C-8179
09/25/2012

CITY CLERK
ORIGINAL

ADOT File No.: IGA/JPA 10-055-I
ADOT CAR No : 13-0000560-I
AG Contract No.: P001 2012-003062
ADOT No.. SS846 01C
Project No : GLNN13-902 & GLN11-702
Project: New River Multi-Use Pathway
Section: Bethany Home Road
alignment to Northern Avenue.

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into this date April 18th 2013 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. The work proposed under this Agreement, hereinafter referred to as the "Project", is to construct a 10-foot wide concrete pathway from Bethany Home Road alignment north to Northern Avenue. The pathway includes trail under crossings at Glendale Avenue, Northern Avenue and the ADOT drainage channel bridge located a quarter mile south of Northern Avenue. Amenities include landscaping and irrigation with pedestrian lighting, benches and trash receptacles for pathway users. Pedestrian level lighting will be installed below the bridge at Glendale Avenue at the Glendale Avenue underpass and amenities such as benches and trash receptacles along the pathway. New railings will be added where needed and existing rails increased in height to meet AASHTO guidelines Construct a bridge approximately 70 feet long and 14 feet wide over the ADOT Outfall Channel located approximately ¼ mile south of Northern Avenue. The bridge will accommodate light-weight maintenance vehicles and will have removable bollards with locks. The City shall maintain the pathway and provide electrical power and water required for the irrigation

4. Such 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 and estimates will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.

5. The interest of the State in this Project is the acquisition 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.

6. 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.

7 The Parties shall perform their responsibilities consistent with this Agreement and any change or modification to the Project will only occur with the mutual written consent of both Parties.

8 The Project cost breakdown is as follows

ADOT Project No. SS846 01C	
Construction Federal Aid CMAQ @ 94 3% (MAG TIP GLN 13-902)	$ 1,388,096.00
Construction Federal Aid CMAQ @ 94 3% (MAG TIP GLN 11-702)	$ 1,557 943 00
City Match @ 5 7%	$ 178,075 00
Estimated Construction Cost	$ 3,124,114.00
ADOT design review fee (SS939 01D)*	$ 10,000.00
Total Estimated City's Funds	$ 188,075 00
Total Federal Funds	$ 2 946,039.00
**TOTAL Project Costs	$ 3,134,114.00

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

The Parties acknowledge that the eventual actual cost may exceed the *construction* estimate, and in such case the City is responsible for *any and all costs exceeding the estimate*. Actual costs may be less than the estimate and not needed for the Project, at which time any excess Feceral funding will be de-obligated from the Project

Federal funding is subject to de-obligation and removal from the Project twelve (12) months after the date of initial authorization unless the deadlines in this subsection are met or sufficient justification regarding the delay and expected construction start date are provided to the State and FHWA in writing

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

II. SCOPE OF WORK

1. The State will

a Prior to performing or authorizing any work, invoice the City for ADOT's review fee

b Upon receipt of the review fee and on behalf of the City, act as the City's designated agent.

c. Upon execution of this Agreement invoice the City for the City's estimated share of the Project, currently estimated at *$188,075.00*

d. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction and funding. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation

e. Upon receipt of the City's estimated share of the Project and approval and authorization by FHWA the State shall proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the City, to whom the award is made for and enter into a contract(s) with a firms(s) for the construction of the project. Request the maximum 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 and for any costs not eligible for Federal funding

f. 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 on to and over said rights-of-way of the City

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

h Once the Project costs have been finalized the State will either invoice or reimburse the City for the difference between estimated and actual costs

2. The City will:

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

b. Remit to the State within thirty (30) days of receipt of an invoice from the State for ADOT's review costs.

c Provide to the State design documents required for State review comments as appropriate

d Upon receipt of an invoice from the State and prior to bid advertisement and within thirty (30) days of receipt of invoice from the State, remit to the State the City's share of the construction costs currently estimated at *$188,075.00.* Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs Final adjustments to the City's funds for construction of the project may be required based on the final contract award amount

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 right-of-way manual, sections 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. Be responsible for any costs exceeding the maximum Federal funds available for the Project or those costs deemed ineligible for federal aid Agree that the cost of the construction activities covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA

h Require their Design Consultant to provide services as required and requested throughout the construction phase for the Project.

i Grant the State, its agents and/or contractors, without cost, the right to enter 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

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. The (City) will provide eligible inspection services, and be reimbursed for these services. All 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 and will not be considered an employee of the Arizona Department of Transportation during the term of this Agreement The City will invoice monthly for reimbursement, all charges must be kept current for both payment and federal reporting purposes. The City will be notified of all approvals by the ADOT Construction Group.

l Additionally 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 Section

m 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.

n. Upon completion of construction, 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.

o Upon completion of the Project, agree to accept, maintain and assume full responsibility of said Project in writing

III. MISCELLANEOUS PROVISIONS

The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project and related deposits or reimbursement Further, this Agreement may be cancelled at any time upon thirty days (30) written notice to the other party Should the City terminate the Agreement, the City will reimburse the State for any costs incurred by the State as a result of the termination. If the federal funding related to this Project is terminated or reduced by the federal government, or if the federal government 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

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 any construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined 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 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.

The cost of design and construction 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.

The cost of the Project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (FHWA) "Applicable indirect costs" means costs incurred by ADOT and approved by FHWA under ADOT's indirect cost allocation proposal, pursuant to 2 CFR 225 and (OMB Circular A-87)

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

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

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

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

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".

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.

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

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 (ADOT)	City of Glendale
Joint Project Administration	Transportation Department
205 S 17th Avenue, Mail Drop 637E	5850 West Glendale Avenue
Phoenix, Arizona 85007	Glendale, Arizona 85301-2599
(602) 712-7124	(623) 920-2000
(602) 712-3132 Fax	(623) 847-1399

ADOT Financial Management Services
Attn: Project Accounting
206 S. 17th Avenue, Mail Drop 204B
Phoenix Arizona 85007
(602) 712-8471 Fax

City of Glendale
City Attorney's Office
City Attorney
Craig Tindall
5850 West Glendale Avenue, Suite 450
Glendale, Arizona 85301-2599

Glendale Finance Director
Diane Goke
5850 West Glendale Avenue
Glendale, Arizona 85301-2599
dgoke@glendaleaz.com

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).

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.

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

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 _____
HORATIO SKEETE
Acting City Manager for the City of Glendale

STATE OF ARIZONA
Department of Transportation

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

ATTEST:

By: _____
PAMELA HANNA
City Clerk

G 2010 JPA 055-I
Final February 12th, 2013-ly

RESOLUTION NO. 4615 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 CONSTRUCTION OF A 10-FOOT WIDE CONCRETE PATHWAY FROM THE BETHANY HOME ROAD ALIGNMENT TO NORTHERN AVENUE.

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 construction of a 10-foot wide concrete pathway from the Bethany Home Road Alignment to Northern Avenue (IGA/JPA 10-055-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 25th day of September, 2012

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

IGA/JPA 10-055-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 between 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 27 day of September, 2012.

City Attorney

THOMAS C. 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. P0012012003062 **(IGA/JPA 10-055-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: April 18, 2013

THOMAS C. HORNE
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:rl # 3279129
Attachment

1275 West Washington, Phoenix, Arizona 85007-2926 • Phone 602-542-1680 • Fax 602-542-3646