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C-9168  
08/12/2014

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**CITY OF GLENDALE, ARIZONA**

**INTERGOVERNMENTAL AGREEMENT C-64-15-006-M-00,  
BETWEEN MARICOPA COUNTY AND THE CITY OF  
GLENDALE FOR IMPROVEMENTS TO 99<sup>TH</sup> AVENUE  
FROM MISSOURI AVENUE TO BETHANY HOME ROAD  
AND INSTALLATION OF TRAFFIC SIGNALS AT THE  
INTERSECVTION OF 99<sup>TH</sup> AVENUE AND MONTEBELLO  
AVENUE ALIGNMENT**

(Agreement C-9168)

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**(PLEASE DO NOT REMOVE ~ THIS IS PART OF THE OFFICIAL DOCUMENT)**

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

**INTERGOVERNMENTAL AGREEMENT  
C-64-15-006-M-00**

**Between Maricopa County and the City of Glendale  
for Improvements to 99<sup>th</sup> Avenue from Missouri Avenue to Bethany  
Home Road and Installation of Traffic Signals at the Intersection of  
the 99<sup>th</sup> Avenue and Montebello Avenue Alignment**

**Approved by the Maricopa County Board of Supervisors  
On the 13th Day of August, 2014**

**DO NOT REMOVE  
This is part of the official document**

**MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION**

(Leave approximately 2" at the top of the document for the County Recorder's Office)

**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN MARICOPA COUNTY AND THE CITY OF GLENDALE**  
**FOR IMPROVEMENTS TO 99<sup>TH</sup> AVENUE**  
**FROM MISSOURI AVENUE TO BETHANY HOME ROAD**  
**AND INSTALLATION OF TRAFFIC SIGNALS AT THE INTERSECTION OF**  
**THE 99TH AVENUE AND MONTEBELLO AVENUE ALIGNMENT**  
**(C-64-15- 006 -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**.

**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. Ninety-ninth Avenue (99<sup>th</sup> Avenue) from Missouri Avenue to Bethany Home Road is located in central Maricopa County and is partially in the jurisdiction of the County and partially in the jurisdiction of the City.
5. The City is anticipating a new commercial development in the vicinity of 99<sup>th</sup> Avenue and Bethany Home Road. The City plans to improve, or arrange for the developer to improve, portions of 99<sup>th</sup> Avenue between Missouri Avenue and Bethany Home Road

and install a traffic signal at the intersection of the 99<sup>th</sup> Avenue and Montebello Avenue alignment (the "Project"). The Project would be designed to accommodate traffic levels expected after completion of the new commercial development based on Maricopa Association of Governments (MAG) traffic projections

## **PURPOSE OF THE AGREEMENT**

6. The purpose of this Agreement is to identify and define the responsibilities of the County and the City related to the Project.

## **TERMS OF THE AGREEMENT**

### **7. Responsibilities of the County:**

- 7.1 Except as provided in this Agreement, the County shall have no responsibility, financial or otherwise, for any aspect of the Project, including, but not limited to, design, utility relocation, environmental clearance, right-of-way acquisition, construction and construction management.
- 7.2 The County shall assume no obligation related to the Project as a result of its actions in coordinating with the City or the developer on the Project, plan review or issuance of any permits necessary for design, construction, maintenance or any other aspect of any portion of the Project.
- 7.3 The County shall issue permits and perform inspections on portions of the Project that are within County jurisdiction, as applicable, at the time the permits and inspections are required, at no cost.
- 7.4 The County shall provide comments within 30 days of receipt of plans from the third party developer, American Furniture Warehouse.
- 7.5 The County shall process the annexation in the normal course of business, within a reasonable time after receipt of a written request for the annexation from the City.
- 7.6 The County will execute a maintenance agreement with the City for the traffic signal equipment at the Montebello Avenue alignment and any pavement, signage and striping west of the section line.

### **8. Responsibilities of the City:**

- 8.1 The City shall act as the lead agency for all aspects of the Project throughout the duration of the Project, shall apply City standards to the Project, and shall coordinate with the County throughout all phases of the Project
- 8.2 The City shall contribute 100% of the cost of Project not otherwise borne by the third party developer.

- 8.3 The City shall annex the west 23' of the NW ¼ of Section 16, T2N-R1E of the Gila and Salt River Base and Meridian. The City will maintain all existing pavement, traffic signals, striping and signage west of the section line. The City will not annex any land west of the section line.
- 8.4 The City shall make a formal request to the County for the annexation pursuant to law.
- 8.5 The City shall begin the annexation process upon approval of this Agreement and shall complete the annexation as soon as reasonably practicable.
- 8.6 The City shall be responsible for reviewing and approving any plans for the Project prepared by its developer and coordinating with the County regarding issuance of permits.
- 8.7 The City shall coordinate with the entity or entities receiving any permit for the Project from the County regarding compliance with all laws, rules, regulations and permits applicable to the Project.
- 8.8 Upon completion of construction, final inspection and acceptance of the Project, the City shall assume liability, operation and maintenance responsibility for all aspects of the Project.
- 8.9 The City will execute a maintenance agreement with the County for the traffic signal equipment at the Montebello Avenue alignment and any pavement, signage and striping west of the section line.

