

When Recorded Return to:
City of Glendale
5850 W Glendale Ave
Glendale, AZ 85301

Intergovernmental Agreement
for the
**Design, Rights-of-Way Acquisition, Construction,
Construction Management, Operation and Maintenance**
of the
New River North Shared Use Pathway Project
between the
City of Glendale
and the
City of Peoria

This Intergovernmental Agreement, hereinafter the Agreement, is entered into by and between the City of Glendale, a municipal corporation, acting by and through its City Council, hereinafter GLENDALE, and the City of Peoria, a municipal corporation, acting by and through its City Council, hereinafter PEORIA (individually a party and collectively the parties).

This Agreement shall become effective as of the date it has been executed by both parties and may be recorded by the Maricopa County Recorder.

DATE FILED WITH THE MARICOPA COUNTY RECORDER: _____

STATUTORY AUTHORIZATION

1. GLENDALE is empowered by A.R.S. § 11-952 to enter into this Agreement and has by resolution resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of GLENDALE.
2. PEORIA is empowered by A.R.S. § 11-952 to enter into this Agreement and has by resolution resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of PEORIA.

In consideration of the mutual agreements and obligations expressed herein, the parties agree as follows:

BACKGROUND

3. In 2013, GLENDALE applied for and received federal funding for the New River Shared Use Pathway Project. According to the FY17-21 Transportation Improvement Program (TIP) the estimated available federal funding and local costs are:

3.1 <u>Design Cost</u>	<u>\$110,000.00</u>
Local Design funding	\$110,000.00

3.2 <u>Estimated construction cost</u>	<u>\$512,381.17</u>
Federal construction funding	\$330,850.00
Local construction funding	\$181,531.17

3.3 <u>Total local costs</u>	<u>\$291,531.17</u>
Glendale funding	\$204,071.82
Peoria funding	\$87,459.35

4. On May 13, 2014, the Glendale City Council adopted Resolution No. 4794 New Series authorizing GLENDALE to enter into an intergovernmental agreement with the Arizona Department of Transportation, hereafter ADOT, for the New River North Shared Use Pathway Project, IGA/JPA 13-0003922-I.
5. On June 28, 2016, GLENDALE and ADOT entered into Amendment No. One to IGA/JPA 13-0003922-I (Exhibit A), adding right-of-way costs and revising funding. The latest constructions costs are detailed in the Estimated Engineering Construction Cost – Cost Estimate Worksheet, v 3.6 (Exhibit B).
6. The New River North Shared Use Pathway Project, hereafter PROJECT, consists of a roughly 2,600 feet long, 10 feet wide, concrete multi-use pathway that will expand the New River pathway from its current terminus north to Patrick Ln drainage channel as depicted in Exhibit B. The improvements will provide the following benefits:
- 6.1 Connect the bike lane on Hillcrest Blvd to the New River Trail;
- 6.2 Expand the New River Trail by creating a crossing at the New River wash, roughly half a mile of new pathway and a bridge over the Patrick Ln drainage channel; and
- 6.3 Roughly seventy percent of the PROJECT by distance is in GLENDALE and thirty percent of the PROJECT is in PEORIA.

PURPOSE OF THE AGREEMENT

7. The purpose of this Agreement is to identify and define the responsibilities of GLENDALE and PEORIA for the design, rights-of-way acquisition, construction, construction management, and operation and maintenance of the PROJECT.

TERMS OF AGREEMENT

8. Features of the PROJECT, as envisioned at the time of this Agreement, are represented in Exhibit C but are subject to change without amendment to this Agreement.
9. GLENDALE's and PEORIA's total local shared costs for design, project management design review, construction and construction administration are hereinafter referred to as the SHARED PROJECT COST.
 - 9.1 The SHARED PROJECT COST is estimated to be \$291,531.17, but is subject to change without amendment to this Agreement. The SHARED PROJECT COST is determined by New River North Shared Use Pathway Project, IGA/JPA 13-0003922-I, Amendment No. One to IGA/JPA 13-0003922-I (Exhibit A), the Estimated Engineering Construction Cost – Cost Estimate Worksheet, v 3.6 (Exhibit B), and any amendments or subsequent versions of those Exhibits.
 - 9.2 The following costs are expressly excluded from the SHARED PROJECT COST under this Agreement:
 - 9.2.1 Costs associated with rights-of-way acquisition;
 - 9.2.2 Costs associated with ongoing operation and maintenance of the completed Project; and
 - 9.2.3 Personnel and administrative costs incurred by either party.
10. GLENDALE shall:
 - 10.1 Fully fund seventy percent of the SHARED PROJECT COST, making GLENDALE's estimated share \$204,071.82;
 - 10.2 Complete necessary right-of-way acquisitions for the portion of the PROJECT that is within the jurisdiction of GLENDALE;
 - 10.3 Upon completion of construction for the Project, prepare a final accounting of the final costs for each agency;
 - 10.4 Discuss any change orders that will impact PEORIA's proportionate share.
 - 10.5 Invoice PEORIA as follows:
 - 10.5.1 Within 30 days of award of a PROJECT construction contract, invoice the PEORIA for one-half of its share of the SHARED PROJECT COST;
 - 10.5.2 Within 30 days of completion of construction of the PROJECT, or no later than June 30, 2018 (whichever occurs first), prepare a final accounting including change order costs not previously paid, and invoice PEORIA for the remainder of its share of the SHARED PROJECT COST incurred to date; or reimburse PEORIA for any previous over-payments;
 - 10.6 Monitor design of the PROJECT with ADOT, provide PROJECT plans and specifications to PEORIA (including interim submittals as appropriate) for review and

comment, allow three weeks for review, and incorporate PEORIA comments, if any, into the PROJECT as appropriate; and

