C-6108
08/15/07

JPA File No.: 07-057 I
AG Contract No.: P001 2007 002054
Project No.: CM-GLN-0(034)A
Project: North Area Fiber Optic Network
Section: No. Glendale various
TRACS No.: SS 601 01C
Budget Source Item No.: n/a

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into this date September 10th, 2007, 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") 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, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.

4. Such project lies within the boundary of the City and has been selected by the City; the survey of the project has been completed; and the plans, estimates and specifications 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 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 for this project is in the acquisition of Federal funds for the use and benefit of the City. The State shall be the designated agent for the City. Funds expended for the project are authorized by reason of Federal law and regulations.

NO. 29214
Filed with the Secretary of State
Date Filed: 9-10-07
Secretary of State
By:

7. The work embraced in this Agreement is for constructing the north Glendale area fiber optic system, including conduit, pull boxes and fiber optic cable. This system will ultimately connect to the Glendale Emergency Operations Center. The construction area specifically involved under this Agreement lies between the L101 freeway to 59th Ave, and north from Union Hills to Pinnacle Peak, hereinafter referred to as the "Project". The State shall advertise, bid and award the Project. The estimated construction costs are as follows:

TRACS No. SS601 01C

*Estimated Project Costs	**$2,172,530.00**
Federal Aid Funds @ 94.3% (capped)	$ 894,000.00
City Funds @ 5.7%	$ 54,038.00
Estimated City Funds @ 100%	$1,224,492.00
*Total Estimated City Funds	$1,278,530.00
*(Includes 15% CE and 5% project contingencies)	

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction and funding. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.

b. Upon approval 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 firms(s) for the construction of the project.

c. Enter into a Project Agreement with FHWA on behalf of the City covering the work encompassed in said construction contract and will request the maximum Federal Funds available, including construction engineering and administration costs. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

d. Prior to bid advertising, invoice the City for the City's share of the Project, currently estimated at $1,278,530.00. 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. 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 shall:

a. Upon execution of this Agreement, designate the State as authorized agent for the City.

b. Prior to bid advertising and upon receipt of ADOT engineering estimates, deposit funds with the State in the an amount equal to the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid (capped) received, currently estimated at $1,278,530.00.

c. Be entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not.

d. Provide for cost and, as an annual item in the City's budget, proper maintenance of the Project including all of the Project components.

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.

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 and related matters; 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 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 nonperformance 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 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. This Agreement shall be filed with the Arizona Secretary of State and shall not become effective until the date of said filing.

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

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. This Agreement is subject to all applicable provisions of the Americans with Disability 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 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment 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.

9. 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.

10. 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 616E Phoenix, Arizona 85007 (602) 712-7525 (602) 712-7424 Fax	City of Glendale Attn: Transportation Department 5800 W. Glenn Dr., #315 Glendale, AZ 85301 (623) 930-3630 (623) 930-2194 Fax

11. 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 _____
ELAINE M. SCRUGGS
Mayor

ATTEST:

By _____
PAMELA HANNA
City Clerk

STATE OF ARIZONA
Department of Transportation

By _____
DALE BUSKIRK
Division Director

G:\JPA 07-057-Glendale No. Area Fiber Optic System, Initial draft 5/24/07 ghc
Revised 6/18/07 ghc

JPA 07-057

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 A.R.S. § 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 15th day of August, 2007.

City Attorney

RESOLUTION NO. 4083 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF INTERGOVERNMENTAL AGREEMENTS WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION OF INTELLIGENT TRANSPORTATION SYSTEM EQUIPMENT IN NORTH GLENDALE AND AT THE SPORTS FACILITIES.

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 Agreements between the City of Glendale and the Arizona Department of Transportation be entered into, which agreements are 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 agreements 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 14th day of August, 2007.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

TERRY GODDARD
Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
Writer's Direct Line:
602.542.8855
Facsimile: 602.542.3646
E-mail: Susan Davis@azag.gov

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. P0012007002054 (**JPA 07-057-I**), an Agreement between public agencies, i.e., 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: September 5, 2007

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:55457
Attachment