C85-76

PROJECT: IR-10-3(193)
SECTION: Warner Road T.I.
CITY PROJECT: 82011

NO. 10545
FILED WITH SECRETARY OF STATE
Date Filed 8-21-85
Secretary of State

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF TEMPE

THIS AGREEMENT entered into this 8th day of August, 1985, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter called "State", and the City of Tempe, acting by and through its City Council, hereinafter called "City".

WHEREAS, State is empowered by Section 28-108 Arizona Revised Statutes to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and the Director of the Arizona Department of Transportation has delegated to the undersigned the authority to execute same on behalf of the State; and

WHEREAS, City is empowered by Section 9-672 and 11-952, Arizona Revised Statutes and its City Charter to enter into this agreement and acting by and through its City Council, has, by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute same on behalf of City; and

WHEREAS, State and City desire to establish a traffic interchange at the Warner Road - Interstate 10 crossing; and

WHEREAS, City desires to have said interchange construction project underway in 1985; and

WHEREAS, State and City desire to enter into a joint project for construction of said interchange.

THEREFORE, the parties hereto agree as follows:

STATE SHALL:

1. Design and develop construction plans for an interchange at the aforesaid Warner Road - I-10 crossing. The design will be for a four lane overcrossing with double left turn lanes in a roadway width of eighty feet.

2. Construct, concurrently with construction of the interchange, a drainage structure for the use of City which said drainage structure will lie on the east side of Interstate 10 and will cross Warner Road. The drainage structure will be constructed in conformance with plans prepared by City and submitted to State.

3. Submit said interchange plans to City for review and approval.

4. Upon approval of the plans, advertise for and accept bids for construction of the project.

5. Submit to City, after entering into a contract for construction of the project, a statement setting forth the exact contract price.

6. State will require the contractor to carry general liability insurance in the amount of the standard State policy limits throughout the course of construction of the project, naming thereon as additional named insureds, the State, its departments, agencies, agents, employees and the City. The contractor's coverage shall be primary for any and all losses arising out of the course of construction of the project.

CITY SHALL:

1. Upon receipt of the project plans, review same in a timely manner and upon approval notify State of City's approval.

2. Design and prepare plans for the drainage structure across Warner Road and submit said plans to State prior to start of construction on the interchange.

3. Using qualified appraisers, cause a market value appraisal to be made of each of the various properties needed for highway right of way at the site of the proposed traffic interchange and furnish to State a copy of each appraisal report.

4. Secure for right of way purposes all of the real property required for construction of the proposed traffic interchange.

5. Transfer to State, prior to start of construction, all right, title and interest in and to the real property acquired by City for right of way purposes.

6. Determine, based upon the total construction cost of the traffic interchange plus the value of the real property secured by City and transferred to State, the amount due from City to State to satisfy City's share of the total cost of the interchange, which share shall be one-half (1/2) the total appraised value of right of way secured by City plus one-half (1/2) the total construction cost of the traffic interchange.

7. Pay to State, City's share of the interchange cost by making available to State without restriction, the appropriate amount of urban funds allocated to City. The funds and their obligation authority will be transferred to State through the authority of the Maricopa Association of Governments. If the total of the City's Urban Fund transfer plus the value of the right of way acquired and provided by City is less than one-half of the total project cost as defined in Item 6 above, City will transfer additional funds to bring City participation to the full one-half of total project cost. If the total of the City's Urban Fund transfer plus the value of Right-of-way acquired and provided by City is more than one-half of the total project cost, State will reimburse City for that portion beyond the agreed 50-50 split.

8. Reimburse State for all costs associated with construction of the drainage structure crossing Warner Road, provided, however, that any required embankment for Warner Road shall not be included as a part of said reimbursable costs.

The parties hereto further agree that:

To the extent permitted by law, State and City agree to defend, indemnify, and hold harmless each other and their agents officials, employees and subsidiaries, from and against any and all claims, actions, demands, liability, damage, cost and expense of whatsoever character whether direct or indirect, or consequential, including loss or damage to property of either party hereto or of their persons and for the injury or death to any or all persons caused by or attributable to the negligence or fault of the State or the City, their employees or agents. As to any liability claims where the parties hereto may be jointly at fault, whether or not a named defendant to an action, the parties agree that they will share in any settlement or judgment on the amount that is proportionate to the degree of negligence or fault of the respective parties as agreed to between them or adjudicated by the courts.

