A. G. Contract No.KR-89-0396
ECS File: IGA-88-06
Project: H2045 01C
Section: Salt River Channel
IGA FCD-87052

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA,
THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
and THE CITY OF TEMPE

THIS AGREEMENT is entered into 11 OCTOBER, 1989, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "STATE"), the FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, a municipal corporation and political subdivision of the State of Arizona (the "DISTRICT"), and the CITY OF TEMPE, acting by and through its City Council ("TEMPE").

I. RECITALS

1. The STATE is empowered by Arizona Revised Statutes Sections 11-952 and 28-108 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 has delegated to the undersigned the authority to execute this agreement on behalf of the STATE.

2. The DISTRICT is empowered by Arizona Revised Statutes Section 48-3603 to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the DISTRICT.

3. TEMPE is empowered by Arizona Revised Statutes Section 48-572 and by Part I, Section 1.03 of its City Charter 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 has authorized the undersigned to execute same on behalf of TEMPE.

NO. 14297
FILED WITH SECRETARY OF STATE
Date Filed 10-11-89
Jim Shumway
Secretary of State
By B Vermillion

4. The STATE, DISTRICT and TEMPE affirm that channelization of the Salt River from the area of 40th Street eastward to approximately the Southern Pacific Railroad (SPRR) Bridge near Mill Avenue is the desired alternative to protect the proposed East Papago, Hohokam and Sky Harbor Access roadways.

5. The STATE is proceeding with the planning, design and construction of the East Papago, Hohokam and Sky Harbor Access roadways all of which cross or are adjacent to the Salt River. The STATE has selected alignments for these roadways that require channelization of the Salt River from the area of 40th Street (Extended) to approximately the SPRR Bridge near Mill Avenue as described in exhibit "A". The STATE selected these alignments based on commitments from the DISTRICT to maintain the river channel and commitments from TEMPE, PHOENIX, and SRP to grant rights-of-way for Salt River Channel construction.

6. Based on Geotechnical analysis by the STATE, no known landfill deposits are within the rights of way proposed for Channel construction.

7. It is understood by all parties that the DISTRICT shall not assume now or in the future any costs for maintenance of any facilities within the Channel rights of way that are not directly related to the flood control functioning or operation of the Channel. The DISTRICT shall be solely responsible for determining what facilities it will be required to maintain when it assumes operation and maintenance of the Channel.

8. The purposes of this agreement are to define the responsibilities for design, construction, operation and maintenance of the Salt River Channel between the STATE, the DISTRICT, and TEMPE and to establish adequate rights of way for the Channel and the East Papago, Hohokam and Sky Harbor Access roadways.

9 Additional separate agreements between the STATE, DISTRICT, SRP and the City of PHOENIX will further define responsibilities for design, construction, operation, and maintenance of other portions of the Salt River Channel, and provide additional right of way for the channel.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF RESPONSIBILITIES

A. Salt River Channel

The STATE shall:

1. In conjunction with design and construction of the East Papago, Hohokam and Sky Harbor Access roadways, obtain design and construction plans in accordance with design and construction criteria provided by the DISTRICT and the CITY OF TEMPE.

   a. Provide the DISTRICT and TEMPE with preliminary plans and specifications for the Channel prior to finalization, for their review and comment.

   b. Provide the DISTRICT and TEMPE with final plans and specifications for the Channel prior to advertisement of the construction contract for review and approval, and advertise only after written approval is obtained from the DISTRICT and TEMPE.

   c. Bear the total cost of said channel design and construction, estimated to be $23,500,000.

   d. Obtain all state, federal or local environmental discharge or other flood and regulatory permits required for the construction of the channel.

2. Upon completion of Channel, grant the DISTRICT a perpetual easement for drainage in the STATE's right of way through SR 143 and SR 153, and for use of the STATE rights of way for the DISTRICT's maintenance purposes.

3. Be responsible for the operation, maintenance, and the repair of all STATE roadways, and roadway bridges, superstructures, substructures, wingwalls, and approaches to the bridges that are constructed within the Channel.

4. Stockpile sufficient fill material for the existing Rio Salado Parkway in the south Salt River Channel levee, to be used by Tempe to close the opening when flooding is eminent.

