C-8195
10/09/2012

CITY CLERK
ORIGINAL

INTERGOVERNMENTAL AGREEMENT

BETWEEN MARICOPA COUNTY AND THE CITY OF GLENDALE

FOR CONSTRUCTION INSPECTION SERVICES FOR NORTHERN PARKWAY

FROM SARIVAL AVENUE TO DYSART ROAD

(TT195)

(C-64-13-072-M-00)

This Intergovernmental Agreement (**Agreement**) is between the County of Maricopa, a political subdivision of the State of Arizona (**County**), and the City of Glendale, a municipal corporation (**City**). The County and City are collectively referred to as the **Parties** or individually as a **Party**.

This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors.

STATUTORY AUTHORIZATION

1. A.R.S. Section 11-251 and Sections 28-6701 *et. seq.* authorize the County to lay out, maintain, control and manage public roads within the County.

2. A.R.S. Sections 11-951 *et. seq.* authorize public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.

3. A.R.S. Section 9-240 and Sections 9-276 *et. seq.* authorize the City to lay out and establish, regulate and improve streets within the City, and to enter into this Agreement.

BACKGROUND

4. On December 26, 2008, the Maricopa County Board of Supervisors approved an Intergovernmental Agreement (C-91-09-081-M-00) between the County and the Cities of El Mirage, Glendale, and Peoria for improvements to Northern Parkway from State

clarified the responsibilities of the parties to that agreement for cost sharing, design, construction, construction management, rights-of-way acquisition, utility relocation, and maintenance of the overall Northern Parkway project (from Sarival Avenue to Grand Avenue).

5. The overall Northern Parkway project, as defined in the 2008 IGA, is a principal arterial roadway that will have more traffic-carrying capacity than a typical arterial and will enable traffic to travel faster compared to typical arterials. The project will also link El Mirage, central Glendale, unincorporated portions of Maricopa County, and southern Peoria to the rapidly developing far West Valley. Finally, the project will provide improved access from Peoria, El Mirage, unincorporated Maricopa County, and Glendale to downtown Phoenix via the Northern Parkway – Grand Avenue route. For the purposes of this Agreement, the "Project" is defined as the segment of the overall Northern Parkway project from Sarival Avenue to Dysart Road.

6. As provided in the 2008 IGA, the County is the lead agency for the overall Northern Parkway project, including the Project that is the subject of this Agreement, and is responsible for issuing and managing design and construction contracts, including field engineering and inspection work, at the direction of the Northern Parkway Executive Committee. Also, as provided in the 2008 IGA, the County is responsible for arranging and overseeing the construction of the overall Northern Parkway project, including the Project that is the subject of this Agreement, including field engineering and inspection work.

7. On May 16, 2011, the Maricopa County Board of Supervisors approved an Intergovernmental Agreement (C-91-09-081-M-00, 2011 IGA) between the County and the City of Glendale for ownership, operation and maintenance of Northern Parkway from Sarival Avenue to Dysart Road. Among other things, the 2011 IGA identified and defined the responsibilities of the parties to that agreement for the ownership, operation and maintenance of the Project. Specifically, the City will accept ownership of the Project right-of-way upon completion of the Project and transfer of land rights.

8. The purpose of this Agreement is, in accordance with the County's previously established lead role related to inspections and the City's previously established responsibility to ultimately accept ownership of the Project right-of-way, to provide additional inspection services for the Project by the City. The City will be allowed to apply the value of these services toward the City's local match contribution to the Project in accordance with the 2008 Northern Parkway IGA. Recognizing that the City will ultimately accept ownership of the Project right-of-way, the Parties consider it appropriate for the City to participate in inspections as described in this Agreement.

9. This is a federally-funded project and a part of the Maricopa Association of Governments (MAG) Regional Transportation Plan, Arterial Life Cycle Program (ALCP). County staff costs and other necessary expenses (direct costs) will be considered as either reimbursable costs or as local matching funds. The City of Glendale is also contributing reimbursable and local matching funds for the Project and, once construction is complete, the County will turn the Project over to the City to operate and maintain.

PURPOSE OF THE AGREEMENT

10. The purpose of this Agreement is to supplement the 2008 IGA and the 2011 IGA by identifying and defining the responsibilities of the County and the City for Project inspection services and related Project matching funds.

TERMS OF THE AGREEMENT

11. **Responsibilities of the County:**

    11.1 The County shall allow the City to provide eligible inspection services for the Project to be conducted in a manner agreed upon by the County and the City.

    11.2 The County shall comply with all County policies and procedures, as applicable, in the course of completing the Project.

    11.3 The County shall collaborate with the City to reach agreement on the City personnel to be used for the Project-related inspection services.

