C-8423
04/09/2013

ADOT File No.: IGA/JPA 12-154-I
AG Contract No.: P001-2012-003982
Project: Fiber Optic Cable &
CCTV Cameras
Section: Various Locations;
Cactus Thunderbird &
Greenway Roads 2.5 miles
Federal-aid No.: CM-GLN-0(223)A
ADOT Project No.: SS847 01C/01D
TIP/STIP No.: GLN12-804
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into this date _____, 2013, under 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") and the CITY OF GLENDALE, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City collectively are 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 installing 2.5 miles of fiber optic cable and closed circuit television (CCTV) cameras at various locations along Cactus, Thunderbird and Greenway Roads, ("Project"). The City will administer the design and the State will advertise, bid and award the construction of the Project.

4. The Project lies within the boundary of the City and has been selected by the City, and the survey of the project site has been completed. 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.

5. 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).

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 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.

8. The federal funds will be used for the construction of the project, including the construction engineering and administration cost (CE).

The current Project costs are as follows:

ADOT Project No. SS847 01C

Federal-aid funds @ 94.3%	**$899,276.00**
City's match @ 5.7%	$ 54,357.00
City's contribution @ 100%	$ .00
State design review fee (**SS847 01D**)*	$ 10,000.00
Total Estimated City **Funds**	**$ 64,357.00**
Total Federal Funds	**$ 899,276.00**
****TOTAL Project Costs**	**$ 963,633.00**

* (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 will be 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 such project is approved by FHWA and project funds 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 **$10,000.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

c. Upon receipt of the design review fee, on behalf of the City, review and approve documents required by FHWA to qualify certain projects for and to receive federal funds, providing comments to the City as appropriate. Such documents may consist of, but are not specifically limited to, environmental documents; 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 related activities and such other related tasks essential to the achievement of the objectives of this Agreement.

d. Upon notification by the City of the completion of design and prior to authorization, invoice the City, for the City's share of funds for the construction costs of the Project currently estimated at **$54,357.00.** Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

e. Upon notification from the City of the completion of design, FHWA authorization 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.

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, 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.

h. Hereby 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.

i. Notify the City 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.

j. 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, remit to the State the State's design review fee, currently estimated at **$10,000.00.**

c. Provide to the State 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. Incorporate State design review comments as appropriate.

f. Upon notification by the City of the completion of design and prior to bid advertisement, invoice the City, for the City's share of funds for the construction costs of the Project currently estimated at **$54,357.00**. 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. 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.

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 entirely 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.

j. Enter into an agreement with the design Consultant(s), which states that the design consultant shall provide services as required and requested throughout the construction phase of the Project.

k. 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.

l. Hereby 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.

m. 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.

n. 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.

o. Provide a set of as-built plans upon completion of the construction phase of the Project. An electronic version of the as-built plans shall be forwarded to Arizona Department of Transportation Section.

p. Pursuant to 23 USC 102(b), repay all federal funds and 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.

r. Upon completion of the Project, agree to accept, maintain and assume full responsibility of the Project in writing.

s. The City will provide eligible inspection services, and be reimbursed for these services. All ADOT policies and procedures will be applicable as coordinated with the Phoenix Construction District (District) and the ADOT Construction Group. The City, District and Construction Group must agree on the City Inspector. The City Engineering Director must provide the ADOT Construction Group (for pre-approval) all required and current certifications and chargeable rates (labor and equipment). The City

Inspector will report to the ADOT Resident Engineer and must comply with all ADOT hardware/software computer requirements; this includes keeping the computer and any information in a secure location. The City Inspector must also utilize ADOT's automated system to complete the required weekly timesheet. The City Inspector will remain an employee of the City and will not be considered an employee of the Arizona Department of Transportation during the term of this Agreement. The City will invoice monthly for reimbursement, all charges must be kept current for both payment and federal reporting purposes. The City will be notified of all approvals by the ADOT Construction Group.

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 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 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 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 and the federal funds 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 requested by the State to enable the State to comply with the requirements of the Act.

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 arising out of this Agreement, the Parties agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

12. 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) 712-8998 (602) 712-3132 Fax	City of Glendale Attn: Trevor Ebersole 5800 West Glenn Drive, Suite 315 Glendale, Arizona 85301 Phone (623) 930-2940 Fax (623) 847-7681
For ADOT Financial Matters: Account Receivables (602) 712-6638 Account Payables (602) 712-8006	For City Financial Matters: Diane Goke 5850 West Glendale Avenue Glendale, AZ 85301

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

14. Under Arizona Revised Statutes §§ 35-391.06 and 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in Arizona Revised Statutes §§ 35-391 and 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

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

16. In accordance with Arizona Revised Statutes § 11-952(D), attached 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 _____
JERRY WEIERS
Mayor

ATTEST:

By _____
PAMELA HANNA
City Clerk

STATE OF ARIZONA
Department of Transportation

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

IGA/JPA 12-154-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 _____ day of _____2013.

_____
City Attorney

RESOLUTION NO. 4659 NEW SERIES

JERRY P. WEIERS
MAYOR

ATTEST:

PAMELA HANNA
City Clerk

(SEAL)

APPROVED AS TO FORM:

NICHOLAS DIPIAZZA
City Attorney

REVIEWED BY:

RICHARD BOWERS
Acting City Manager

STATE OF ARIZONA)
County of Maricopa) ss
City of Glendale)

I, the undersigned, Pamela Hanna, being the duly qualified City Clerk of the City of Glendale, Maricopa County, Arizona, certify that the foregoing Resolution No. 4659 New Series is a true, correct and accurate copy of Resolution No. 4659 New Series, passed and adopted at a regular meeting of the Council of the City of Glendale, held on the 9th day of April, 2013, at which a quorum was present and voted in favor of said Resolution.

Given under my hand and seal this 26th day of April, 2013.

CITY CLERK

RESOLUTION NO. 4659 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 STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, FOR THE FIBER OPTIC CABLE AND CCTV CAMERAS PROJECT ALONG CACTUS, THUNDERBIRD AND GREENWAY ROADS.

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 with the State of Arizona, Department of Transportation, for the Fiber Optic Cable and CCTV Cameras Project (IGA/JPA 12-154-I) along Cactus, Thunderbird and Greenway Roads 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 Mayor or 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 9th day of April, 2013.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

Acting City Manager