The DISTRICT shall:

1. Monitor construction of the Channel. The DISTRICT shall inspect and approve the completed facility.

2. At its own cost, operate and maintain the Salt River Channel after it is constructed and any necessary easements for maintenance purposes have been transferred to the DISTRICT.

a. Maintain the Channel in such a manner so as not to endanger the Channel bridges. If the DISTRICT does not so maintain the channel, the STATE shall notify the DISTRICT, who shall perform the necessary maintenance within thirty days following notification. If the DISTRICT fails to perform, the STATE may perform the necessary maintenance, and the DISTRICT shall promptly reimburse the STATE for actual costs incurred.

b. Not be responsible for operation and maintenance of any landscaping or aesthetic features which may be installed as part of the Channel construction.

c. Reserve the right to approve the design and construction of any future changes to, or improvements on, the Salt River Channel.

3. Approve final plans and specifications for the Salt River Channel Work.

a. Submit comment to the state within 30 days of receipt of plans and specifications.

b. Have 30 days of receipt of final plans and specifications, submit their approval to the STATE or notify the STATE of their concerns. In the event no response is received by the STATE within 30 days, it shall be deemed approved by the DISTRICT.

The CITY OF TEMPE shall:

1. Monitor construction of the Channel and inspect and approve the completed facility.

2. Grant to the STATE the right to enter upon lands owned by TEMPE for the purpose of constructing the Salt River Channel. This right to enter shall expire upon completion of the Channel construction.

3. Grant the DISTRICT a perpetual and assignable easement to operate and maintain the Salt River Channel and to occasionally overflow, flood and submerge the lands within the banks of the Salt River Channel and all future improvements thereon, if any, upon completion of Channel construction within its ownership.

4. Approve the final plans and specifications for the Salt River Channelization work.

a. Within 30 days of receipt of plans and specifications, submit their comments to the STATE.

b. Within 30 days of receipt of final plans and specifications, submit their approval to the STATE or notify the STATE of their concerns. In the event no response is received by the STATE within 30 days, it shall be deemed approved by TEMPE.

5. Not permit any mining or excavation to occur in or adjacent to the Channel without first reviewing the permit application with the DISTRICT and receiving the DISTRICT's written concurrence.

6. Provide to the STATE a flood plain use permit for the construction of the Channel upon approval of channel design.

7. At its own expense, maintain, within the Salt River Channel landscaping or other aesthetic features that will not be maintained by the DISTRICT.

8. Be responsible for protecting lands behind the new Salt River Channel levee from river flows by closing the openings that provide for existing Rio Salado Parkway roadway to pass through the levee. The openings shall be closed when flooding is eminent by placement of fill material stockpiled by ADOT near the openings.

B. <u>East Papago, Hohokam and Sky Harbor Access Roadways</u>

The STATE shall:

1. Construct additional features shown on Exhibit "B".

2. At its own cost, construct, operate, and maintain the roadways, bridges, superstructures, substructures, wingwalls and bridge approaches associated with the East Papago, Hohokam and Sky Harbor Access roadways.

III. MISCELLANEOUS PROVISIONS

1. The DISTRICT agrees to indemnify and save harmless the STATE and TEMPE or any of their departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or non-performance by the DISTRICT of any of the provisions of this Agreement. The STATE and TEMPE shall in all instances be indemnified against all liability, losses and damages of any nature for or on account of any injuries to, or death of persons, or damages to or destruction of property arising out of, or in any way connected with the DISTRICT's performance or non-performance of this Agreement, except such injury or damage as shall have been occasioned by the negligence of the STATE or TEMPE. The above cost of damages incurred by the STATE or TEMPE or any of their departments, agencies, officers or employees, shall include in the event of an action, court costs, expenses for litigation and reasonable attorney's fees.

2. The STATE agrees to indemnify and save harmless the DISTRICT and TEMPE or any of their departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or non-performance by the STATE of any of the provisions of this Agreement. The DISTRICT and TEMPE shall in all instances be indemnified against all liability, losses and damages of any nature for or on account of any injuries to, or death of persons, or damages to or destruction of property arising out of or in any way connected with the STATE's performance or non-performance of this Agreement, except such injury or damage as shall have been occasioned by the negligence of the DISTRICT or TEMPE. The above cost of damages incurred by the DISTRICT or TEMPE or any of their departments, agencies, officers or employees, shall include in the event of an action, court costs, expenses for litigation and reasonable attorney's fees.