    11.4 The County shall receive detailed monthly reports from the City which shall outline the inspection services provided by the City and their charges to the Project ("Reports"). The County's resident engineer ("County Resident Engineer") shall review the Reports and if appropriate, approve them and return them promptly to the City. If the Reports cannot be approved, the County Resident Engineer shall return the Reports to the City with an explanation concerning why they could not be approved. The City shall make any necessary changes to the Reports and resubmit them to the County. The County shall approve the Reports only if there is mutual agreement between the Parties. Inspection services listed in a Report that is not approved shall not be applied toward the City's local match contribution to the Project.

    11.5 If requested by the City, the County shall apply the City's eligible Project inspection costs, appropriately documented by the City in the Reports, toward the City's local match contribution to the Project in accordance with the 2008 Northern Parkway IGA.

12. **Responsibilities of the City:**

    12.1 The City shall provide inspection services for the Project in a manner agreed upon by the County and the City. The City shall request the County apply the costs of these services toward the City's local match contribution to the Project in accordance with the 2008 Northern Parkway IGA.

    12.2 The City shall comply with all County policies and procedures, as applicable, in the course of completing the Project.

    12.3 The City shall collaborate with the County to reach agreement on the City

personnel to be used for the Project related inspection services.

12.4 The City shall provide the County Resident Engineer, for pre-approval, all required and current certifications and chargeable rates applicable to labor and equipment.

12.5 The City's chosen personnel shall report to the County Resident Engineer and must comply with all County hardware/software computer requirements.

12.6 The City's chosen personnel shall use the County's automated system to complete their required weekly timesheets.

12.7 The City shall report the results of the inspection to the County's Resident Engineer for the Project.

12.8 The City shall provide the County's Resident Engineer with detailed monthly reports which shall outline the inspection services provided by the City and their charges to the Project. All charges must be kept current for both credits toward the local match contribution and County reporting purposes. The report will include hours, mileage, authorized lab work and the cost of these services. The rate for inspectors as well as material testing technicians will be $45 per hour. When approved by the County Resident Engineer, the report will be returned to the City's Transportation Department, who will then authorize payment of the City's GO funds for work performed.

12.9 The City's inspection personnel assigned to this Project will remain employees of the City and will not be considered employees of the County.

GENERAL TERMS AND CONDITIONS

13. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify and save the other Party harmless, including any of the Parties' departments, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or nonperformance by the indemnifying Party of any of the provisions of this Agreement. By entering into this Agreement, each Party indemnifies the other against all liability, (including, but not limited to, vicarious liability), losses and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement, except such injury or damage as shall have been occasioned by the negligence of that other Party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Party, its departments, agencies, officers, employees, elected officials or agents. In the event of an action, the damages which are the subject of this indemnity shall include costs, expenses of litigation and reasonable attorney's fees.

14. This Agreement shall become effective as of the date it is approved by the Maricopa

County Board of Supervisors and remain in full force and effect until all stipulations previously indicated have been satisfied except that it may be amended upon written Agreement by all Parties. Any Party may terminate this Agreement upon furnishing the other Parties with a written notice at least thirty (30) days prior to the effective termination date.

15. This Agreement shall be subject to the provisions of A.R.S. § 38-511.

16. The Parties warrant that they are in compliance with A.R.S. § 41-4401 and further acknowledge that:

    16.1 Any contractor or subcontractor who is contracted by a Party to perform work on the Project shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A), and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.

    16.2 Any breach of the warranty, shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.

    16.3 The Parties retain the legal right to inspect the papers of any contractor or subcontractor employee who works on the Project to ensure that the contractor or subcontractor is complying with the warranty above and that the contractor agrees to make all papers and employment records of said employee available during normal working hours in order to facilitate such an inspection.

    16.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.

17. The Parties warrant that they do not have scrutinized business operations in Sudan or Iran, as prohibited by A.R.S. §§ 35-391.06 and 35-393.06, and further acknowledge that any contractor or subcontractor who is contracted by a party to perform work on the Project shall warrant that they do not have scrutinized business operations in Sudan or Iran.

18. Each Party to this Agreement warrants that neither it nor any contractor or vendor under contract with the Party to provide goods or services toward the accomplishment of the objectives of this Agreement is suspended or debarred by any federal agency which has provided funding that will be used in the Project described in this Agreement.

19. Each of the following shall constitute a material breach of this Agreement and an event of default ("Default") hereunder: A Party's failure to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by that Party ("Defaulting Party"), where such failure shall continue for a period of thirty (30) days after the Defaulting Party receives written notice of such failure from the non-defaulting party provided, however, that such failure shall not be a Default if the Defaulting Party has commenced to cure the Default within such thirty (30) day period and thereafter is diligently pursuing such cure to completion, but the total

aggregate cure period shall not exceed ninety (90) days unless the Parties agree in writing that additional time is reasonably necessary under such circumstances to cure such default. In the event a Defaulting Party fails to perform any of its material obligations under this Agreement and is in Default pursuant to this Section, the non-defaulting party, at its option, may terminate this Agreement. Further, upon the occurrence of any Default and at any time thereafter, the non-defaulting party may, but shall not be required to, exercise any remedies now or hereafter available to it at law or in equity.