### **GENERAL TERMS AND CONDITIONS**

9. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify, defend and save the other Parties 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 negligent 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, 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 caused or contributed to 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.
10. 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 Party with a written notice at least thirty (30) days prior to the effective termination date.

11. This Agreement shall be subject to the provisions of A.R.S. Section 38-511.
12. The Parties warrant that they are in compliance with A.R.S. Section 41-4401 and further acknowledge that:
  - 12.1 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. Section 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.
  - 12.2 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.
  - 12.3 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.
  - 12.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
13. 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.
14. 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.

15. 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 Street  
Phoenix, AZ 85009

Glendale Public Works Department - Transportation  
Attn: Deputy Director  
6210 W. Myrtle Ave., Suite 112  
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.

16. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.
17. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.
18. 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.
19. 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, as applicable.
20. 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.
21. 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

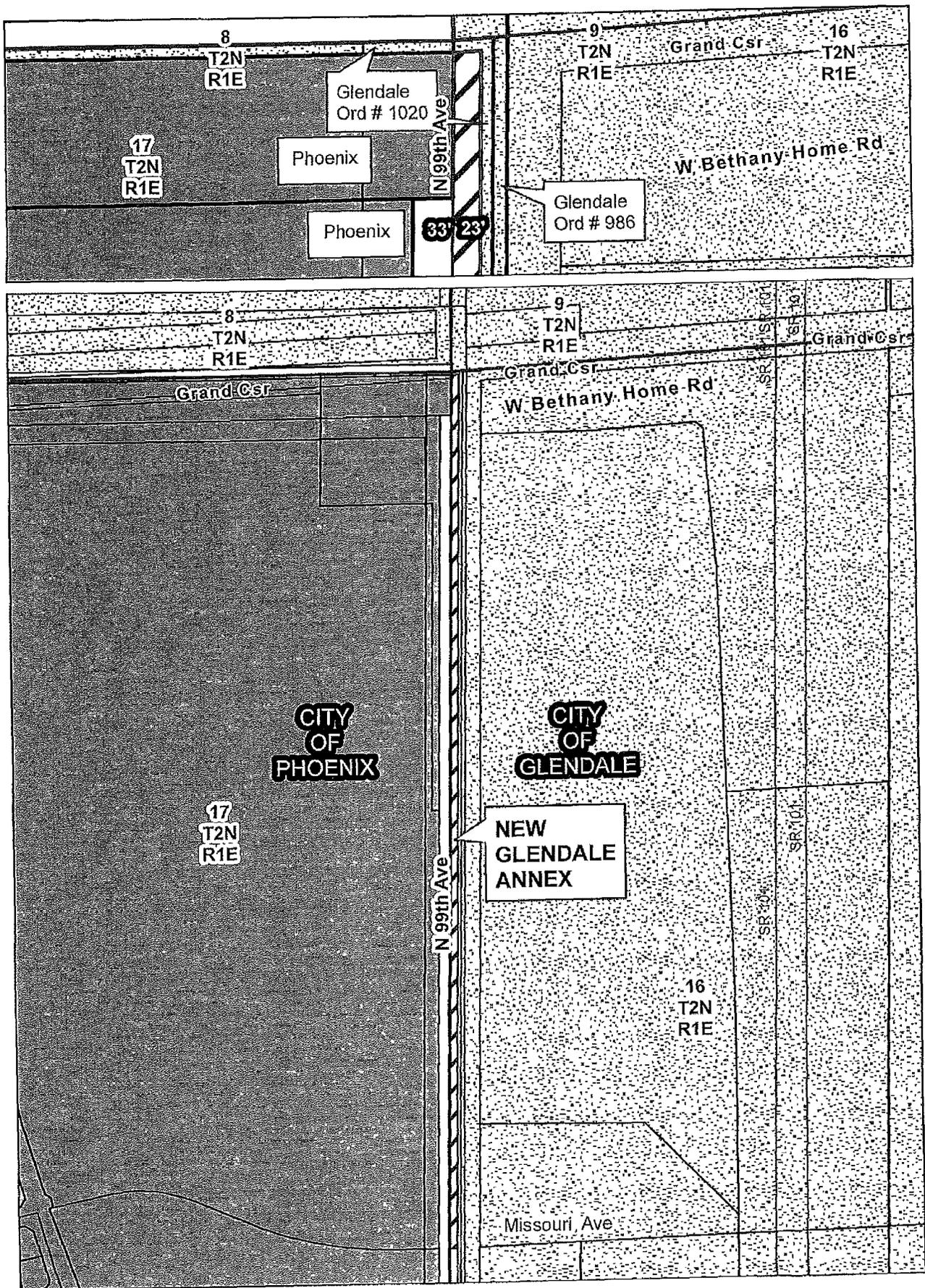
understandings, either oral or written, between the Parties other than as set forth in this Agreement, and those agreements which are executed contemporaneously with this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption 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.

22. 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.
23. 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.
24. 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.
25. 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.
26. 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
27. 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.
28. 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.
29. 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.

30. 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.
31. This Agreement shall be governed by the laws of the State of Arizona.
32. Unless otherwise lawfully terminated by the Parties, this Agreement expires upon completion and acceptance of the Project and fulfillment of all terms of the Agreement.

***End of Agreement - Signature Page Follows***





The West 23 feet of the North One Half of Section 16; EXCEPT that portion annexed by City of Glendale in Ordinance 1020.