

06/12/2012

**CITY CLERK
ORIGINAL**

ADOT File No.: IGA/JPA 11-176I
AG Contract No.: P001 2012 000726
Project: Pave Dirt Alley
Section: Glendale Avenue
Federal Project No.: GLN-0(230)
ADOT Project No.: SS889 01C
TIP/STIP No.: GLN09-610R
Budget Source Item No.: LOCAL

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF GLENDALE

THIS AGREEMENT is entered into this date September 4, 2012, 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 Project lies within the boundary of the City and has been selected by the City; the survey of the Project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted by the State to the Federal Highway Administration (FHWA) for its approval.

4. The interest of the State in this Project is the acquisition and distribution of federal funds for the use and benefit of the City and to authorize such federal funds for the Project pursuant to Federal law and regulations. The State shall be the designated agent for the City.

5. The improvements intended will reconstruct and beautify approximately four hundred (400) feet of alleyway connecting Glendale Avenue and Glenn Drive between 57th Avenue and 57th Drive, hereinafter referred to as the "Project". The Project will also include decorative pavement, undergrounded electric lines along the Project length, site furnishings, decorative screen walls, pedestrian lighting and landscaping on both sides of the alleyway. The Federal funds will be used for the construction of the project, including the construction engineering and administration cost (CE). The State shall advertise, bid and award the Project.

6. City personnel will be used for the construction engineering of the Project. The City will provide eligible inspection services, and be reimbursed for these services. All Arizona Department of Transportation (ADOT) policies and procedures will be applicable as coordinated with the Phoenix Construction District (District) and the ADOT Construction Group. The City, District and Construction Group must agree on the City Inspector. The City Engineering Director must provide the ADOT Construction Group (for pre-approval) all required and current certifications and chargeable rates (labor and equipment). The City Inspector will report to the ADOT Resident Engineer and must comply with all ADOT hardware/software computer requirements, this includes keeping the computer and any information in a secure location. The City Inspector must also utilize ADOT's automated system to complete the required weekly timesheet. The City Inspector will remain an employee of the City of Glendale and will not be considered an ADOT employee during the term of this Agreement. The City will invoice monthly for reimbursement, all charges must be kept current for both payment and ADOT reporting purposes. The ADOT Contract Administrator will be Michelle Bowser at MBowser@azdot.gov. The City will be notified of all approvals by the ADOT Construction Group.

The current Project costs are estimated as follows

ADOT Project No. SS889 01C

Federal CMAQ Funds @ 100%	\$ 315,721.00
City's contribution @ 100%	\$ 128,288 00
State design review fee (SS889 01D)*	\$ 10,000 00
Total Estimated City Funds	\$ 138,288 00
Total Federal Funds	<u>\$ 315,721 00</u>
**TOTAL Project Costs	\$ 454,009.00

* (Included in the City Estimated Funds)
 ** (Includes 15% CE and 5% Project contingencies)

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. Upon execution of this Agreement, and prior to performing or authorizing any work, invoice the City for the State's design review fee, of \$10,000.00 and for the City's estimated share of the Project, currently estimated at **\$128,288.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs. The State will prepare a final reconciliation upon completion of the Project.

b. Review the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project and provide comments to the City as appropriate.

c. On behalf of the City, review and approve documents required by the FHWA to qualify certain projects for and to receive federal funds. Such work may consist of, but is not specifically limited to, the review and approval of the prepared environmental documents, the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications, geologic materials testing and analysis, right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement.

d. Request the maximum programmed federal funds for the construction of this Project. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

e. Upon approval by the FHWA, and receipt of the City's funds, proceed to advertise for, receive and open bids. The State will enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project; administer contract(s) for the Project and make all payments to the contractor(s).

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.

b. Within thirty (30) days of receipt of an invoice from the State, and prior to the performance or authorization of any work, remit the City's share of the Project costs currently estimated at **\$138,288.00** to the State.

c. Prepare and provide the design documents required for construction of the Project and incorporate comments to the State as appropriate.

d. Be responsible for all costs in excess of the maximum amount of federal funds and for any costs ineligible for federal funds. Such costs shall be paid by the City within thirty (30) days of receipt of invoice from the State.

e. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid 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, in accordance with The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended; 49 CFR 24.102 Basic Acquisition Policies; 49 CFR 24.4 Assurances, Monitoring and Corrective Action, parts (a) & (b) and ADOT ROW Manual 8.02 Responsibilities, 8.03 Prime Functions, 9.07 Monitoring Process and 9.08 Certification of Compliance. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the City, if applicable.

f 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.

g Hereby 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.

h. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work requested by the City. Such changes require the prior approval of the State and FHWA. Be responsible for any contractor claims for additional compensation caused by Project delays attributable to the City. Payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

i. Provide for cost and proper maintenance of the Project, including all of the Project components.

j. Enter into an agreement with the design consultant which states that the design consultant shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project.

k. Provide a set of as-built plans upon completion of the construction phase of the Project. An electronic version of the as-built plans shall be forwarded to Arizona Department of Transportation Local Government Section.

l. Upon completion of the Project, 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 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 (30) days 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. If the federal funding related to this Project is terminated or reduced by the federal government, or if 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.

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 construction and construction engineering work under this Agreement is to be covered by the federal 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 federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the City agrees to furnish and provide the difference between actual costs and the federal funds received.

5. The cost of the project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (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 arising 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

City of Glendale
Bill Passmore, P.E., Principal

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

Engineer
5850 West Glendale Avenue, Suite
315
Engineering Department
Glendale, AZ 85301
(623) 930-3647
(623) 915-2861 Fax
Email: bpassmore@glendaleaz.com

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

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

17 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

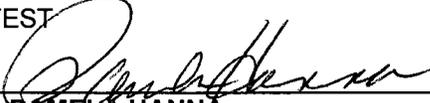
By 
ELAINE M. SCRUGGS
Mayor

STATE OF ARIZONA

Department of Transportation

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

ATTEST

By 
PAMELA HANNA
City Clerk

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 13 day of June, 2012



City Attorney

RESOLUTION NO. 4581 NEW SERIES

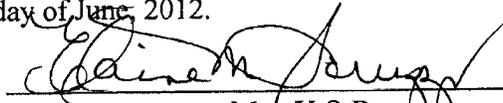
A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION TO RECONSTRUCT AND BEAUTIFY APPROXIMATELY 400 FEET OF ALLEYWAY CONNECTING GLENDALE AVENUE AND GLENN DRIVE BETWEEN 57TH AVENUE AND 57TH DRIVE.

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 City of Glendale and the Arizona Department of Transportation (**JPA File No. 11-176I**) to reconstruct and beautify approximately 400 feet of alleyway connecting Glendale Avenue and Glenn Drive between 57th Avenue and 57th Drive 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.

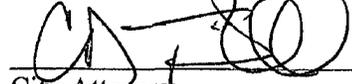
PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 12th day of June, 2012.


MAYOR

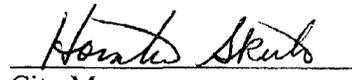
ATTEST:


City Clerk (SEAL)

APPROVED AS TO FORM:


City Attorney

REVIEWED BY:


Acting 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. P0012012000726 (**IGA/JPA 11-176-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: September 4, 2012

TOM HORNE
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED In:#2854418
Attachment