INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into this date ________________, 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 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 on behalf of the City.

3. The State will design, advertise, award and administer construction of the extension of westbound left turn lanes on US 60 at Northern Avenue and US 60 at Bethany Home, and railroad safety improvements at US 60 and Bethany Home Road ("the Project"). The State will obtain federal funds for the design and construction costs associated with the Project. The City will be responsible for the maintenance of all Project improvements within City right-of-way.

4. The Parties will perform their responsibilities consistent with this Agreement; any change or modification to the Project will only occur with the mutual written consent of both Parties.

5. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.
**THEREFORE,** in consideration of the mutual terms expressed in this Agreement, it is agreed as follows:

II. **SCOPE OF WORK**

1. The State will:
   a. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the City's designated agent for the Project.
   b. Prepare and provide the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project and incorporate comments from the City as appropriate.
   c. With FHWA authorization, proceed to administer construction: advertise, receive and open bids, award, and enter into a contract with the firm for the construction of the Project. Administer contract(s) for the Project and make all payments to the contractor(s).
   d. 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.
   e. Issue, per established procedures of the State's Central District Permit Office, a valid blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance work to be provided by the City within the State's rights-of-way. Process any other Encroachment Permits that may be needed to work within the State's right-of-way to effectively meet the obligations set forth for the City in this Agreement. The State agrees all activities that are reasonably required to be performed by the City under this Agreement shall be set forth in and covered by the appropriate Encroachment Permit.
   f. Notify the City of final inspection and acceptance of all the Project improvements, and be responsible for the maintenance of the improvements within the State's right-of-way.

2. The City will:
   a. Designate the State as the City's authorized agent for the Project.
   b. Review the design documents required for construction of the Project and provide comments to the State as appropriate.
   c. Not permit or allow any encroachments upon or private use of the public 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.

d. Grant the State, its agents and/or contractors, without cost, the right to enter City right-
of-way, as required, to conduct any and all construction and pre-construction related
activities, including without limitation, temporary construction easements or temporary
rights of entry to accomplish among other things, soil and foundation investigations.

e. Request and maintain, per established procedures of the State's Central District Permit
Office, a valid blanket Encroachment Permit for the routine/normal maintenance and
emergency maintenance work provided by the City within the State's rights-of-way.
Agree to obtain separate permits for any new construction and/or installations in
accordance with the Central District's established procedures. The City agrees all
activities performed by the City under this Agreement shall be set forth in and covered
by the appropriate Encroachment Permit.

f. After final inspection and acceptance of the Project is complete, assume maintenance
responsibility of all Project improvements within the City's right-of-way, and at its sole
expense.

III. MISCELLANEOUS PROVISIONS

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

2. The terms, conditions and provisions of this Agreement shall remain in full force and effect
until completion of the Project. Any provisions for maintenance shall be perpetual, unless
assumed by another competent entity.

3. This Agreement may be cancelled at any time prior to the award of the Project contract and
after 30 days written notice to the other Party. It is understood and agreed that, in the event
the City terminates this Agreement, the City shall be responsible for all costs incurred by the
State up to the time of termination. It is further understood and agreed that in the event the
City terminates this Agreement, the State shall in no way be obligated to complete or
maintain the Project.

4. The City shall indemnify, defend, and hold harmless the State, any of its departments,
agencies, officers or employees (collectively referred to in this paragraph as the "State")
from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of
every kind and description, including reasonable attorneys' fees and/or litigation expenses
(collectively referred to in this paragraph as the "Claims"), which may be brought or made
against or incurred by the State on account of loss of or damage to any property or for
injuries to or death of any person, to the extent caused by, arising out of, or contributed to,
by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of
the City, its employees, officers, directors, agents, representatives, or contractors, their
employees, agents, or representatives in connection with or incident to the performance of
this Agreement. The City's obligations under this paragraph shall not extend to any Claims
to the extent caused by the negligence of the State, except the obligation does apply to any
negligence of the City which may be legally imputed to the State by virtue of the State's ownership or possession of land. The City's obligations under this paragraph shall survive the termination of this Agreement.

5. The State shall include Section 107.13 of the 2008 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated to this Agreement by reference, in the State's contract with any and all contractors, of which the City shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the City.

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

7. 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.

8. 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 shall provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.

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

10. The provisions of Arizona Revised Statutes § 35-214 are applicable 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 09-09 issued by the Governor of the State of Arizona and incorporated 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 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 Statutes § 41-4401 and Title 34 of the Arizona Revised Statutes.
15. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01.1

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

17. 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:

For Agreement Administration:
Arizona Department of Transportation
Joint Project Agreement Section
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
JPABranch@azdot.gov
City of Glendale
Attn: Debbie Albert
6210 West Myrtle Ave., Ste. 112
Glendale, Arizona 85301
(623) 847-7524

For Project Administration:
Arizona Department of Transportation
Project Management Group
205 S. 17t Avenue, Mail Drop 614E
Phoenix, Arizona 85007
(602) 712-7545
City of Glendale
Attn: Debbie Albert
6210 West Myrtle Ave., Ste. 112
Glendale, Arizona 85301
(623) 847-7524

For Financial Administration:
Arizona Department of Transportation
Project Management Group
205 S. 17th Avenue, Mail Drop 614E
Phoenix, Arizona 85007
602.712.7545
City of Glendale
Attn: Debbie Albert
6210 West Myrtle Ave., Ste. 112
Glendale, Arizona 85301
(623) 847-7524

18. In accordance with Arizona Revised Statutes § 11-952 (D) attached and incorporated in this Agreement 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.

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1 In Jordahl v. Brnovich et al., Case No. 3:17-cv-08263 (D. Ariz.), the U.S. District Court entered a preliminary injunction that enjoins the State from enforcing A.R.S. § 35-393.01(A) (the “Anti-Israel Boycott Provision”). That statute states that: “[a] public entity may not enter into a contract with a company to acquire or dispose of services, supplies, information technology or construction unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel.” Unless and until the District Court’s injunction in Jordahl is stayed or lifted, the Anti-Israel Boycott Provision (A.R.S. § 35-393.01(A)) is unenforceable and the State will take no action to enforce it.
IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

CITY OF GLENDALE

By __________________________
JERRY WEIERS
Mayor

STATE OF ARIZONA
Department of Transportation

By __________________________
STEVE BOSCHEN, PE
Division Director

ATTEST:

By __________________________
JULIA K. BOWER
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 ____________ day of ____________, 2019.

____________________
City Attorney