20. All notices required under this agreement to be given in writing shall be sent to:

Maricopa County Department of Transportation
Attn: Intergovernmental Liaison
2901 W. Durango St.
Phoenix, AZ 85009

Glendale Department of Transportation
Attn: City Engineer
5800 West Glenn Drive, Suite 315
Glendale, Arizona 85301

Glendale City Attorney's Office
Attn: City Attorney
5850 W. Glendale Ave., Suite 450
Glendale, AZ 85301

All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this paragraph. Either Party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given 72 hours after the notice is addressed as required in this paragraph and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next-day delivery shall be deemed given 24 hours after delivery of the notice to the Postal Service or courier.

21. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.

22. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.

23. This Agreement does not grant authority to control the subject roadway, except to the extent necessary to perform the tasks expressly undertaken pursuant to this Agreement.

24. Any funding provided for in this Agreement, other than in the current fiscal year, is

contingent upon being budgeted and appropriated by the Maricopa County Board of Supervisors and the Glendale City Council in such fiscal year. This Agreement may be terminated by any Party at the end of any fiscal year due to non-appropriation of funds without any liability to the non-terminating party.

25. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assignees. Neither Party shall assign its interest in this Agreement without the prior written consent of the other Party.

26. This Agreement and all Exhibits attached to this Agreement set forth all of the covenants, promises, agreements, conditions and understandings between the Parties to this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties other than as set forth in this Agreement, and those agreements which are executed contemporaneously with this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party drafting this Agreement. This Agreement cannot be modified or changed except by a written instrument executed by all of the Parties hereto. Each party has reviewed this Agreement and has had the opportunity to have it reviewed by legal counsel.

27. The waiver by any Party of any right granted to it under this Agreement is not a waiver of any other right granted under this Agreement, nor may any waiver be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

28. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalid or prohibited under the law, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.

29. Except as otherwise provided in this Agreement, all covenants, agreements, representations and warranties set forth in this Agreement or in any certificate or instrument executed or delivered pursuant to this Agreement shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.

30. Nothing contained in this Agreement shall create any partnership, joint venture or other agreement between the Parties hereto. Except as expressly provided in this Agreement, no term or provision of this Agreement is intended or shall be for the benefit of any person or entity not a party to this Agreement, and no such other person or entity shall have any right or cause of action under this Agreement.

31. Time is of the essence concerning this Agreement. Unless otherwise specified in this Agreement, the term "day" as used in this Agreement means calendar day. If the date for performance of any obligation under this Agreement or the last day of any time period provided in this Agreement falls on a Saturday, Sunday or legal holiday, then the date for performance or time period shall expire at the close of business on the first day thereafter which is not a Saturday, Sunday or legal holiday.

32. Sections and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

33. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument. Faxed, copied and scanned signatures are acceptable as original signatures.

34. The Parties agree to execute and/or deliver to each other such other instruments and documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by such party pursuant to this Agreement.

35. The Parties hereby agree that the venue for any claim arising out of or in any way related to this Agreement shall be Maricopa County, Arizona.

36. This Agreement shall be governed by the laws of the State of Arizona.

37. Unless otherwise lawfully terminated by the Parties, this Agreement expires upon fulfillment of all terms of the Agreement.

End of Agreement - Signature Page Follows

IN WITNESS WHEREOF, the Parties have executed this Agreement.

MARICOPA COUNTY

Recommended by:

11-15-2012

John B. Hauskins, P.E. Date
Transportation Director

Approved and Accepted by:

NOV 07 2012

Max Wilson, Chairman Date
Board of Supervisors

Attest by:

NOV 07 2012

DEPUTY Clerk of the Board 10/31/12 Date

CITY OF GLENDALE

Recommended by:

10-25-12

City Engineer Date

Approved and Accepted by:

10/16/12

Mayor Date

Attest by:

10-24-12

City Clerk Date

APPROVAL OF DEPUTY COUNTY ATTORNEY AND CITY ATTORNEY

I hereby state that I have reviewed the proposed Intergovernmental Agreement and declare the Agreement to be in proper form and within the powers and authority granted to the Parties by their respective governing bodies under the laws of the State of Arizona.

11/1/12

Deputy County Attorney Date

10/10/12

City Attorney Date

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2012-1106899 12/05/2012 04:47p
C_64_13_072-10-1-1- Leonardil

WHEN RECORDED RETURN TO:
Maricopa County Department of Transportation
Engineering and Planning Division

INTERGOVERNMENTAL AGREEMENT
C-64-13-072-M-00

Between Maricopa County and City of Glendale
For Construction Inspection Services for Northern Parkway
From Sarival Avenue to Dysart Road

Approved by the Maricopa County Board of Supervisors
On the 31st Day of October, 2012

DO NOT REMOVE
This is part of the official document

MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION