AG Contract No. KR95 2797TRN
ADOT ESC File No. JPA 95-220
Project: STP-600-8(006) H0875 02C
Section: SR-202L, Price - McKellips
CBC at Tempe Drain

AGREEMENT
AMONG
THE STATE OF ARIZONA
THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT
AND
ROBERT E. HURLEY, Individually and on behalf of
MARGARET L. HURLEY SMITH and HELEN E. HURLEY SMITH

THIS AGREEMENT is entered into 10 MAY, 1996 pursuant to Arizona Revised Statutes, Section 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, (the "State"), the SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, acting by and through its BOARD OF DIRECTORS (the "SRP"), and ROBERT E. HURLEY, Individually and on behalf of MARGARET L. HURLEY SMITH AND HELEN E. HURLEY SMITH ("HURLEY").

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 SRP is empowered by Arizona Revised Statutes Section 48-2337 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 SRP.

3. Robert E. Hurley elects to execute this agreement on his own behalf, and warrants that he has the authority to execute this agreement on behalf of Margaret L. Hurley Smith and Helen E. Hurley Smith,

4. Incident to drainage improvements on SR202L (Red Mountain Freeway) between the Price Freeway and McKellips Road contemplated by the State, the SRP and Hurley have requested the State to increase the size of a concrete box culvert (CBC) to pass water into the Tempe Drain to accomodate additional waters from SRP and Hurley properties, hereinafter referred to as the Project, at a cost of approximately $97,319.00. A cost estimate for the CBC is attached hereto as Exhibit A. The CBC will be designed to have a minimum 18" of freeboard over the highest anticipated water level in order to address safety concerns raised by SRP and Hurley, and an additional thrity (30) feet of length to the south of the State's right of way along SR-202L for the use of Hurley.

5. Other than the rights affirmed, acknowledged and conveyed in this agreement, the parties hereto recognize that no other rights, title or interest of the parties in the Tempe Drain are affected hereby.

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

NO. 20686
FILED WITH SECRETARY OF STATE
Date Filed 05/10/96
Jane Lee Hull
Secretary of State
By Vicky Groenewold

II. SCOPE

1. The State will:

a. Provide to State standards design plans, specifications and such other documents and services required for construction bidding and construction to increase the size of the culvert to provide a minimum of eighteen inches of freeboard at a flow rate of 995 CFS. Incorporate SRP and Hurley review comments as appropriate.

b. Call for bids, and with the concurrence of SRP and Hurley, award one or more construction contracts for the Project. Administer same and make all payments to the contractor. Obtain the concurrence of SRP and Hurley on any Project contract modifications. Be responsible for any contractor claims for extra compensation attributable to the State on the State's project.

c. Be responsible for one third of the additional cost of the larger CBC, in an amount estimated at $30,000.00. Upon filing of this agreement with the Arizona Secretary of State, invoice the SRP and Hurley for $30,000.00 each respectively, as the estimated additional cost of the larger CBC.

d. Retain the right to cancel this agreement after bid opening but prior to construction contract award, in the event of excessive cost over and above the States current $90,000.00 Project cost estimate.

e. After bid opening but prior to construction contract award, in the event the parties elect not to participate in the Project due to excessive cost, refund the deposits of SRP and the Hurleys. Refund one third of any overage to both SRP and Hurley if the actual increased cost of construction is less than $90,000.00.

2. The SRP will:

a. Review the design documents and provide comments.

b. Upon execution of this agreement, advance the State $30,000.00 as one third of the estimated cost of the larger CBC. Be responsible for one third of any additional reasonable direct actual costs of the Project over and above $90,000.00. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the SRP.

c. Retain the right to cancel this agreement after bid opening but prior to the State's construction contract award, in the event of excessive cost over and above the State's current $90,000.00 Project estimate.

3. Hurley will:

a. Review the design documents and provide comments.

b. Upon execution of this agreement, advance the State $30,000.00 as one third of the estimated cost of the larger CBC. Be responsible for one third of any additional reasonable direct actual costs of the Project over and above $90,000.00. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to Hurley.

c. Retain the right to cancel this agreement after bid opening but prior to the State's construction contract award, in the event of excessive cost over and above the State's current $90,000.00 Project estimate.

III. MISCELLANEOUS PROVISIONS

1. The SRP and Hurley agree that Hurley shall, from the completion date of the construction contemplated by this agreement forward, have the right to place drainage into the Tempe Drain at a point as close to the south headwall of the concrete box culvert and outside the State's south right of way line as is reasonably possible, not to exceed 100 feet southeast of the State's south right of way line; provided that, following Hurley's connection to the Tempe Drain, Hurley shall reimburse SRP for Hurley's pro rata share, 15% (150 cfs out of 995 cfs = 15%) of the costs of operation and maintenance of that portion of the Tempe Drain so shared (i.e. that portion of up to 100 feet used by Hurley as a percentage of the total length of the Tempe Drain); and provided further that Hurley shall indemnify SRP for any liability arising out of Hurley's use of the Tempe Drain.

