A. G. Contract No. kr95 2160trn
ADOT ECS File: JPA 95-171
Project: CM-TMP-0(9)P
Fund: SS381 01C
Section: Weber Drive, Scottsdale Road - Indian Bend Wash

C95-224

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

THIS AGREEMENT is entered into 22 JANUARY, 1995 96, 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 MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 and 28-112 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 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. Congress has authorized appropriations for, but not limited to, the design and construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.

4. Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for approval.

NO. 20448
FILED WITH SECRETARY OF STATE
Date Filed 01/22/96
Jane Dee Hull
Secretary of State
By Vicky Greenwood

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The work embraced by this agreement is to be administered by City, and the estimated cost is as follows: Bicycle Lane, Sidewalk and Striping.

Estimated Project Cost (includes 15% CE)	$ 130,332.00
Federal Aid Funds @ 80% (CAP of $125,550.00)	$ 104,266.00
Tempe City Funds @ 20% of $130,332.00	$ 26,066.00
Five percent surcharge	$ 6,517.00
Federal Aid Funds @ 80% of $6,517.00	$ 5,213.00
City Funds @ 20% of $6,517.00	$ 1,304.00
Total City Funds	$ 27,370.00

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

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the City with the aid and consent of FHWA will proceed to construct the project, at the agreed upon unit prices, such project to be performed, completed, accepted and paid for in accordance with the approved plans and specifications. The State will enter into a Project Agreement with FHWA covering the work embraced in said construction and will request the maximum federal funds available.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the City shall be obligated to incur any expenditure in excess.

2. Prior to construction, the City shall set aside sufficient funds in the amount determined to be necessary to match federal funds in the ratio required.

3. The City shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

4. The City shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom, prior to the start of construction.

5. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the City.

6. Upon completion of construction, the City shall provide maintenance unless assumed by another governmental entity.

7. The City shall mark and sign school crossings and railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

8. By such regulation as it may by ordinance provide, the City shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic at intersections and at such other locations as necessary.

9. The City will provide personnel to administer and supervise construction. The FHWA will participate in the cost of construction supervision provided by the City at the pro rata established in the Project Agreement for up to 15 percent of the cost of construction. Construction supervision costs not participated in by FHWA shall be borne by the City. All construction project change orders are to be copied to the State.

10. The City will complete the project in accordance with approved plans and specifications and the requirements of the relevant State and federal statutes, rules, or regulations. In the event the City fails to comply with the plans, specifications or any relevant State or federal statutes, rules, or regulations, the City shall hold the State harmless from any claims or costs incurred by the State as a result of the City's failure to comply.

11. State employees may perform any inspections of the project or audit any books or records of the City in order for the State to satisy itself that the monies on the project have been spent and the project completed in accordance with the plans and specifications, statutes, rules, and regulations of the State and federal government.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. This agreement shall remain in force and effect until completion of the work and related deposits or reimbursements.

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

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

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

6. 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.

7. 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
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

City of Tempe
City Manager
Box 5002
Tempe, AZ 85280-5002

8. Attached hereto and incorporated herein is 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 Neil G. Giuliano
NEIL G. GIULIANO
Mayor

STATE OF ARIZONA
Department of Transportation

By Peter L. Eno
PETER L. ENO
Contract Administrator

ATTEST

By Helen R. Fowler
HELEN FOWLER
City Clerk

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JPA 95-171

RESOLUTION

BE IT RESOLVED on this 13th day of September 1995, that I, the undersigned LARRY S. BONINE, 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 bicycle lane on Weber Drive, Scottsdale Road to Indian Bend Wash.

Therefore, authorization is hereby granted to draft said agreements which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

for LARRY S. BONINE
Director

JPA 95-171

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 25th day of October, 1995.

David R. Merkel

City Attorney

RESOLUTION NO. 95.57

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

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WHEREAS, it is to the mutual BENEFIT of the State of Arizona, Department of Transportation and the City of Tempe to enter into an agreement for construction of the Weber Drive Bicycle Lane, Sidewalk and Striping from Scottsdale Road to the Indian Bend Wash, and

WHEREAS, the Arizona Department of Transportation has prepared an agreement setting forth the responsibilities for each party.

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 is hereby authorized to execute an agreement with the State of Arizona, Department of Transportation setting forth the provisions and responsibilities for processing necessary requirements for acquisition of federal funds for the use and benefit of the City.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA this 26th day of October, 1995.

Neil G. Giuliano
Mayor

ATTEST:
Helen R. Fowler
City Clerk

APPROVED AS TO FORM:
David R. Merkel
City Attorney

I, Helen R. Fowler, the duly appointed City Clerk of the City of Tempe, Maricopa County, AZ, do hereby certify the above to be a true and exact copy of Res. No. 95.57, passed and adopted at the Regular Council Meeting of October 26, 1995 by the Tempe City Council, Tempe, AZ.

DATED this 27th day of October, 1995.

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

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A. G. Contract No. KR95-2160-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 January, 1996.

GRANT WOODS
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:lsr
9042G