

ADOT File No.: IGA/JPA15-0005687-1
AG Contract No.: P001201500226
Project: Intersection Safety Improvements
Section: Olive at 59th Avenue
Federal-aid No.: GLN-0(246)T
ADOT Project No.: SH635 01R 01C
TIP/STIP No.: MAG 2014 GLN14-104RW,
GLN17-402
CFDA No.: 20.205 Highway Planning
and Construction
Budget Source Item No.: HSIP

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into this date April 12, 2016, pursuant to the Arizona Revised Statutes §§ 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 GLENDALE, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 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 § 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. The work proposed under this Agreement, hereinafter referred to as the "Project", consists of acquiring the needed right-of-way for the safety improvements at the intersection of Olive Avenue and 59th Avenue. The State will administer the preparation of right-of-way documents and procurement of the needed parcels. The State will advertise, bid, award and administer the construction of the Project. The plans, estimates and specifications for the Project have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for approval.
4. The City, in order to obtain federal funds for the construction of the Project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE).
5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and the authorization of such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City for the Project, if the Project is approved by FHWA and funds for the Project are available. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project specifications and terms and conditions.
6. The Parties will perform their responsibilities consistent with this Agreement; any change or modification to the Project will only occur with the mutual written consent of both Parties.

7. The federal funds will be used for the construction of the Project, including the construction engineering and administration cost (CE). The estimated Project costs are as follows:

SH63501C (construction)

Federal-aid funds @ 94.3%	\$ 1,395,146.00
City's match @ 5.7%	\$ 84,330.00
Subtotal – Construction**	\$ 1,479,476.00
<u>SH63501R (right-of-way)</u>	
Federal-aid funds @ 94.3%	\$ 100,382.00
City's match @ 5.7%	\$ 6,068.00
Subtotal - Right-of-Way	\$ 106,450.00
Total Estimated City Funds	\$ 90,398.00
Total Federal Funds	<u>\$ 1,495,528.00</u>
TOTAL Estimated Project Construction Costs**	\$ 1,585,926.00

** (Includes 15% CE (this percentage is subject to change, any change will require concurrence from the City) and 5% Project contingencies)

The Parties acknowledge that the final Project costs may exceed the initial estimate(s) shown above, and in such case, the City is responsible for, and agrees to pay, any and all actual costs exceeding the initial estimate. If the final bid amount is less than the initial estimate, the difference between the final bid amount and the initial estimate will be de-obligated or otherwise released from the Project. The City acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all actual costs exceeding the final bid amount.

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

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this Agreement, be the designated agent for the City for the Project, if the Project is approved by FHWA and funds for the Project are available.

b. Upon execution of this Agreement, review the design plans, specifications and other such documents and provide services required for the construction bidding and construction administration of the Project and provide comments to the City, as appropriate.

c. Upon execution of this Agreement, prior to performing or authorizing any work, invoice the City for the City's share of the right-of-way costs, currently estimated at \$6,068. If additional funding is needed during the procurement of right-of-way for the City, an invoice will be sent to the City requesting these funds. Once the right-of-way costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual Project right-of-way costs.

d. Upon completion of design and prior to bid advertisement, invoice the City for the City's share of the Project construction costs, estimated at \$84,330.00. Once the Project costs have been finalized, the

State will either invoice or reimburse the City for the difference between estimated and actual costs; and de-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

e. Upon receipt of the City's's estimated share of the Project construction costs, submit all documentation required to FHWA with the recommendation that funding be approved for construction and request the maximum programmed federal funds for the construction of the Project. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

f. Upon FHWA authorization, proceed to administer construction, advertise for, receive and open bids, award and enter into a contract(s) with a firm(s) for the construction of the Project. If the bid amounts exceed the construction cost estimate, obtain City concurrence prior to awarding the contract.

g. Be granted, without cost requirements, the right to enter City right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry onto and over said rights-of-way of the City.

h. Notify the City that the Project has been completed and is considered acceptable, coordinating with the City as appropriate to turn over full responsibility of the Project improvements. De-obligate or otherwise release any remaining federal funds from the construction phase of the Project within ninety (90) days of final acceptance.

i. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City will:

a. Upon execution of this Agreement, designate the State as authorized agent for the City for the Project.

b. Within thirty (30) days of receipt of an invoice from the State pay the City's Project right-of-way costs, estimated at **\$6,068.00**. If, during the development of the right of way, additional funding to cover costs is required, pay the invoiced amount to the State within thirty (30) days of receipt of such an invoice. Be responsible for any difference between the estimated and actual right-of-way costs of the Project. Provide the design plans, specifications and other such documents and services required for construction bidding and construction of the Project and incorporate comments from the State as appropriate.

c. Review right of way plans, cost estimates and other such documents required for the construction bidding and construction of the Project, including scoping/design plans and documents required by FHWA to qualify projects for and to receive federal funds, and provide design review comments to the State as appropriate.

d. Upon execution of this Agreement, within thirty (30) days of receipt of an invoice from the State and prior to bid advertisement, pay, the City's Project construction costs, estimated at **\$84,330.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

e. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement that are not covered by federal funding. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the City is responsible for these costs; payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

f. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any City requested changes to the scope of work of the Project,

with the understanding that such changes will require State and FHWA approval. Be responsible for any contractor claims for additional compensation caused by Project delay attributable to the City. Payment for these costs will be made to the State within 30 days of receipt of an invoice from the State.

g. Not permit or allow any encroachments upon or private use of the right-of-way, except those authorized by permit. 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.

h. Grant the State, its agents and/or contractors, without cost, the right to enter City rights-of-way, as required, to conduct any and all construction and preconstruction related activities, including without limitation, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

i. Upon notification of Project completion, from the State, agree to accept, maintain and assume full responsibility of the Project in writing.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and acceptance of related deposits or reimbursements. Any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the Project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the City will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that should the City terminate this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, 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 the State's participation is confined solely to securing federal aid on behalf of the City and the fulfillment of any other responsibilities of the State as specifically set forth herein; 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 to the extent permitted by law, the City hereby agrees to save and hold harmless, defend and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all liability, costs and/or damage incurred by any of the above arising or resulting from this Agreement; and from any other liability, damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non-performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City, any of its agents, officers and employees, or 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, and expenses of litigation and attorneys' fees.

3. The cost of construction and construction engineering work under this Agreement is to be covered by the maximum available amount of federal funds programmed for this Project. The City acknowledges that actual Project costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by FHWA as eligible for federal funds. Therefore, the City agrees to pay the difference between actual costs of the Project and the federal funds received.

4. Should the federal funding related to this Project be terminated or reduced by the federal government, or Congress rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for any past, current or future expenses under this Agreement.

5. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.

6. The Parties warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the City will provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.

7. The City acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend \$500,000.00 or more (prior to 12/26/14) and \$750,000.00 or more (on or after 12/26/14) of federal assistance (federal funds, federal grants, or federal awards) are required to comply by having an independent audit. Either an electronic or hardcopy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine (9) months of the sub recipient fiscal year end.

ADOT – FMS
Attn: Cost Accounting Administrator
206 S 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
SingleAudit@azdot.gov

8. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

9. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

10. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.

11. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The Parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

12. Non-Availability of Funds: Every obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

13. 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 § 12-1518.

14. The Parties shall comply with the applicable requirements of Arizona Revised Statute § 41-4401.

15. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

16. 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:

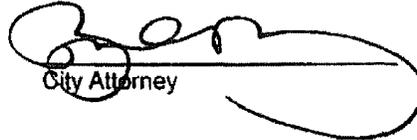
IGA/JPA 15-0005687-I

ATTORNEY APPROVAL FORM FOR THE CITY OF GLENDALE

I have reviewed the above-referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF GLENDALE, an agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 11-951 through 11-954 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.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 12 day of April, 2016.


City Attorney

RESOLUTION NO. 5085 NEW SERIES

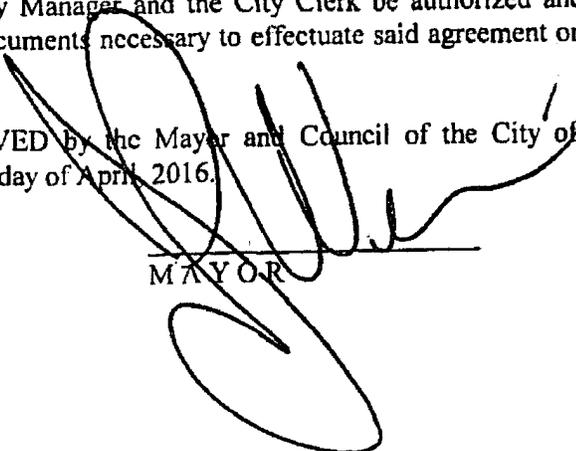
A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION (IGA/JPA 15-0005687-I) FOR THE INTERSECTION SAFETY IMPROVEMENTS PROJECT IN THE CITY OF GLENDALE.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement between the Arizona Department of Transportation and the City of Glendale for the Intersection Safety Improvements Project (IGA/JPA 15-0005687-I) be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver any and all documents necessary to effectuate said agreement on behalf of the City of Glendale.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 12th day of April, 2016.

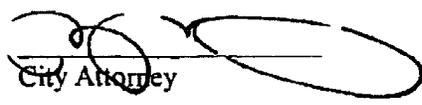

MAYOR

ATTEST:


City Clerk

(SEAL)

APPROVED AS TO FORM:


City Attorney

REVIEWED BY:


City Manager



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
TRANSPORTATION SECTION

SUSAN E. DAVIS
ASSISTANT ATTORNEY GENERAL
DIRECT LINE: 602-542-8855
E-MAIL: SUSAN.DAVIS@AZAG.GOV

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012016000226 (ADOT IGA/JPA 15-0005687-I), an Agreement between public agencies, the State of Arizona and City of Glendale, 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: May 4, 2016

MARK BRNOVICH
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:ln:#5064799
Attachment