3. TEMPE agrees to indemnify and save harmless the DISTRICT and the STATE or any of their departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or non-performance by TEMPE of any of the provisions of this Agreement. The DISTRICT and the STATE shall in all instances be indemnified against all liability, losses and damages of any nature for or on account of any injuries to, or death of persons, or damages to or destruction of property arising out of or in any way connected with the TEMPE's performance or non-performance of this Agreement, except such injury or damage as shall have been occasioned by the negligence of the DISTRICT or the STATE. The above cost of damages incurred by the DISTRICT or the STATE or any of their departments, agencies, officers or employees, shall include in the event of an action, court costs, expenses for litigation and reasonable attorney's fees.

4. This Agreement shall remain in force and effect as long as the roadways are part of the State Highway System unless modified or terminated by written agreement of all parties.

5. This Agreement shall become effective upon filing with the Secretary of State.

6. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

7. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

8. 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 Arizona Revised Statutes Section 12-1518(B) and (C).

9. Attached hereto and incorporated herein by reference is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this STATE to enter into this Agreement and that the Agreement is in proper form.

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

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

RECOMMENDED BY:

D.E. Sagramoso 4-19-89

D.E. Sagramoso, P.E. Date
Chief Engineer and General Manager

APPROVED AND ACCEPTED:

By: Fred Koory, Jr.
Chairman, Board of Directors

ATTEST:

By: Clerk of the Board Date
4-17-89

Approved as to Form:

Julie M. Lemmon 4/20/89
General Counsel Date

CITY OF TEMPE

By: Harry E. Mitchell

Title: Mayor

ATTEST:

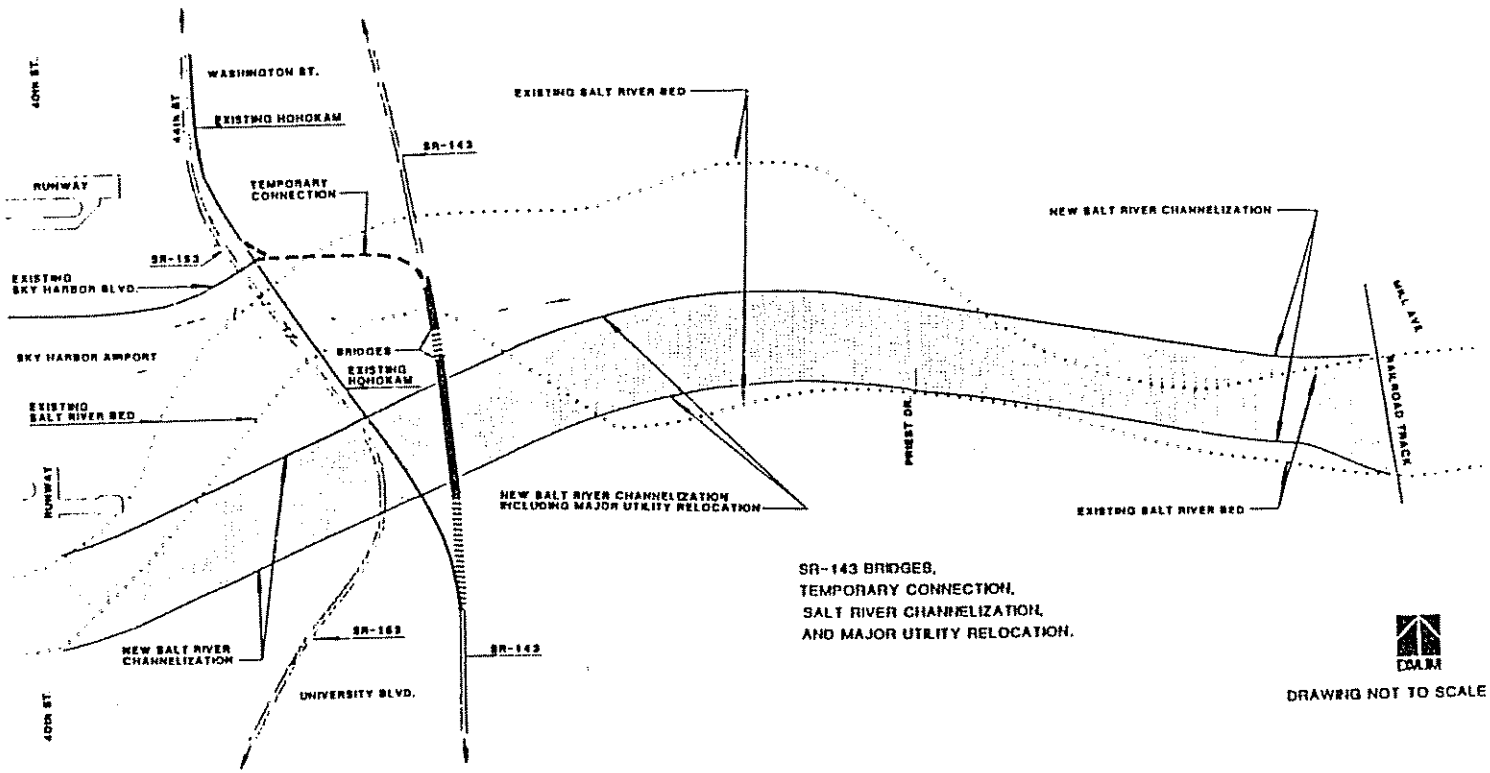
Helen R. Fowler
Helen R. Fowler, CMC
City Clerk