THIS AGREEMENT shall remain in full force and effect until completion of said project as aforesaid; provided, however, that this agreement may be cancelled by either party upon 30 day's written notice by one party to the other party.

All parties hereto acknowledge that this agreement is subject to cancellation by the Governor pursuant to the provisions of Section 38-511 Arizona Revised Statutes.

In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Section 12-1518 (B) and (C) of Arizona Revised Statutes as amended.

This agreement shall become effective on the date of filing same with the Secretary of State.

Attached hereto and incorporated herein by reference is a copy of State's resolution authorizing entry into this agreement, a copy of City's resolution passed by its City Council, a copy of the written determination of the appropriate attorney that City is authorized under the laws of the State to enter into this agreement and that said agreement is in proper form, and a copy of the Attorney General's Intergovernmental Agreement Determination.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF TEMPE, a municipal corporation

By: Harry E. Mitchell

ATTEST:

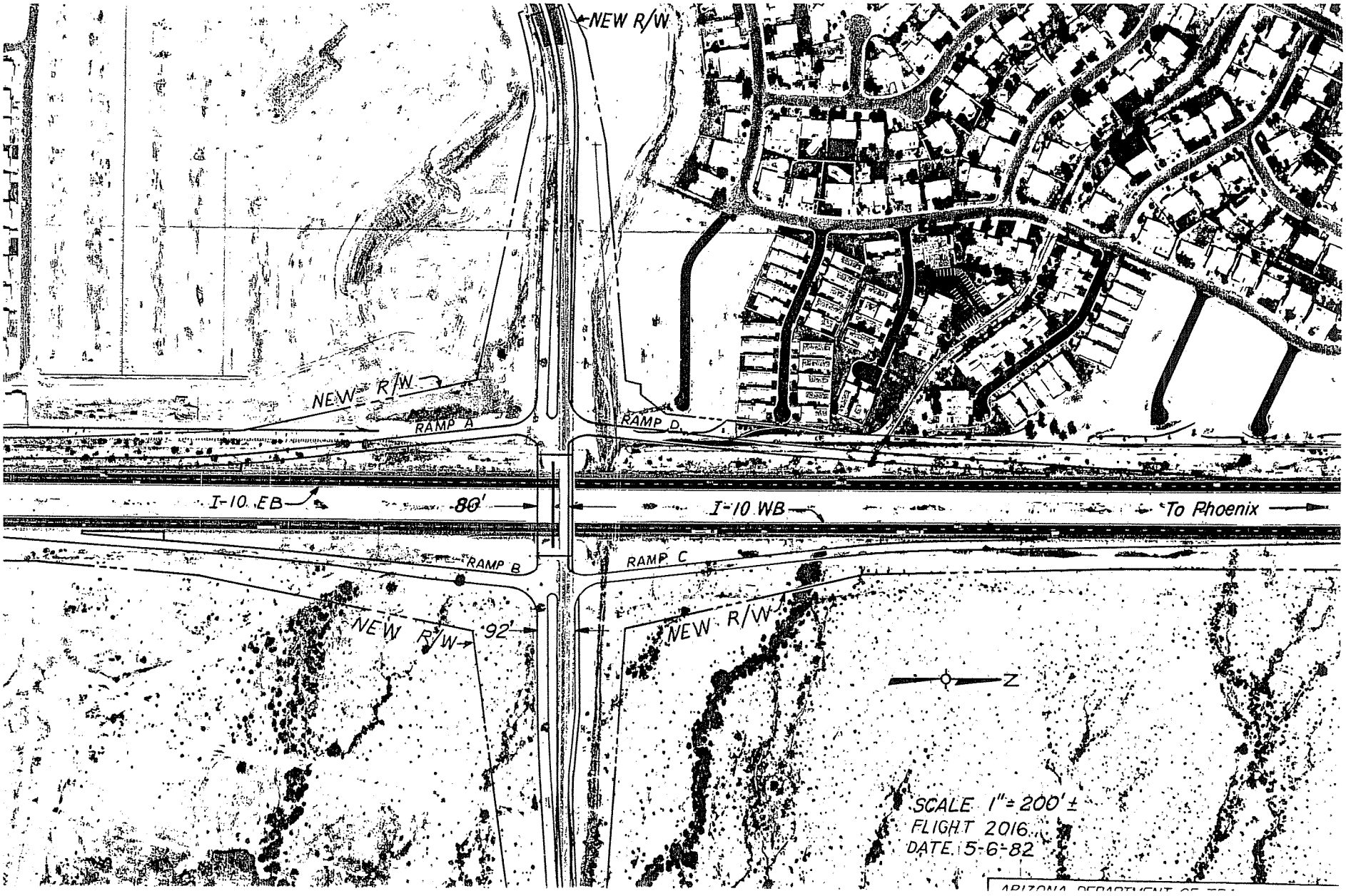
Virginia L. Thompson

City Clerk

STATE OF ARIZONA
ARIZONA DEPARTMENT OF TRANSPORTATION

By: Walter O. Ford

W. O. FORD
State Engineer


NEW R/W
NEW R/W
RAMP A
RAMP D
I-10 EB
80'
I-10 WB
To Phoenix
RAMP B
RAMP C
NEW R/W
92'
NEW R/W
N
SCALE 1" = 200' ±
FLIGHT 2016
DATE 5-6-82

Project: IR-10-3(193)

Section: Warner Road T.I.

RESOLUTION

BE IT RESOLVED on this 4th day of February, 1985, that I, W. A. Ordway, as Director, ARIZONA DEPARTMENT OF TRANSPORTATION, have determined that it is in the best interests of the State of Arizona that the DEPARTMENT OF TRANSPORTATION, acting by and through the Highways Division, enter into an Intergovernmental Agreement with the City of Tempe for the formation of a jointly funded project to construct an interchange at the Warner Road - Interstate 10 crossing.

Therefore, authorization is hereby given to draft said Agreement which, upon completion, shall be submitted for approval and execution by the Chief Deputy State Engineer.

W. A. Ordway, Director