10.7 Provide PEORIA copies of the Project as-builts and copies of all final construction documentation

10.8 Operate and maintain the portion of the completed PROJECT that is within the jurisdiction of GLENDALE. The maintenance activities include, but are not limited to, maintaining the flood control function of the PROJECT, including sediment and vegetation removal in culverts and under the bridge and any and all aesthetic, park, and public use features, maintenance of landscaping, irrigation, multi-use trails and berms, removal of trash and debris, electricity and other operation costs for the facilities, vandalism repair and replacement, and structural repair and replacement of the flood control structures.

11. PEORIA shall:

11.1 Fully fund thirty percent of the SHARED PROJECT COST, making the PEORIA's estimated share \$87,459.35;

11.2 Complete necessary right-of-way acquisitions for the portion of the PROJECT that is within the jurisdiction of PEORIA;

11.3 Participate in a final inspection of the completed PROJECT with GLENDALE; and

11.4 Operate and maintain the portion of the completed PROJECT that is within the jurisdiction of PEORIA. The maintenance activities include, but are not limited to, maintaining the flood control function of the PROJECT, including sediment and vegetation removal in culverts and any and all aesthetic, park, and public use features, maintenance of landscaping, irrigation, multi-use trails and berms, removal of trash and debris, electricity and other operation costs for the facilities, vandalism repair and replacement, and structural repair and replacement of the flood control structures.

11.5 Maintain the property (APN 200-07-714) barrier wall and access gate that are part of the PROJECT.

12. Any local permits required for the PROJECT that are issued by the parties shall be issued at no cost to the PROJECT.

13. The parties shall apply to MAG for any available close-out federal funds to increase the federal contribution and reduce GLENDALE's and PEORIA's local match contribution.

14. The parties may, with mutual written agreement of all parties, delegate responsibilities to another party. Any delegation, however, shall not relieve the delegating party of its original responsibilities as defined herein.

15. In the case of any dispute over any items in this Agreement, the parties agree to use their best efforts and enter into good faith negotiations to resolve the disputed matters. However, this shall not limit the rights of the parties to seek any remedies provided by law.

16. The parties agree to equally share the cost of a PROJECT compliance and cost audit to be initiated within 60 days of PROJECT completion, if requested by either City. An independent

auditing firm agreed to by both parties will perform the audit. Any payments or reimbursements necessary to bring the PROJECT into compliance with the audit findings shall be made within 45 days of acceptance by the parties of the audit report.

17. Each party to this Agreement (Indemnitor) shall, to the extent permissible by law, indemnify, defend and save harmless the other party (Indemnitees) including agents, officers, directors, governors and employees thereof, from and against any loss or expense incurred as a result of any claim or suit of any nature whatsoever, which arises out of Indemnitor's negligent or wrongful acts or omissions pursuant to this Agreement. The Indemnitor shall further, to the extent permissible by law, indemnify, defend and save harmless the other Indemnitee including agents, officers, directors, governors and employees thereof, from and against any loss or expense incurred as a result of any claim or suit of any nature whatsoever, which arises out of recreational use of the PROJECT in the event that it elects to invite such use. Such indemnification obligations shall encompass any personal injury, death or property damages resulting from the indemnitor's negligent or wrongful acts or omissions, as well as reasonable attorney fees, court costs, and other expenses relating to the defense against claims or litigation, incurred by the indemnitee. Indemnitee shall be liable for its own negligence or wrongful acts as provided by law.
18. 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:

City of Glendale Purab Adabala 6210 W Myrtle Ave, Suite 111 Glendale, Arizona 85301	City of Peoria Engineering Director 9875 N 85 th Avenue Peoria, Arizona 85345
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19. This Agreement shall expire upon both completion of the PROJECT and satisfaction of all funding obligations and reimbursements associated with this Agreement. However, by mutual written agreement of all parties, this Agreement may be amended or terminated except as expressly stated in this Agreement. The operation and maintenance and indemnification provisions of this Agreement shall survive the expiration or termination of this Agreement.
20. This Agreement is subject to the provisions of A.R.S. § 38-511.
21. Attached to this Agreement or contained herein are the written determinations by the appropriate attorneys for the parties to this Agreement, that these agencies are authorized under the laws of the State of Arizona to enter into this Agreement and that it is in proper form.
22. If legislation is enacted after the effective date of this Agreement that changes the relationship or structure of one or more parties to this Agreement, the parties agree that this Agreement shall be renegotiated at the written request of either party.

In witness, each Party to this Agreement has caused it to be executed on the date indicated below.

[SIGNATURES ON FOLLOWING PAGES]

CITY OF GLENDALE
A Municipal Corporation

Approved and Accepted By:

By: Date
Its:

Attest:

By: _____
City Clerk Date

The foregoing Intergovernmental Agreement has been reviewed pursuant to A.R.S. Section 11-952 by the undersigned attorney who has determined that it is in proper form and within the power and authority granted to the City of Glendale under the laws of the State of Arizona.

City Attorney Date

Exhibit A: Amendment No. One to IGA/JPA 13-0003922-I

Exhibit B: Estimated Engineering Construction Cost – Cost Estimate Worksheet, v 3.6

Exhibit C: New River North Shared Use Pathway Project