

CITY CLERK ORIGINAL

ADOT File No.: IGA/JPA 10-034-I
AG Contract No.: P001 2011007
Project: CM GLN-0(203)
Section: Grand Canal
ADOT No.: SL6190 01D, 01C & 02D
Budget Source Item No.:

INTERGOVERNMENTAL AGREEMENT

C-7772
09/13/2011

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into this date October 18th, 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 collectively are 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 on behalf of the City.
 3. Congress has authorized appropriations for, but not limited to twelve eligible categories of Transportation Enhancement (TE) activities and the City has requested TE and CMAQ funds from the Federal Highway Administration (FHWA) through the State in the amount of \$750,000.00 for a project within the boundary of the City and described more fully below in Paragraph 5 of this Section.
 4. The City, in order to obtain Federal funds for the design and construction of the project, is willing to provide City funds to match the Federal Transportation Equity Act (TEA) funds in the ratio required or as finally fixed and determined by the City and FHWA, including design and actual construction engineering (CE) and contingency costs. The interest of the State in this project is the acquisition of Federal funds for the use and benefit of the City. The State is requesting the Federal funds to be authorized for the project by reason of Federal law and regulations.
 5. This project involves the design and construction of a 1-mile long 10-foot wide Portland cement concrete pathway along the Grand Canal and Bethany Home Road and Outfall Channel, connecting to an existing pathway near the northbound ramp to the Loop 101 freeway and then west to 107th Avenue, hereinafter referred to as the "Project". Amenities include landscaping and irrigation. The City shall maintain the pathway and provide electrical power and water required for the irrigation.
 6. The survey of the project has been completed and the plans, estimates and specification shall be prepared as required and submitted to the State and FHWA for their approval. The City has been approved by FHWA and the State to bid and administer the construction of the Project, using Arizona Procurement Procedures. The State shall be the designated agent for the City. The Project costs are allocated as follows:
-

ADOT No. SL619 02D – DESIGN

Federal CMAQ funds @ 100%	\$250,000.00
Estimated City funds @ 100%	\$ 44,562.00
Total Estimated City Funds for design	\$ 44,562.00
Total Estimated Project Design Costs	\$294,562.00

ADOT No. SL619 01C-CONSTRUCTION

(including Construction Engineering @ 15% and Contingency @ 5%)

Federal TEA funds @ 94.3%	\$500,000.00
Estimated City matching funds @ 5.7%	\$ 30,223.00
Estimated City additional funds @ 100%	<u>\$326,138.00</u>
Total Estimated City Funds for construction	\$356,361.00
Total Estimated Project Construction Cost	\$856,361.00

CITY ESTIMATED DESIGN REVIEW (Tracs No. SL619 01D) **\$ 3,000.00****TOTAL ESTIMATED COST OF THE PROJECT** **\$1,153,923.00**

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

II. SCOPE OF WORK

1. The State will:

a. Submit a program to the FHWA containing the above-mentioned Project with the recommendation that it be approved for design and construction.

b. On behalf of the City, enter into a project agreement with FHWA covering the work embraced in said design and construction contract and request the maximum authorized Federal funds available, including construction engineering and administration costs. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

c. Hereby authorize the City to advertise for, receive and open bids, enter into contract(s) with a firm(s) to whom the award is made for the design and construction of the Project using State of Arizona Procurement Procedures. The Project shall be performed, completed, inspected, accepted and paid for in accordance with the requirements of the approved Project Plans, Technical Specifications, Special Provisions and Standard Specifications.

d. Not be obligated to incur any expenditure on behalf of the City in excess of the amount reference herein. Should costs exceed the maximum Federal funds available, or 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, it is understood and agreed that the City will be responsible for any overage.

e. Upon federal authorization of the project and execution of this Agreement and within thirty (30) days of receipt of approved invoices, reimburse the City for costs incurred for design utilizing federal CMAQ funds, and construction, including construction engineering utilizing federal TEA funds. Payments will not exceed the federal amounts shown above unless changed by amendment to this Agreement.

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.

2. The City will:
 - a. Upon execution of this Agreement designate the State as authorized agent for the City to secure the federal aid.
 - b. Enter into an Agreement with the Design Consultant(s), solicited and selected in compliance with Arizona Procurement Procedures, which defines a specific scope of services and approved contract price.
 - c. Prior to advertising the Project for bids, and per FHWA's conditions, provide the State design plans, specifications (PS&E's) and other such documents and services required for bidding and construction of the Project. Additionally, incorporate or resolve State review comments as appropriate.
 - d. Under direct supervision of a registered professional, administer design development of the Project, bidding, contract award and construction and make all payments to the consultant(s) and contractor(s). Advertise for, receive and open bids, enter into contract(s) with a firm(s) to whom the award is made for the construction of the Project using State of Arizona Procurement Procedures. The Project shall be performed, completed, inspected, accepted and paid for in accordance with the requirements of the approved Project Plans, Technical Specifications, Special Provisions and Standard Specifications.
 - e. Provide personnel to administer and supervise construction. Copy ADOT on any addendums issued during bidding, and change orders and supplemental agreements issued during construction. Addendums and change orders unrelated to the TE project and adding new work that is beyond the originally approved project scope and clearances are subject to prior ADOT/FHWA approval.
 - f. Coordinate with the Contractor for collecting federal labor compliance documentation (DBE, EEO, Davis-Bacon, and OJT as applicable) and compliance with the Buy America Act. Ensure that documentation is being appropriately collected in accordance with the federal aid process and recorded and filed for potential auditing purposes. Ensure that the Contractor posts the required federal posters, performs DBE compliance reporting to ADOT Civil Right Office.
 - g. Be entirely responsible for all costs incurred by the City in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not and be obligated to pay for all cost overruns above the amount of federal funds authorized and available for the Project.
 - h. 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.
 - i. Upon execution of this Agreement and incurring eligible costs, invoice the State for progress payments for design and construction up to an amount of federal aid received for this Project and currently estimated at \$294,562.00 for design and \$856,361.00 for construction including construction engineering (CE), not to exceed the federal amount, which is \$250,000 for design and \$500,000 for construction. For construction reimbursements, invoice the State at 94.3% of eligible design and construction costs, including CE, up to the authorized amount.
 - j. Upon completion of construction, the City shall provide for, at its own cost and as an annual item in its budget, perpetual and proper maintenance of all pathway and landscape improvements. Maintenance of all landscaping shall be in accordance with accepted horticultural practices including but not limited to keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water,

furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning, and replanting as required to maintain the landscaping as it was designed and established at the completion of the Project and performing sidewalk repairs as required to keep the sidewalk compliant with the Americans with Disabilities Act Accessibility Guidelines.

k. Be responsible for the furnishing of electrical power and water necessary and to maintain and operate the landscaping and irrigation system including but not limited to all testing, adjustments, and repairs necessary to keep system in proper working order.

III. MISCELLANEOUS PROVISIONS

1. 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. **The City shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State as an additional indemnitee in the City contracts with its contractors.** It is understood and agreed that the State's participation is confined to securing federal aid on behalf of the City and requirements contained in this Agreement; 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 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.

2. The cost of construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

3. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance, electrical power and water shall be perpetual. Further, this Agreement may be canceled at any time prior to the award 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.

4. The cost of the Project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (FHWA).

5. The City warrants compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 amendments and with Arizona Revised Statutes § 41-725.

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

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

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

9. 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.

10. 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: City Manager's Office
5850 West Glendale Avenue
Glendale, Arizona 85301
Phone (623) 930-2870
Fax (623) 847-1399

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 payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment 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. 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, Subsection 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).

14. 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.

15. 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

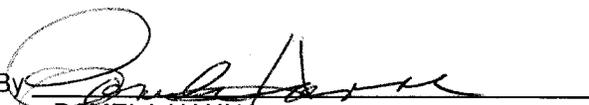
STATE OF ARIZONA

Department of Transportation

By 
ELAINE M. SCRUGGS
Mayor

By 
DALLAS HAMMIT, P.E.
Deputy State Engineer, Development

ATTEST:

By 
PAMELA HANNA
City Clerk

July 19th, 2011-ly

RESOLUTION NO. 4512 NEW SERIES

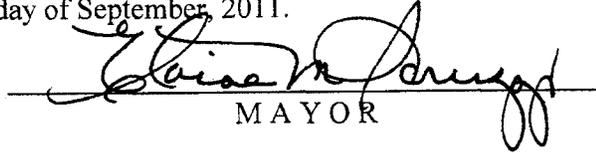
A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, FOR THE DESIGN AND CONSTRUCTION OF A PATHWAY ALONG THE GRAND CANAL AND BETHANY HOME ROAD AND OUTFALL CHANNEL.

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 the design and construction of a pathway along the Grand Canal and Bethany Home Road and Outfall Channel (IGA/JPA 10-034-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.

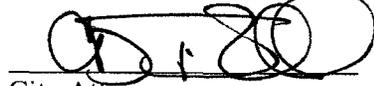
PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 13th day of September, 2011.


MAYOR

ATTEST:


City Clerk (SEAL)

APPROVED AS TO FORM:


City Attorney

REVIEWED BY:


City Manager

JPA 10-034-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, 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 15 day of September, 2011.

A handwritten signature in black ink, appearing to be "C. S. ...", written over a horizontal line.

City Attorney



TOM HORNE
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
TRANSPORTATION SECTION

JAMES R. REDPATH
ASSISTANT ATTORNEY GENERAL
DIRECT LINE: 602-542-8837
E-MAIL: JIM.REDPATH@AZAG.GOV

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012011002007 (**IGA/JPA 10-034-I**), an Agreement between public agencies, i.e., 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: October 18, 2011

TOM HORNE
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:In:#2368153
Attachment



Arizona Department of Transportation

Intermodal Transportation Division

205 South Seventeenth Avenue Phoenix, Arizona 85007

Janice K. Brewer
Governor

John Halikowski
Director

October 24, 2011

Jennifer Toth
State Engineer

Ms. Pamela Hanna,
City Clerk
City of Glendale
5850 W. Glendale Avenue
Glendale, Arizona 85301-2599

Reference:

ADOT JPA File No.: 10-034
ADOT Project No.: SL619 01D, 01C & 02D
Project: Grand Canal
1 ½ long 10 foot wide Portland
Cement concrete pathway
Location: Grand Canal & Bethany Home Rd
& Outfall Channel connecting to Loop 101

Dear Ms. Hanna:

Please find enclosed (1) original Intergovernmental Agreement fully executed on October 18th, 2011.

If I can be of further assistance, please do not hesitate to contact me at [REDACTED]

Sincerely,

Lisa Yahraus
Joint Project Agreement Specialist II
205 S. 17th Avenue MD 637E Room 213
Phoenix, Arizona 85007
Phone [REDACTED]
Fax (602) 712-7424

October 24, 2011-ly