

CITY CLERK
ORIGINAL

ADOT File No . IGA/JPA 11-174I
ADOT CAR 13-000626-I
AG Contract No : P0012012002595
Project: Multi Use Pathways, Widening
and Bike Lane Striping
Section: Maryland Avenue, 67th - 69th
Ave, & 79th -83rd Ave
Federal Project No.: TEA-CM-GLN-
0(220) T
ADOT Project No.: SL671 01D/01C
TIP/STIP No.:TEA-GLN11-704 &
CMAQ GLN09-813
CFDA No.: 20.205 – Highway
Planning and Construction
Budget Source Item No.: 71614

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF GLENDALE

THIS AGREEMENT is entered into this date June 12, 2014, pursuant to the Arizona Revised Statutes §§ 11-951 through 11-964, 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 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 Congress has authorized appropriations for, but not limited to, twelve eligible categories of Transportation Enhancement (TE) activities and TE funds have been requested from the Federal Highway Administration (FHWA) through the State for a project within the boundaries of the City

4 The project lies within the boundaries of the City and has been selected by the City. The plans, estimates and specifications will be prepared and, as required, submitted to the (FHWA) for its approval

5 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, including actual construction engineering and administration costs (CE)

6. 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

7. The City will design improvements to an existing bicycle route, including widening and striping as necessary along Maryland Avenue within Discovery Park, between 67th and 79th Avenues and between 79th and 83rd Avenues, this work will be referred to as the "Project". The City will administer the scoping and design. The State will advertise, bid, and award the construction of the Project. The current Project costs are estimated as follows

SL671 02D (scoping/design):

Federal-aid funds @ 100% (capped)	\$ 100,000.00
City additional funds @100%	\$ 86,033.00
State design review fee (SL671 01D)*	<u>\$ 56,300.00</u>
Subtotal – Scoping/Design	\$ 242,333.00

SL671 01C (construction):

Federal-aid funds @ 94.3% (capped)	\$ 369,276.00
City's match @ 5.7%	<u>\$ 22,321.00</u>
Subtotal – Construction**	\$ 391,597.00
TOTAL Project Cost	\$ 633,930.00
Total Estimated City Funds	\$ 164,654.00
Total Federal Funds	\$ 469,276.00

* (Included in the City Estimated Funds)

** (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, invoice the City for the State's design review fee, currently estimated at **\$56,300.00 (of which \$12,198.93 has been paid)** Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual design review and design costs

c Acknowledge that the City was authorized and started the design and approvals process based on the project having been previously approved by the State as a self-administered project, but *which such approval has now been rescinded, and that 15% plans were prepared, a Categorical Exclusion was obtained for the Project, and the Project is approved to immediately advance to Stage III (60%)* submittal to ADOT for review upon receiving a notice to proceed. The State agrees that, upon resubmittal by the City of any Federal-aid Process required updates and modifications to supporting documentation it submitted for the clearances, the expiration dates of clearances and approvals will be extended to meet the current project needs

d On behalf of the City, perform any additional administrative work under the State's responsibility that is necessary to secure the approval any additional documents required by FHWA and submitted by the City to qualify the project for the Federal funding Such documents may consist of, but are not specifically limited to, revisions to the Project Assessment to modify the self-administration aspect of the project and update the project schedule and construction cost estimate, certain time-sensitive environmental documents, engineering reports, design plans estimates, and specifications; right-of-way and utility clearance documentation, and other documents essential to the achieve the objectives of this Amendment Provide comments to the City as appropriate

e Within thirty (30) days of receipt of approved invoices and no more than monthly, reimburse the City with available federal funds for eligible design costs incurred in an amount not exceeding the amount authorized to Federal Highway Administration, currently \$100,000 00 of which \$64,354 has already been paid to the City

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 **\$22,321.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs De-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project

g. Upon receipt of the City's full payment of the State design review fee and 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 full deposit of the City's local funds, and with the aid and consent of the City and FHWA, proceed to advertise for, receive and open bids, subject to the concurrence of FHWA and the City to whom the award is made, 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 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

j Notify the City that 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.

k 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 within thirty (30) days of receipt of an invoice from the State, pay to the State the State's design review fee, currently estimated at **\$56,300.00 (of which \$12,198.93 has been paid)**. Be responsible for any difference between the estimated and the State's actual design review costs of the Project

c. Enter into a contract(s) for the additional design of the Project Under direct supervision of a registered professional, administer contract(s) for the Project design by the currently contracted consultant and make all payments to the consultant(s) 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 Costs related to post design services performed by said consultant are not eligible for federal reimbursement, cannot be applied to the local match and, as such, will be entirely at the City's expense A copy of the contract modification and consultant's notice to proceed shall be submitted to the State within thirty (30) days of issue to the consultant

d Upon notice to proceed, move forward with the design for the project and obtain the necessary clearances not already obtained to construct the project. Provide to the State design plans, specifications and other such documents and services required for the State to advertise the project for bids, award a contract, and administer construction of the Project, including design plans and documents required by FHWA to qualify projects for and to receive federal funds Consult with and copy State on any addendums to be issued during bidding and supplemental agreements issued during construction Respond to State design review comments as appropriate

e Invoice the State for reimbursement of eligible, incurred Project design costs at least once every ninety (90) days throughout the design phase of the Project, or within thirty (30) days following payment to a contractor or consultant Provide all necessary backup documentation with said invoice. Costs incurred prior to the initial date of federal funds authorization are not eligible for reimbursement Total invoiced costs for preliminary engineering may not exceed \$100,000, the amount of federal funds programmed for the Project

f. Upon completion of design, 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 **\$22,321.00**. 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 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

h Certify that all necessary rights-of-way have been or will be acquired prior to the State advertising for bids 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 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