2. This agreement shall remain in effect as long as the Tempe Drain is operated and maintained as a drainage facility component of the SRP water delivery system.

3. This agreement shall become effective upon filing with the Secretary of Stateand recording with the Maricopa County Recorders Office.

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

Salt River Project Agricultural
Improvement and Power District
Attn: Manager, Water Engineering & Transmission PAB 103
PO Box 52025
Phoenix, AZ 85072-2025

Mr. Robert Hurley
c/o Mr. Steve Hirsch
2800 N. Central Avenue, 21st floor
Phoenix, AZ 85004-1019

(and)

Mr. Robert Hurley
134 East Palm Lane
Phoenix, AZ 85004-1550

8. Attached hereto and incorporated herein is the written determination of legal counsel that the State and SRP 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.

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

By _____
PAUL CHERRINGTON, Manager
Water Engineering & Transmission
My Commission Expires Sept. 15, 1997
Subscribed and sworn to before me,
this 20 day of March 1996.

_____
Notary Public

(seal)

STATE OF ARIZONA
Department of Transportation

By _____
PETER L. ENO
Contract Administrator
My Commission Expires 7-24-96
Subscribed and sworn to before me,
this 27th day of March 1996.

_____
Notary Public

(seal)

ROBERT E. HURLEY

By _____
ROBERT E. HURLEY
Individually and on behalf of
MARGARET L. HURLEY SMITH and
HELEN E. HURLEY SMITH
My Commission Expires Sept. 15, 1997
Subscribed and sworn to before me,
this 20 day of March 1996.

_____
Notary Public

(seal)

APPROVED AS TO FORM
Salt River Project Legal Services Dept.

By _____

Date _____

JPA 95-220

RESOLUTION

BE IT RESOLVED on this 9th day of January 1996, 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 with the Salt River Project and Robert Hurley, et al, for the purpose of defining responsibilities for the design, construction and maintenance of a concrete box culvert to the Tempe Drain on SR-202L, Price - McKellips.

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

for LARRY S. BONINE
Director

95-720

Alma School Drain

Twin Box 6 x 7					
ITEM	DESCRIPTION	Unit	Quantity	Unit Price	Amount
6010002	STRUCTURAL CONCRETE (CLASS S) (F'C = 3,000)	CU.YD.	765	$ 200.00	$ 153,000.00
6050002	REINFORCING STEEL	LB.	114441	$ 0.50	$ 57,220.50
2030506	STRUCTURE BACKFILL	CU.YD.	1557	$ 15.00	$ 23,355.00
	Total Twin Box 6 x 7				$ 233,575.50

Twin Box 8 x 8					
ITEM	DESCRIPTION	Unit	Quantity	Unit Price	Amount
6010002	STRUCTURAL CONCRETE (CLASS S) (F'C = 3,000)	CU.YD.	1112	$ 200.00	$ 222,400.00
6050002	REINFORCING STEEL	LB.	157770	$ 0.50	$ 78,885.00
2030506	STRUCTURE BACKFILL	CU.YD.	1974	$ 15.00	$ 29,610.00
	Total Twin Box 6 x 7				$ 330,895.00

Box Comparison							
ITEM	DESCRIPTION	Total Twin Box 6 x 7	Total Twin Box 8 x 8	Total Difference	1/3 Total Difference ADOT	1/3 Total Difference SRP	1/3 Total Difference Hurley
6010002	STRUCTURAL CONCRETE (CLASS S) (F'C = 3,000)	$ 153,000.00	$ 222,400.00	$ 69,400.00	$ 23,133.33	$ 23,133.33	$ 23,133.33
6050002	REINFORCING STEEL	$ 57,220.50	$ 78,885.00	$ 21,664.50	$ 7,221.50	$ 7,221.50	$ 7,221.50
2030506	STRUCTURE BACKFILL	$ 23,355.00	$ 29,610.00	$ 6,255.00	$ 2,085.00	$ 2,085.00	$ 2,085.00
	Total	$ 233,575.50	$ 330,895.00	$ 97,319.50	$ 32,439.83	$ 32,439.83	$ 32,439.83

RECEIVED
APR 26 1996
STATEWIDE PROJECT
MANAGEMENT

JPA 95-220

APPROVAL OF THE SALT RIVER PROJECT AGRICULTURAL

IMPROVEMENT AND POWER DISTRICT ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION and the SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, and declare this agreement to be in proper form and within the powers and authority granted to the Salt River Project Agricultural Improvement and Power District under the laws of the State of Arizona.

DATED this 25th day of April, 1996.

Steven B. Doncaster
Attorney

doc#4

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

TRN Main: 542-1680
Direct: 542-8837
Fax: 542-3646

MAIN PHONE: 542-5025
TELECOPIER: 542-4085

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR95-2797-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 2nd day of May, 1996.

GRANT WOODS
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:lsr
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