

CITY CLERK
ORIGINAL

ADOT File No.: IGA/JPA 13-0003924-I
AG Contract No.: P001 2014001353
Project: Thunderbird Paseo Pathway
Section: Thunderbird Sweetwater Ave,
Hearn Rd and 71st Avenue & Skunk
Creek Pathway (64th Dr)
Federal-aid No.: GLN-0(243)T
ADOT Project No.: SZ108 01D 03D
01C
TIP/STIP No.: MAG-GLN-16-404
CFDA No.: 20.205 - Highway Planning
and Construction
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF GLENDALE

THIS AGREEMENT is entered into this date July 2, 2014, 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, 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 improving the existing access points to the Thunderbird Paseo Pathway and Skunk Creek Pathway at four locations by making them ADA compliant with concrete ramps, curb cuts, and new gates. Gabion columns and landscaping will be used to improve the appearance of the access points. Three of the locations are where Sweetwater Avenue, Hearn Road, and 64th Drive to the Thunderbird Paseo Parkway. The fourth location is where 64th Drive provides neighborhood access to the Skunk Creek Pathway. Unique signage will be installed in the local area to direct people to the access points. The combined length of the project is 306 feet, hereinafter referred to as the "Project". The City will self-fund the usage of an ADOT on call firm for the design and the State will facilitate contracting the design consultant and oversee the City's administration of the design. In addition the State will advertise, bid 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 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

5. 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

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

SZ108 01D / 03D (ADOT Project Management Design Review (PMDR) Cost, non-federal-aid) :

City's contribution @ 100% (SZ108 03D)*	\$ 85,000.00
ADOT Estimated Project Management and Design Review (PMDR) Costs (SZ108 01D)*	\$ <u>30,000.00</u>
Subtotal – Scoping/Design/PMDR* (State administered)	\$ 115,000.00

SZ108 01C (construction)

Federal-aid funds @ 94.3%	\$ 107,832.00
City's match @ 5.7%	\$ 6,517.00
City's match @ 100%	\$ <u>4,000.00</u>
Subtotal-construction**(State administered)	\$ 118,349.00

Total Estimated City Funds	\$ 125,517.00
Total Federal Funds	\$ 107,832.00

TOTAL Estimated Project Costs** **\$ 233,349.00**

* (Included in the City Estimated Funds and Total Project Construction Costs)

** (Includes 15% CE and 5% Project contingencies)

The Parties acknowledge that the final Project costs 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 ADOT PMDR costs, currently estimated at **\$30,000.00**. If, during the development of the

design, additional funding from the City is required, the State will invoice the City in increments of \$5,000.00 to cover projected PMDR costs.

c. Upon execution of this Agreement, and prior to performing or authorizing any work, invoice the City for the City's share of the Project scoping/design costs, currently estimated at **\$85,000.00**. Once these costs have been approved, the State will either invoice or reimburse the City for the difference between the estimated and approved scoping/design costs of the Project.

d. Upon receipt of the PMDR costs and the City's estimated share of the Project scoping/design costs, 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 scoping/design of the Project, incorporating the City's comments as appropriate. 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.

e. Review and approve documents required by FHWA to qualify the Project for and to receive federal funds, including the issuance of appropriate clearance documents required for construction.

f. Upon completion of design and prior to bid advertisement, invoice the City, for the City's share of the Project construction costs currently estimated at **\$10,517.00**. Once the Project construction costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

g. Upon receipt of the City's estimated share of the Project construction costs, 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. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

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

i. Be granted, without cost requirements, the right to enter City rights-of-way as required to conduct any and all pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry onto and over said rights-of-way of the City.

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. Upon completion of the construction phase of the Project, require its consultant to provide an electronic version of the as-built plans to the City.

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

l. 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, and prior to performing or authorizing any work, and within thirty (30) days of receipt of an invoice from the State, pay to the State the PMDR costs, currently estimated at **\$30,000.00**. If, during the development of the design, additional funding to cover PMDR costs is required, remit the invoiced amount to the State within 30 days of receipt.
- c. Upon execution of this Agreement, and 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 scoping/design costs, currently estimated at **\$85,000.00**. Be responsible for any difference between the estimated and approved scoping/design costs of the Project.
- d. 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.
- e. Monitor, and as required be involved with, all right-of-way activities and functions performed by the Consultant, including, but not specifically limited to, right-of-way survey, delineation, appraisal, review appraisal, acquisition, relocation and property management, as applicable.
- f. 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, and payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.
- g. Upon completion of design and within thirty (30) days of receipt of an invoice from the State and prior to bid advertisement, pay to the State, the City's Project construction costs, currently estimated at **\$10,517.00**. Once the Project construction costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.
- h. 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.
- i. 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.
- j. 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 preconstruction related activities, including without limitation, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

k. 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 consultant 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.

l. 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 completed Project

III. MISCELLANEOUS PROVISIONS

1 The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project, including related deposits and/or reimbursements. 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 City will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that should the City terminate this Agreement, the State shall in no way be obligated to maintain said Project.

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. 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 of the Project and the federal funds received.

4. Should the federal funding related to this Project be terminated or reduced by the federal government, or 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.

5. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.

6. 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

7. The City acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend \$500,000 or more of Federal assistance (Federal funds, Federal grants, or Federal awards) are required to comply by having an independent audit A copy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services.

ADOT – FMS
Cost Accounting Administrator
206 S 17th Ave. Mail Drop 204B
Phoenix, AZ 85007

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

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

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

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 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.

13. 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

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

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

16 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: Steve Hancock
6210 W Myrtle Avenue
Suite 111 (Building A)
Glendale AZ 85301
(623) 930-2036
(623) 930-XXXX Fax

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

STATE OF ARIZONA

Department of Transportation

By 

BRENDA S. FISCHER, ICMA-CM
City Manager

By 

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

ATTEST

By 

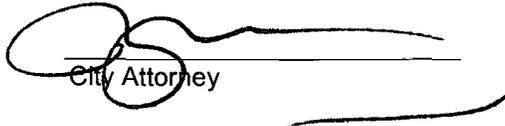
PAMELA HANNA
City Clerk

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 11th day of JUN, 2014.



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

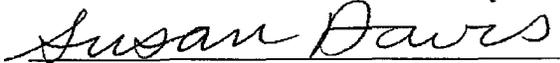
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012014001353 (ADOT IGA/JPA 13-0003924-I), an Agreement between public agencies, 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: July 2, 2014

THOMAS C. HORNE
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:rl:#3872339
Attachment