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 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

l. Upon notification by the State of Project completion, agree to accept, maintain and assume full responsibility of the Project in writing

m. 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

n. Upon completion of the construction phase of the Project, provide a hard copy and an electronic version of the as-built to ADOT Statewide Management Group 207, 17th Avenue MD 614 E Phoenix, Arizona 85007. Additional information can be found on the ADOT website at www.azdot.gov/business/management/service/statewide-project-management

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 days (30) 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, 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 This Agreement shall remain in force and effect until completion of the work and related deposits and reimbursements.

4 The cost of scoping, design, construction and construction engineering 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.

5 Should the federal funding related to this Project be terminated or reduced by the federal government, or Congress rescinds, fails to renew, or otherwise reduce 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.

6 The cost of the project under this Agreement includes applicable indirect costs approved by (FHWA).

7 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 (ADOT) to enable the State (ADOT) to comply with the requirements of the Act, as may be applicable.

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 Parties shall comply with the applicable requirements of Arizona Revised Statutes § 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

The City of Glendale
Attn: Bill Passmore
5850 W Glendale
Glendale, Arizona 85301
(623) 930-6381
(623) 847-1399 Fax

ADOT Transportation Enhancement & Scenic
Roads Section
1615 W Jackson St MD EM10
Phoenix, AZ 85007
(602) 712-6258
(602) 712-3347 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

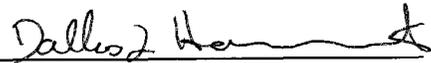
CITY OF GLENDALE

STATE OF ARIZONA

Department of Transportation

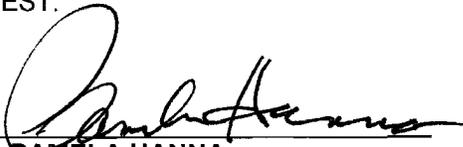
By 

BRENDA S. FISCHER
City Manager

By 

DALLAS HAMMITT, P.E.
Deputy State Engineer, Development

ATTEST.

By 

PAMELA HANNA
City Clerk

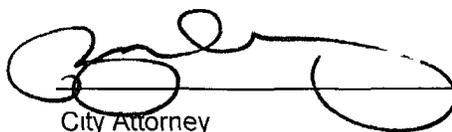
JPA 11-174I

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 15 day of May, 2014


City Attorney

RESOLUTION NO. 4793 NEW SERIES

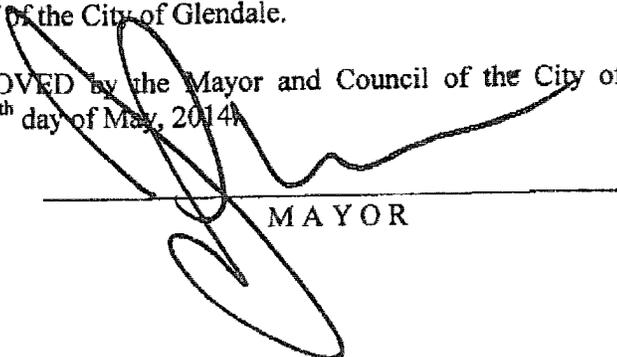
A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION OF MULTI-USE PATHWAYS, WIDENING, AND BIKE LANE STRIPING FROM MARYLAND AVENUE, 67TH TO 69TH AVENUES AND 79TH TO 83RD AVENUES.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

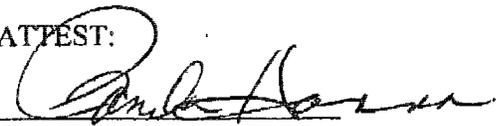
SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement between the City of Glendale and the Arizona Department of Transportation (IGA/JPA 11-1741) for the construction of multi-use pathways, widening, and bike lane striping from Maryland Avenue, 67th to 69th Avenues and 79th to 83rd Avenues 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 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 13th day of May, 2014.

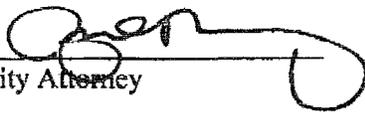

MAYOR

ATTEST:

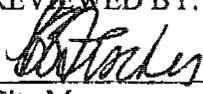

City Clerk

(SEAL)

APPROVED AS TO FORM:


City Attorney

REVIEWED BY:


City Manager



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. P0012012002595 (ADOT IGA/JPA 11-174-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: June 12, 2014

THOMAS C. HORNE
Attorney General



SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:rl:#3849261
Attachment