITY OF MESA, ARIZONA.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL OF THE CITY OF MESA, MARICOPA COUNTY, STATE OF ARIZONA, THIS 22ND DAY OF MAY, 1981.

Grace M. Cokeley (Deputy)
for DORTHE M. DANA, CITY CLERK

RESOLUTION NO. 4629

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE A LANDSCAPE MAINTENANCE AGREEMENT, ARIZONA PROJECT F-028-1(17), SUPERSTITION FREEWAY.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Section 1: That the City Manager and City Clerk are authorized and directed on behalf of the City of Mesa to execute and deliver a Landscape Maintenance Agreement, Arizona Project F-028-1(17), Superstition Freeway, which agreement is between the Department of Transportation, Highways Division, an agency of the State of Arizona, and the City of Mesa.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 18th day of May, 1981.

APPROVED:

Don W. Stance
Mayor

ATTEST:

Grace M. Cokeley (Deputy)
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 MESA 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 15th day of May, 1981.

J. LAMAR SHELLEY

The City Attorney

RESOLUTION

Be it resolved on this date, July 22, 1981, 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 MESA, 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 Mesa 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

Morgan

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

ROBERT K. CORBIN
ATTORNEY GENERAL

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. 81-387, 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 6th day of July, 1981.

ROBERT K. CORBIN
Attorney General

Albert Morgan
Assistant Attorney General
Transportation Division