A. G. Contract No. KR920314TRN
ECS File: JPA 92-27
Project: IR-10-3(331)
Tracs No: 10 MA 152 H 2875 01 C
Section: 48th St. - Southern Ave.
City of Tempe Contract C92-51

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

THIS AGREEMENT is entered into 23 April, 1992 pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF TEMPE, acting by and through its City Council, (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 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 City is empowered by Arizona Revised Statutes Section 48-572 and City Charter Section 103 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 this agreement on behalf of the City.

3. It is to the mutual advantage of the State and the City to landscape areas within the right of way on Interstate 10 at the following locations:

> From 48th Street centerline roadway station 8074+56 to Southern Avenue, centerline roadway station 8156+00, a net distance of approximately 1.89 miles.

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

NO. 16562
FILED WITH SECRETARY OF STATE
Date Filed 04/23/92
Richard Mahoney
Secretary of State
By [illegible]

II. SCOPE OF WORK

1. The State will prepare landscape architectural plans for the landscaping and irrigation project. Upon review and concurrence by the City the State will submit them to the Federal Highway Administration for approval.

2. Upon approval the project will be constructed by the State, using State and Federal funds apportioned to the State.

3. The City shall furnish and install necessary water services from water mains to the designated locations within the right of way, at the State's expense.

4. The City shall furnish all water for landscape installation during the construction phase, and all water thereafter necessary to properly maintain the landscape, all at City expense.

5. The City hereby agrees to maintain the landscaping and irrigation system in the medians on Broadway Road from 48th Street to Priest Drive and the side areas within the right-of-way from the Tempe Butte water tank service road to Priest Drive, in accordance with Maintenance Exhibit A, which is attached hereto and made a part hereof, furnishing all labor, materials and electrical power to maintain the landscaping.

6. The State agrees to maintain the landscaping and irrigation system on Interstate 10 from 48th Street to Southern Avenue, furnishing all labor, materials (excluding water) and electrical power to maintain the landscaping.

7. The State and City hereby agree to maintain the landscaping and irrigation system for the areas in accordance with Maintenance Exhibit A. Maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed, testing, adjusting, repairing and operation of the irrigation system and the repair of all erosion to maintain the final grade established at the completion of the project. All maintenance work shall be conducted in a manner to minimize traffic congestion and interference with through traffic. All traffic control will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual."

III. MISCELLANEOUS PROVISIONS

1. This agreement shall become effective upon filing with the Secretary of State.

2. The terms, conditions and provisions of this agreement shall remain in full force and effect for 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 either party shall give notice in writing to the other not less than one (1) month nor more than three (3) months prior to the initial or renewed expiration date. Further, this agreement may be terminated by the State at any time upon providing sixty (60) days written notice. It is understood and agreed that in the event this agreement is terminated by the City, the State shall in no way be obligated to maintain said landscaping.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

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

5. 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).

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Engineering Consultants Services
205 South 17 Avenue, Room 118E
Phoenix, AZ 85007

City of Tempe
City Manager
31 East 5th. Street
Tempe, AZ 85281

7. Attached hereto and incorporated herein 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.

CITY OF TEMPE

By _____
HARRY E. MITCHELL
MAYOR

STATE OF ARIZONA
Department of Transportation

By _____
ROBERT P. MICKELSON
Deputy State Engineer

ATTEST

By _____
HELEN FOWLER
City Clerk

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JPA 92-27

RESOLUTION

BE IT RESOLVED on this 12th day of February 1992, that I, CHARLES E. COWAN, as Director of the 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, to enter into an agreement with the City of Tempe for the purpose of defining responsibilities for the design, construction and maintenance of a landscaping improvements to I-10 from 48th Street to Southern Avenue in the City.

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

Ray Ellis

for CHARLES E. COWAN
Director

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RESOLUTION NO. 92.17

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION

* *

WHEREAS, it is to the mutual advantage of the State of Arizona and the City of Tempe to landscape areas within the right of way on Interstate 10 from 48th Street to Southern Avenue and Broadway Road from 48th Street to Priest Drive, and

WHEREAS, The Arizona Department of Transportation has prepared an agreement setting forth the provisions and responsibilities for construction of said project.

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

That the Mayor of the City of Tempe, hereby be authorized to execute an agreement with the State of Arizona, Department of Transportation setting forth the provisions and responsibilities for construction of landscaping and irrigation on the I-10 Freeway from 48th Street to Southern Avenue and Broadway Road from 48th Street to Priest Drive.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA

this 19th day of March, 1992.

Harry E. Mitchell
Mayor

ATTEST:

Helen R. Fowler
City Clerk

APPROVED AS TO FORM:

City Attorney

I, Helen R. Fowler, the duly appoint City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the attached to be a true and exact copy of Resolution No. 92.17, passed and adopted at the Regular Council Meeting of March 19, 1992, by the Tempe City Council, Tempe, AZ.

DATED this 30th day of March, 1992.

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

JPA 92-27

APPROVAL OF THE TEMPE CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the CITY OF TEMPE and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

DATED this 31st day of March, 1992.

City Attorney

1979j

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

April 17, 1992

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A. G. Contract No. KR92-0314-TRN, 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 17th day of April, 1992.

GRANT WOODS
Attorney General

James R. Redpath

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:ls
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