STATE OF ARIZONA
Department of Transportation

By: Gary K. Robinson
GARY K. ROBINSON
Chief Deputy State Engineer

APPROVED AS TO FORM:

David R. Merkel
David R. Merkel
City Attorney



SR-143 BRIDGES,
TEMPORARY CONNECTION,
SALT RIVER CHANNELIZATION,
AND MAJOR UTILITY RELOCATION.

EXHIBIT "A"

EXHIBIT "B"

The following list of additional features for the enhancement of the East Papago Freeway Corridor are acceptable to ADOT and TEMPE for funding with Salt River Channel project funds. The availability of funds for these features approved by ADOT shall not exceed $4.2 million.

1. Construction of a Mill Ave. Bridge over Salt River

2. Design and Construct Upgrade Landscaping for the East Papago Freeway

1756j
05APR

RESOLUTION

BE IT RESOLVED on this 4th day of January 1989, that I, CHARLES L. MILLER, as Director of the Arizona Department of Transporation, 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, to enter into an agreement with the City of Tempe and Maricopa County Flood Control District for the purpose of the channelization of the Salt River.

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

CHARLES L. MILLER, Director
Arizona Department of
Transportation

1204j

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

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. KR89-0396, 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 18th day of May, 1989.

ROBERT K. CORBIN
Attorney General

Albert Morgan
Assistant Attorney General
Transportation Division

3658G

County of Maricopa

State of Arizona

Office of the Clerk

State of Arizona
County of Maricopa } ss.

I, Cherie Pennington, Clerk of the Board of Supervisors do hereby Certify That the attached is a true and correct extract from the minutes of the Board of Directors' of the Flood Control District meeting held April 17, 1989:

CHAIRMAN AUTHORIZED TO SIGN INTERGOVERNMENTAL AGREEMENTS WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION, THE SALT RIVER PROJECT, THE CITY OF TEMPE, AND THE CITY OF PHOENIX APPROVED:

Motion was made by Supervisor Freestone and unanimously carried to approve and authorize the Chairman of the Board to sign Intergovernmental Agreements FCD 87051, FCD 87052, and FCD 87053 with the Arizona Department of Transportation, the Salt River Project, the City of Tempe and the City of Phoenix, respectively, for the design, construction, operation and maintenance of the Salt River Channel between 40th Street and Mill Avenue.

In Witness Whereof, I have hereunto set my hand and affixed the Official Seal of the Board of Supervisors. Done at Phoenix, the County Seat this 27th day of April, 1989 A.D.

Cherie Pennington

Clerk of the Board of Supervisors

Flood Control
File

1300-003 R6-86

RESOLUTION NO. 89.20

A RESOLUTION OF THE COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING EXECUTION OF AGREEMENT WITH ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION OF THE SALT RIVER CHANNEL.

WHEREAS, with the construction of the East Papago Freeway by the State of Arizona Department of Transportation, it will be necessary to construct a channel in the Salt River for flood protection.

WHEREAS, with the construction of the project, the City of Tempe has requested that certain design features be incorporated into the channel design.

WHEREAS, the State of Arizona is empowered by Section 28-108 Arizona Revised Statutes and the City of Tempe is empowered by Section 9-672B Arizona Revised Statutes to enter into an intergovernmental agreement setting forth the conditions for construction of said channel.

NOW THEREFORE, be it resolved by the City Council of the City of Tempe:

That the Mayor is authorized to execute said intergovernmental agreement with the State of Arizona Department of Transportation for the Salt River Channel Project H 2045 01C.

PASSED AND ADOPTED by the Mayor and City Council of the City of Tempe this 23rd day of March, 1989.

Harry E. Mitchell
Mayor

ATTEST:

Helen R. Fowler
City Clerk

APPROVED AS TO FORM:

W. Kent Jones
City Attorney

I, Helen R. Fowler, the duly appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the above to be a true and exact copy of Res. 89.20, passed and adopted at the Regular Council Meeting of March 23, 1989, by the Tempe City Council, Tempe, Arizona.

DATED this 28th day of March, 1989.

Helen R. Fowler
Helen R. Fowler, CMC
City Clerk

I, Helen R. Fowler, the duly appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the attached to be a true and exact excerpt of the Minutes of the Regular City Council Meeting of March 23, 1989, of the City of Tempe, Arizona.

DATED this 31st day of March, 1989.

Helen R. Fowler

Helen R. Fowler, CMC
City Clerk

#ZON-89.09. Zoning change from the R/O Residence/Office District (.287 acres) and the R1-6 Single Family Residential District (.306 acres) to the C-1 Neighborhood Commercial District for .593 acres.

#SIP-89.16. Site Plan for the NWC of Rural and Broadway Roads consisting of 2,980 s.f. on .593 net acres. In addition the following are requested:

Use Permit
Allow a service station (convenience store with self-serve gas pumps) in the C-1 Zoning District.

Variances
a. Reduce the required distance between an arterial street intersection and a driveway from 100' to 87' along Broadway Road.
b. Increase maximum wall height in the front yard setback of the C-1 District from 6' to 8' (along Solano Drive).
c. Reduce the width of a lot for a service station (convenience store w/gas pumps) from 150' to 137' (110' along Solano Drive).

*29. TEMPE CITY CODE (0503-19) ORDINANCE NO. 89.11 Set a public hearing for April 13, 1989 for approval of an ordinance amending Chapter 19, Article V, of the Tempe City Code establishing speed limits.

ORDINANCES FOR ADOPTION - Hold Public Hearings

RESOLUTIONS

*30. REDEVELOPMENT SOUTHEAST QUADRANT (0403-02-06) RESOLUTION NO. 89.18 Adopted a resolution authorizing acquisition of title to parcel Block 2, Tempe, University-Hayden Butte Project Area by use of eminent domain if negotiations are unsuccessful.

*31. IMPROVEMENT (ASSESSMENT) DISTRICT (0805-66) RESOLUTION NO. 89.19 Adopted a resolution extending the time until and including April 10, 1989 to file complaint for the Papago Park Center I.D. 166, Project No. 876203.

*32. ARIZONA DEPARTMENT OF TRANSPORTATION (0107-01) RESOLUTION NO. 89.20 - Adopted a resolution authorizing execution of Contract #89-75, an Intergovernmental Agreement between the Arizona Department of Transportion and the City of Tempe for Salt River channelization.

MISCELLANEOUS DEPARTMENTAL REPORTS, ETC.

*33. Community Services Department Status Report - January 1989
*34. Tempe Municipal Court Monthly Statistical Report - February 1989

NON-CONSENT AGENDA

MISCELLANEOUS