AG Contract No. KR97-1177-TRN
ADOT ECS File No. JPA 97-91
Project: 10MA136 H4382 01C
Section: I-10 MP 136.70 - MP 136.85

AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
HOME DEPOT U.S.A., INC.

THIS AGREEMENT is entered into 19 November, 1997, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION ("the State") and HOME DEPOT U.S.A., INC. ("the Depot").

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 Depot is empowered to enter into this agreement and has resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Depot.

3. The State has a continuing drainage problem on I-10 between MP 136.70 and 136.85 adjacent to the Depot's store property. To resolve this, the State and the Depot have agreed to design, construct and maintain a concrete water barrier north of the right-of-way line between the Depot and the channel access road, and to clean out the drywell located on the Depot's property adjacent to said right of way line, at an estimated cost of $20,100.00 all at State expense, hereinafter referred to as the Project.

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

II. SCOPE

1. The State will:

a. Provide design plans, specifications and such other documents and services required for the Project suitable for construction bidding and construction, and provide copies to the Depot for comment.

b. Call for bids and award one or more construction contracts for the Project. Administer same and make all payments to the contractor. Be responsible for any contractor claims for extra compensation.

c. Upon completion, approve and accept the Project on behalf of the parties hereto.

2. The DEPOT will:

a. Review the design documents and provide concurrence.

b. Grant the State's contractor temporary access onto Depot property to construct the Project.

c. Upon completion and acceptance by the State, provide continued maintenance to the Project and the Depot's on-site surface drainage system; specifically the drywell, and related piping.

III. MISCELLANEOUS PROVISIONS

1. Neither party to this agreement agrees to indemnify the other party or hold harmless the other party from liability hereunder. However, if the common law or a statute provides for either a right to indemnity and/or a right to contribution to any party to this agreement, then the right to pursue one or both of these remedies is preserved.

2. This agreement shall remain in force and effect until completion of said improvements; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

3. This agreement shall become effective upon execution by the parties hereto.

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

Home Depot U.S.A., Inc.
Attn: Construction Manager and Legal Department
601 S. Placentia Avenue
Fulerton, CA 92831

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

HOME DEPOT U.S.A., INC.

By_____
DANIEL R. HATCH
Senior Corporate Counsel

STATE OF ARIZONA
Department of Transportation

By_____
A. WAYNE COLLINS
Deputy State Engineer

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