OPA-81-10

A.G. CONTRACT NO. 80-882

LANDSCAPE MAINTENANCE AGREEMENT

ARIZONA PROJECT F-022-2(21)

(Peoria-Peoria Overpass)

THIS AGREEMENT, made this 7th day of January, 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 Peoria, 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 Grand Avenue, U.S. 60, from Roadway Station 122+00 at Olive Avenue westerly to Roadway Station 198+30.78, a net distance of approximately 1.46 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 constructed the landscaping and irrigation project from approved plans using federal funds apportioned to the State of Arizona.

2. 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 Roadway Station 122+00 at Olive Avenue westerly to Roadway Station 198+30.78, all at City expense.

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Date Filed 1-23-81
Secretary of State

3. The City shall maintain the landscaping and irrigation system, including plant replacement and irrigation systems repairs as needed within the right-of-way from Roadway Station 122+00 at Olive Avenue westerly to Roadway Station 198+30.78, all at City expense.

4. The City shall furnish all electrical power necessary to maintain the landscaping within the right-of-way from Roadway Station 122+00 at Olive Avenue westerly to Roadway Station 198+30.78.

5. The City hereby agrees to maintain the landscaping and irrigation system as it was designed by the Department of Transportation and the City will not make any changes, additions or deletions without written approval by the Department of Transportation.

6. 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.

7. This agreement shall be filed with the Secretary of State and shall become effective on the date of such filing.

8. 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 Peoria that this agreement is in proper form and within the powers and authority granted to the City under the laws of this State.

9. 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.

10. 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 PEORIA

By _____

STATE OF ARIZONA)
) ss:
County of Maricopa)

I, RICHARD GOMEZ, City Clerk of the City of Peoria, Arizona, do hereby certify that the following is a true and correct extract of the Minutes of the City Council meeting held December 9, 1980:

CC-125 LANDSCAPE MAINTENANCE AGREEMENT - PEORIA-PEORIA OVERPASS

Councilman Buckeye moved to approve the Agreement and to authorize the Mayor to sign on behalf of the City. Motion seconded by Councilman Gibbs and carried unanimously.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the City of Peoria, Arizona. Done in Peoria, Arizona, this 11 day of December, 1980.

Richard Gomez
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 PEORIA 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 20th day of November, 1980.

Calvin R. Brice

CALVIN BRICE
The City Attorney

RESOLUTION

Be it resolved on this date, January 7, 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 PEORIA, 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 Peoria 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
ATTORNEY GENERAL

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. 80-882, 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 23rd day of December, 1980.

ROBERT K. CORBIN
Attorney General

Albert Morgan

ALBERT MORGAN
Assistant Attorney General
Transportation Division