CITY CLERK
ORIGINAL

ADOT CAR No IGA/JPA 13-0002426I
AG Contract No P001 2013003061
Project: Sidewalk Improvements
Section: Myrtle Avenue
Federal-aid No.: GLN-0(239)T
ADOT Project No.: SF0150 01C/01D02D
TIP/STIP No.: GLN12-102D; GLN12-102C
Budget Source Item No.: N/A

C-8675
10/22/2013

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into this date November 5, 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" or "ADOT") 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 work proposed under this Agreement consists of design and construction of Myrtle Avenue realignment, new concrete curb gutter, sidewalks, and driveway approaches ADA accessible ramps, drainage appurtenances, and additional ancillary improvements along Myrtle Avenue from 62nd Avenue to 66th Drive, hereinafter referred to as the "Project" The improvements will connect existing sidewalk/curb and gutter currently installed near the two ends for the Project along with realignment of Myrtle Avenue and necessary drainage, facilities and basins, The Parties will jointly monitor the process of design and the State will advertise, bid and award, and administer the construction of the Project. The plans, estimates and specifications for the Project will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval

4 The City in order to obtain federal funds for the design and/or 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, including actual construction engineering and administration costs (CE)

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. The State shall be the designated agent for the City

6 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.

7. The federal funds will be used for the scoping/design and construction of the Project, including the construction engineering and administration cost (CE). The estimated Project costs are as follows:

SF015 02D (scoping/design):

Federal-aid funds @ 94.3% (capped)	**$137,018.00**
City's match @ 5.7%	**$8,282.00**
Design review fee (SF015 01D)*	**$ 60,713.00**
Subtotal – Scoping/Design	**$ 206,013.00**

SF015 01C (construction):

Federal-aid funds @ 100% (capped)	**$ 400,000.00**
City's additional funds @ 100%	**$ 106,410.00**
Subtotal – Construction (State administered)**	**$ 506,410.00**
Summary:	
Total Estimated City Funds	**$ 175,405.00**
Total Federal Funds	**$ 537,018.00**
TOTAL Project Cost	**$ 712,423.00**

* (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, be the designated agent for the City if the Project is approved by FHWA and funds for the Project are available

b. Upon execution of this Agreement, and prior to performing or authorizing any work, invoice the City for the State's design review fee, currently estimated at **$60,713.00** and the City's estimated share of the Project design costs, currently estimated at **$8,282.00**. Once the Project design costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs

c. Upon receipt of the design review fee and the City's estimated share of the Project design costs, currently estimated at **$68,995.00** on behalf and with consent of the City, contract with one of the State's on-call consultants ("Consultant") to prepare all pertaining documents for the design and post-

design of the project; review and approve documents required by FHWA to qualify the Project for and to receive federal funds, and incorporate the City's comments as applicable Such documents may consist of, but are not specifically limited to, environmental documents, including 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 requirements and activities and such other related tasks essential to the achievement of the objectives of this Agreement Issue the rights-of-way clearance after review of the Consultant's right of way submittal.

d Submit all documentation required to FHWA containing the above-mentioned Project with the recommendation that funding be approved for scoping/design. Request the maximum programmed federal funds for the scoping/design of this Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of Project plans and specifications.

e. Upon notification by the City and the Consultant of the completion of design and prior to bid advertisement, invoice the City for the City's share of the Project construction costs currently estimated at **$106,410.00.** Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs. Deobligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

f Upon receipt of the local match and any contribution toward construction, submit all documentation required to FHWA with the recommendation that funding be approved for construction. Request the maximum programmed federal funds for the construction of this Project

g. Upon authorization by FHWA and with the aid and consent of the City and the FHWA, administer the Project and 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 firm(s) for the construction of the Project

h. Notify the City that the Project has been completed and is considered acceptable, coordinating with the City as appropriate and to turn over full responsibility of the Project improvements to the City De-obligate or otherwise release any remaining federal funds from the construction phase of the Project within 90 days of final acceptance.

i 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. Upon execution of this Agreement, prior to performing or authorizing any work, and within thirty (30) days of receipt of an invoice from the State, remit to the State the State's design review fee, currently estimated at **$60,713.00** and the City's estimated share of the Project design costs, currently estimated at **$8,282.00** Be responsible for any difference between the estimated and actual design review costs.

c. Allow the State to enter into an agreement with the selected Consultant to provide services as required and requested throughout the design and post-design of the project Review the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project, including scoping/design plans and documents required by FHWA to qualify projects for and to receive federal funds. Provide design review comments to the State as appropriate.

d. Monitor, and as required, be involved with all rights-of-way activities and functions performed by the Consultant, including, but not specifically limited to, rights-of-way survey, delineation, appraisal, review appraisal, acquisition, relocation and property management as applicable.

e. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, not covered by federal funding. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the City is responsible for these costs, payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

f. Upon completion of design and within thirty (30) days of receipt of an invoice from the State and prior to bid advertisement, remit to the State, the City's share of funds for the construction costs of the Project currently estimated at **$106,410.00.** Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

g. 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

h. 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 and lawful steps to remove or prevent any such encroachment or use.

i. 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, granting the State , its agents and/or contractors temporary construction easements or temporary rights-of-entry as required to accomplish among other things, soil and foundation investigations.

j. 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.

k. Upon completion of the Project, assume responsibility for maintenance of the Project, at its own expense and as an annual item in its budget. Provide perpetual and proper maintenance of the Project. Upon completion of construction, be responsible for the electrical power and water necessary to maintain the Project.

l. Pursuant to 23 USC 102(b), repay all federal funds reimbursements for preliminary engineering costs on the Project if it does not advance to right-of-way acquisition or construction within ten (10) years after federal funds were first made available.

III. MISCELLANEOUS PROVISIONS

1. 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, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award 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 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.

3. The cost of 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

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

5 The Parties 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.

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. 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".

10. 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

11. 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.

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

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

14. 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: Tom Kaczmarowski, P.E.
5850 W. Glendale Avenue
Glendale, Arizona 85301
(623) 930-3640
(623) 930-2861 Fax

With copies to:

City of Glendale
Attn: City Manager's Office
5850 W Glendale
Glendale, Arizona 85301

City of Glendale
Attn: Finance Department
5850 W Glendale Ave
Glendale, Arizona 85301

City of Glendale
Attn· Glendale Transportation Services
5800 W Glenn Drive
Suite 315
Glendale, Arizona 85301

City of Glendale
Attn: Engineering Department
5850 W Glendale Ave.
Glendale, Arizona 85301

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

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

By _____
BRENDA S. FISCHER
City Manager

ATTEST:

By _____
PAMELA HANNA
City Clerk

STATE OF ARIZONA
Department of Transportation

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

IGA/JPA 13-0002426-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 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 23rd day of October, 2013

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. P0012013003061 **(ADOT IGA/JPA 13-0002426-I)**, an Agreement between public agencies, 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: November 5, 2013

THOMAS C. HORNE
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:rl:#3599126
Attachment