C-7726
06/28/2011

CITY CLERK
ORIGINAL

ADOT File No.: IGA/JPA 11-059I
AG Contract No.: P0012011001833
Federal Aid No.: GLN-0(235)A
Project: Pedestrian Countdown Signals
Section: Various Locations
ADOT Project No.: SH479 01C
TIP/STIP No.: GLN11-102
Budget Source Item No.: HSIP Local 72811 132.90

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF GLENDALE

THIS AGREEMENT is entered into this date July 13, 2011, 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. Congress has established the Highway Safety Improvement Program (HSIP) as a core Federal-aid for the specific purpose of achieving a significant reduction in traffic fatalities and serious injuries on public roads. The State, the Federal Highway Administration (FHWA) and the City have identified systematic improvements within the City as eligible for this funding.

4. The purpose of this joint exercise of powers and cooperative action (i.e. Agreement), by the State and the City is to allow the State to acquire Federal funds for the purchase of LED Pedestrian Countdown Signal Modules for approximately 54 intersections within the city limits, hereinafter referred to as the "Project". The modules will be installed in existing pedestrian signal housings. The City, through the State's Procurement Process and Arizona Department of Transportation (ADOT) Procurement contract(s) will utilize an authorized supplier to provide the equipment and services as outlined in the contract and approved Specifications and Terms and Conditions of contract to complete this project with the aid and consent of the State and the FHWA.

5. The interest of the State in this project is the acquisition and distribution of HSIP Funds for the use and benefit of the City and to authorize such HSIP Funds for the project pursuant to Federal law and regulations. The State shall be the designated agent for the City.

The current Project costs are as follows:

ADOT Project No. SH47901C

HSIP Funds @ 100%	$62,000.00
*TOTAL Project Costs *(Includes CE and project contingencies)	$62,000.00

The Parties acknowledge that the final bid amount may exceed the initial estimate(s) shown above, and in such case, the **City** is responsible for, and agrees to pay, any and all eventual, 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 eventual, 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. Submit all documentation required to the FHWA containing the above-mentioned Project with the recommendation that funding be approved for procurement. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Specifications and Terms and Conditions.

b. Request the maximum HSIP funds programmed for this Project, including City contract administration costs. Should costs exceed the maximum HSIP funds available it is understood and agreed that the City will be responsible for any overage.

c. Approve the Project, if such project funds are available from and authorized by FHWA for the Project. Be the designated authorized agent for the City.

d. Upon execution of this Agreement, coordinate with the City regarding the specifics of the equipment to be ordered by the State to best ensure the requirements of the Project are met. Enter into a contract(s) with a firm(s) to whom the award is made for the purpose of the Project.

e. Instruct the vendor to deliver equipment directly to the City for final acceptance and to bill the City directly. The State will reimburse the City, 80% of allocated funds, up to **$49,600.00** within thirty (30) days after receipt and approval of an invoice for equipment purchased under this Agreement. Upon completion of final inspection, within thirty (30) days after receipt of invoice from the City, the State will reimburse the City with the remaining federal funds allocated for this Project not to exceed **$62,000.00**.

f. 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.

g. Upon installation of the equipment, verify installation was performed in compliance with FHWA requirements.

2. The City will:

a. Designate the State as authorized agent for the City, if such project is approved by the FHWA and project funds are available.

b. Be responsible for the cost of installation and any overage of costs exceeding the maximum HSIP funds available for the Project. Agree that the cost of the analysis and work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA.

c. Coordinate with the State during the procurement process of the Project.

d. Certify that all necessary rights-of-way have been or will be acquired prior to installation of LED Pedestrian Countdown Signal Modules and also certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction. Coordinate with the appropriate State's Right-of-Way personnel during any applicable right-of-way process performed by the City.

e. Purchase and install the equipment acquired under this Agreement and maintain all improvements provided by this Project for the entire design life of the equipment.

f. Be responsible for ensuring all equipment purchased is installed within one (1) year of receipt of equipment.

g. Within thirty (30) days of making payment for equipment, invoice the State up to 80% of the allocated funds, for the reimbursement of eligible costs incurred by the City and provide all necessary backup documentation with said invoice. Upon completion of final inspection and approval of the project by the State, invoice the State for the remaining federal funds allocated for this Project not to exceed **$62,000.00**. Be entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement not covered by federal funding.

h. Notify the State when all equipment has been installed and ready for inspection.

i. Be responsible for any unforeseen conditions or circumstances which increase the cost of said work. Should a change in the extent or scope of the work called for in this Agreement become necessary, be obligated to incur and pay for increased costs.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project, except any provisions for maintenance/electrical power and/or landscaping maintenance shall be perpetual by the City. Further, this Agreement may be cancelled at any time prior to advertisement of the project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the City terminates 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 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 costs 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, 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. This Agreement shall remain in force and effect until completion of the work and related deposits and reimbursements.

4. The cost of equipment under this Agreement is to be covered by the HSIP funds set aside for this Project, up to the maximum available. The City acknowledges that the eventual actual costs may exceed the maximum available amount of HSIP funds, or that certain costs may not be accepted by the federal government as eligible for HSIP funds. Therefore, the City agrees to furnish and provide the difference between actual costs and the HSIP funds received.

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

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

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

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

10. 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".

11. 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.

12. 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.

13. 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 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

City of Glendale
Attn: Chris Lemka
5800 W. Glenn Drive, Suite 315
Glendale, Arizona 85301
(623) 930-2940
(623) 915-1029 Fax

For City Financial Matters:
Vendor #866000247 02
Diane Goke, Chief Financial Officer
5800 W Glenn Drive, Suite 315
Glendale, Arizona 85301
(623) 930-2480
(623) 915-2827 Fax

14. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The City warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes § 23-214(A).

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the City may be subject to penalties up to and including termination of the Agreement.

c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the City or subcontractor is complying with the warranty under paragraph (a).

15. Pursuant to Arizona Revised Statutes § 35-391.06 and § 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in Arizona Revised Statutes § 35-391 and/or § 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

16. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and 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 GLENDALE

By _____
ED BEASLEY
City Manager

ATTEST:

By _____
PAMELA HANNA
City Clerk

STATE OF ARIZONA
Department of Transportation

By _____
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

IGA/JPA 11-059I

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 29 day of June, 2011.

City Attorney

RESOLUTION NO. 4499 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 STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, FOR PEDESTRIAN COUNTDOWN SIGNALS AT VARIOUS LOCATIONS WITHIN 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 with the State of Arizona, Department of Transportation, for pedestrian countdown signals at various locations within the City of Glendale (IGA/JPA 11-059-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 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 28th day of June, 2011.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

Horatio Skubo for

City Manager

TOM HORNE
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. P0012011001833 **(IGA/JPA 11-059-I)**, an Agreement between public agencies, i.e., The State of Arizona and The 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: July 13, 2011

TOM HORNE
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:ln:#2150607
Attachment