

Flood Control District of Maricopa County
2801 West Durango Street
Phoenix, AZ 85009-6399

AMENDMENT NO. 1
TO
INTERGOVERNMENTAL AGREEMENT IGA FCD2014A002
AMONG
THE CITY OF SURPRISE, THE CITY OF PEORIA, MARICOPA COUNTY,
AND THE
FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
FOR THE
RIGHTS-OF-WAY ACQUISITION, UTILITY RELOCATIONS, CONSTRUCTION, CONSTRUCTION
MANAGEMENT, AND OPERATION AND MAINTENANCE
OF THE
115TH AVENUE AND UNION HILLS DRIVE DRAINAGE IMPROVEMENTS PROJECT
IGA FCD2014A002A

FCD Agenda Item C-69-15-027-3-01
MCDOT Agenda Item C-64-15-070-M-01

This Amendment Number 1, also known as Intergovernmental Agreement (IGA) FCD2014A002A, to IGA FCD2014A002 is entered into by and among the City of Surprise, a municipal corporation, acting by and through its City Council, hereinafter called SURPRISE, the City of Peoria, a municipal corporation, acting by and through its City Council, hereinafter called PEORIA, Maricopa County, a political subdivision of the State of Arizona, acting by and through its Board of Supervisors, hereinafter called the COUNTY, and the Flood Control District of Maricopa County, a political subdivision of the State of Arizona, acting by and through its Board of Directors, hereinafter called the DISTRICT. The DISTRICT, SURPRISE, PEORIA, and the COUNTY, are hereinafter called the PROJECT PARTNERS.

This Amendment shall become effective as of the date it has been executed by all parties.

STATUTORY AUTHORIZATION

1. The DISTRICT is empowered by Arizona Revised Statutes (A.R.S.) Section 48-3603, as revised, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the DISTRICT.

2. SURPRISE is empowered by A.R.S. Section 11-951 et. al., as amended, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of SURPRISE.
3. PEORIA is empowered by Peoria City Charter Article 1, Sec. 3 (15) and by Arizona Revised Statutes Section 11-951, as amended, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of PEORIA.
4. The COUNTY is empowered by Arizona Revised Statutes 11-251, as amended, and Section 28-6701, as amended, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the COUNTY.

BACKGROUND

5. In 2011, the 107th Avenue and Union Hills Drive Design Concept Report was completed by the DISTRICT to address specific on-going drainage and flooding issues along Union Hills Drive from 107th Avenue to 115th Avenue. This study recommended a regional flood mitigation project that was recommended for inclusion in the DISTRICT's 2012/2013 CIP program. In 2013 the DISTRICT conducted an Alternatives Analysis to study alternative solutions for conveyance of the Beardsley Channel flows.
6. The Design Concept Report and Alternatives Analysis recommended structural solutions to mitigate flooding hazards in the area bounded on the west by 115th Avenue, on the north by Beardsley Road, and east by 107th Avenue, and on the south by the Agua Fria River. The anticipated features include improvements to existing channels, construction of new storm drains, and construction and/or improvements to basins.
7. On March 28, 2012, the Board of Directors of the DISTRICT adopted Resolution FCD 2011R009 (C-69-12-050-6-00), authorizing the DISTRICT to cost-share in the PROJECT, and to negotiate Intergovernmental Agreements for the design, rights-of-way acquisitions, construction, construction management, and operation and maintenance of the PROJECT. On June 19, 2013, the Board of Directors adopted Resolution FCD 2011R009A (C-69-12-050-6-01) which revised the PROJECT authorized area for obtaining land rights.
8. On April 24, 2013, the Board of Directors of the DISTRICT approved Intergovernmental Agreement FCD 2012A005 (C-69-13-041-3-00), among the DISTRICT, PEORIA, and SURPRISE, for the design of the PROJECT. On January 29, 2015, the Board of Directors of the DISTRICT approved Intergovernmental Agreement FCD 2014A002 (C-69-15-027-3-00), among the DISTRICT, PEORIA, SURPRISE, and COUNTY, for the rights-of-way acquisition, utility relocations, construction, construction management, and operation and maintenance of the PROJECT.
9. The PROJECT PARTNERS have agreed to construct under a single contract both Phase 1 and Phase 2 now known as the PROJECT. The timing of funding obligations must now be clarified to accommodate funding constraints now that the PROJECT is to move forward for construction.

PURPOSE OF THE AGREEMENT

10. The purpose of this Amendment is to revise the invoicing and reimbursement paragraphs of the original IGA to accommodate current funding capability, and revise the estimate for the Project Cost.