Arizona Department of
Transportation

JDC:ks

RESOLUTION NO. 1942

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH THE STATE OF ARIZONA FOR THE CONSTRUCTION OF A TRAFFIC INTERCHANGE AT WARNER ROAD AND I-10 FREEWAY AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY.

* *

WHEREAS, the STATE OF ARIZONA acting through its DEPARTMENT OF TRANSPORTATION, hereinafter called "State", and the City of Tempe, hereinafter called "City" desire to establish a traffic interchange at the Warner Road - Interstate 10 crossing; and

WHEREAS, City desires to have said interchange construction project underway in 1985; and

WHEREAS, State and City desire to enter into a joint project for construction of said interchange; and

WHEREAS, City is empowered by Section 9-672 and 11-952, Arizona Revised Statutes and its City Charter to enter into this agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TEMPE:

1. That the City of enter into an agreement with the State for the construction of an interchange at Warner Road and the I-10 Freeway.
2. That the Mayor be and he is hereby authorized to execute said agreement on behalf of the City.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA this 6th day of June, 1985.

Harry E. Mitchell
Mayor

ATTEST:

Virginia S. Thompson
City Clerk

APPROVED AS TO FORM:

David R. Merkel
City Attorney

JRP:kw

APPROVAL OF TEMPE CITY ATTORNEY

I hereby state that I have reviewed the proposed intergovernmental agreement, between the State of Arizona Department of Transportation, and the CITY OF TEMPE, and declare the agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the City, to enter into said agreement.

DATED this 11th day of June, 19 85.

David R. Merkel

DAVID R. MERKEL
City Attorney

Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007
Robert K. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. 85-456, 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 the proper form and is within the powers and authority granted to 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 16th day of August, 1985.

ROBERT K. CORBIN
Attorney General

James R. Redpath

Assistant Attorney General
Transportation Division

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