LANDSCAPE MAINTENANCE AGREEMENT

A.G. CONTRACT NO. 81-617

ARIZONA PROJECT I-10-3(133)

JPA-82-09

(Broadway Road to Elliot Road)

CITY OF TEMPE

THIS AGREEMENT, made this 15 day of December, 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 Tempe, a municipal corporation, thereunto duly authorized, hereinafter designated as City.

PROJECT LIMITS:

Plans and specifications have been developed to provide additional landscaping for areas within the right-of-way on Interstate 10 from south of Broadway Road at Roadway Station 475+00 to south of Elliot Road at Roadway Station 678+00, a net distance of approximately 3.84 miles.

WITNESSETH:

WHEREAS, it is to the mutual advantage of the Department of Transportation and the City to landscape certain areas on Interstate 10; in the roadway median from south of Broadway Road at Roadway Station 475+00 to Baseline Road at Roadway Station 559+00, the Southern Avenue underpass landscaping within the right-of-way, and within the right-of-way on the east side of the westbound lanes from Roadway Station 626+55 to south of Elliot Road at Roadway Station 678+00.

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 state and federal funds apportioned to the State of Arizona.

NO. 7596
FILED WITH SECRETARY OF STATE
Date Filed 1-15-82
Rose Mofford
Secretary of State

3. The City shall furnish and install necessary water services from existing water mains to the designated locations to provide water for plantings in the roadway median from south of Broadway Road at Roadway Station 475+00 to Baseline Road at Roadway Station 559+00, and within the right-of-way on the east side of the westbound lanes from Roadway Station 626+55 to south of Elliot Road at Roadway Station 678+00 using the City established water service schedule rates, all at Department of Transportation expense.

4. The City shall furnish all water for landscaping during construction phase, and all water hereafter necessary to properly maintain the plantings; in the roadway median from south of Broadway Road at Roadway Station 475+00 to Baseline Road at Roadway Station 559+00, the Southern Avenue underpass landscaping within the right-of-way, and within the right-of-way on the east side of the westbound lanes from Roadway Station 626+55 to south of Elliot Road at Roadway Station 678+00, all at City expense.

5. The Department of Transportation shall maintain the landscaping and irrigation system within the right-of-way from south of Broadway Road at Roadway Station 475+00 to south of Elliot Road at Roadway Station 678+00. [The City shall maintain the landscaping and irrigation system within the right-of-way at the Southern Avenue underpass.]

6. The Department of Transportation shall furnish all electrical power necessary to maintain the landscaping within the right-of-way from south of Broadway Road at Roadway Station 475+00 to south of Elliot Road at Roadway Station 678+00. The City shall furnish all electrical power necessary to maintain the landscaping within the right-of-way at the Southern Avenue underpass.

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 injury 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 injury occurs as aforesaid, the City assumes the burden of proof that the activity, condition, or event did not cause such cost, damage or other injury.

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 Tempe 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 TEMPE

By Harry E. Mitchell

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

DATED this 19th day of November, 1981.

David R. Merkel

DAVID R. MERKEL

The City Attorney

STATE OF ARIZONA)

: SS

County of Maricopa)

I, Pauline S. Templeton 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 December 10, 1981.

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 15 day of December, 1981.

(5) I-10 Landscape Maintenance Agreement-Broadway Road to Elliot Road
Councilman Phillips moved that the City Council authorize the Mayor to execute this agreement;

Pauline S. Templeton

Vice-Mayor Sears seconded; roll call vote 7-0.

RESOLUTION

Be it resolved on this date, January 14, 1982, 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

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. 81-617, 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 2nd day of November, 1981.

ROBERT K. CORBIN
Attorney General

Albert Morgan
Assistant Attorney General
Transportation Division