TERMS OF AGREEMENT

11. The current cost estimate for the PROJECT Cost is \$9,700,000.00.

12. The DISTRICT shall

12.1 invoice SURPRISE fifty percent (50%) of its estimated cost share on or about July 1, 2017. The District shall invoice Surprise its final cost-share based on actual costs upon completion of construction of the PROJECT.

12.2 invoice PEORIA for its full cost-share based on actual costs, on or about July 1, 2020. If Peoria has funds available sooner, the DISTRICT shall invoice PEORIA for partial payments in accordance with the available funding as identified by PEORIA, beginning in Fiscal Year 2018, and shall invoice Peoria its remaining final cost-share based on actual costs on or about July 1, 2020.

12.3 invoice the COUNTY its \$367,000 cost-share upon completion of construction of the PROJECT.

13. SURPRISE shall

13.1 pay half of its estimated cost-share within thirty (30) days of invoice by the DISTRICT, in Fiscal Year 2018.

13.2 pay its final cost-share within thirty (30) days of invoice by the DISTRICT, based on actual costs, when construction is complete.

14. PEORIA shall

14.1 pay its full cost-share based on actual costs within thirty (30) days of invoice by the DISTRICT, in Fiscal Year 2021.

14.2 If funding is available, pay partial payments based on available funding and within thirty (30) days of invoice by the DISTRICT, beginning in Fiscal Year 2018. PEORIA shall pay the remainder of its cost share within thirty (30) days of invoice by the DISTRICT, based on actual costs, in Fiscal Year 2021.

15. The COUNTY shall pay \$367,000.00 upon completion of the Project construction and within thirty (30) days of invoice by the District.

16. This Amendment governs where terms conflict with the original IGA FCD 2014A002. However, the original IGA FCD 2014A002 is applicable unless specifically changed by this Amendment. The paragraph numbering in this Amendment is coincidental and is not intended to indicate that these same numbered paragraphs in the original IGA FCD 2014A002 are being replaced in their entirety.

17. Nothing in this Amendment (whether express or implied) is intended to confer upon either party other than the parties hereto and their respective representatives, successors, and permitted assigns, any rights or remedies under or by reason of this Amendment nor is anything in this Amendment intended to relieve or discharge the liability of either party hereto.

18. Attached to this or contained herein are the written determinations by the appropriate attorneys for the DISTRICT, SURPRISE, PEORIA and COUNTY that these agencies are authorized under the laws of the State of Arizona to enter into this Amendment and that it is in proper form.
19. If legislation is enacted after the effective date of this Amendment, which changes the relationship, or structure of one or more parties to this Amendment, the parties agree that this Amendment shall be renegotiated at the written request of either party.

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

Recommended by:

William D. Wiley, P.E. Date
Chief Engineer and General Manager

Approved and Accepted:

By: _____
Chairman, Board of Directors Date

Attest:

By: _____
Clerk of the Board Date

The foregoing Intergovernmental Agreement FCD 2014A002A has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned General Counsel, who has determined that it is in proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

Flood Control District General Counsel Date

CITY OF SURPRISE
A Municipal Corporation,

Sharon Wolcott, Mayor

By: _____
Date

Attest:

By: _____
City Clerk Date

The foregoing Intergovernmental Agreement IGA FCD 2014A002A has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned attorney who has determined that it is in proper form and within the power and authority granted to the City of Surprise under the laws of the State of Arizona.

By: _____
City Attorney Date

CITY OF PEORIA
A Municipal Corporation,

Bob Barrett, Mayor

By: _____
Date

Attest:

By: _____
City Clerk Date

The foregoing Intergovernmental Agreement IGA FCD 2014A002A has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned attorney who has determined that it is in proper form and within the power and authority granted to the City of Peoria under the laws of the State of Arizona.

By: _____
City Attorney Date

MARICOPA COUNTY

Recommended by:

Jennifer Toth, P.E.
Transportation Director

Date

Approved and Accepted:

By: _____
Chairman, Board of Supervisors Date

Attest:

By: _____
Clerk of the Board Date

The foregoing Intergovernmental Agreement FCD 2014A002A has been reviewed pursuant to Arizona Revised Statutes 11-251, as amended, by the undersigned Deputy County Attorney, who has determined that it is in proper form and within the powers and authority granted to Maricopa County under the laws of the State of Arizona.

Deputy County Attorney

Date