

**INTERGOVERNMENTAL AGREEMENT**

between

**THE CITY OF PEORIA**

and the

**FLOOD CONTROL DISTRICT OF MARICOPA COUNTY**

for the

**DESIGN, RIGHTS-OF-WAY ACQUISITION, AND UTILITY RELOCATIONS**

of the

**GRAND & 83RD AVENUE DRAINAGE IMPROVEMENTS**

**IGA FCD 2022A024**

**Agenda Item \_\_\_\_\_**

This Intergovernmental Agreement IGA FCD 2022A024 (Agreement) is entered into by and between the City of Peoria, a municipal corporation, acting by and through its City Council and City Manager, hereinafter called the CITY, 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 and the CITY may hereinafter individually be called a PROJECT PARTNER, or collectively called the PROJECT PARTNERS.

This Agreement shall become effective as of the date it has been executed by all parties (the “Effective Date”).

**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. The CITY is empowered by A.R.S. Section 11-952(A) to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the CITY.

**BACKGROUND**

3. The proposed project is situated in the northern portion of the Maryvale Area Drainage Master Study (ADMS) in a developed urban area within the City of Peoria near 83rd Avenue and Grand Avenue, as depicted in Exhibit A, hereinafter called the PROJECT. The proposed study area is bounded by Peoria Avenue and Grand Avenue on the south Cactus Road on the North, 71st Avenue on the east and Grand Avenue and 87<sup>th</sup> Avenue on the west as shown on the Project Site Map (Exhibit A).
4. In addition to the Maryvale ADMS, this area was studied as part of the City of Peoria Storm Drain Master Plan (PSDMP) prepared in January 2014. The PSDMP identified insufficient capacity in the storm drain system to convey stormwater runoff from the 10-year frequency event and recommended that a combination of storm drain expansion and stormwater storage be implemented north of Grand Avenue in order to mitigate peak discharges to the downstream system and increase system capacity. However, the CITY is unable to obtain the required land at the locations identified in the PSDMP but is still interested in implementing the concept. This study will explore an alternate storage location using currently vacant parcels situated at the southwest corner of the intersection of 83rd Avenue/Peoria

Avenue intersection along the north side of Grand Avenue as a stormwater storage site. The conceptual project proposes storm drain extensions in Cholla Street as proposed in the PSDMP and in 83rd Avenue that will convey stormwater runoff to the proposed retention basin as shown on the Project Site Map (Exhibit A). This study will also explore other alternatives to the working concept to convey stormwater runoff from the 10-year frequency event including a storm drain crossing of Grand Avenue/BNSF right of way as well as identification of additional storage locations north of Grand Avenue in the event volumes at the proposed location are insufficient to attenuate peak stormwater discharges to the downstream system.

5. The scope of work for the proposed PROJECT includes revising the hydrologic and hydraulic analysis in the PSDMP to assess the impact and efficacy of relocating the basin to the southwest corner of 83<sup>rd</sup> Avenue and Grand Avenue, the additional storm drain in 83<sup>rd</sup> Avenue, Peoria Avenue, and in Cholla Street from 83<sup>rd</sup> Avenue to 77<sup>th</sup> Avenue and acquisition of land at the proposed basin site. Additionally, this study will explore integrating existing retention basins into the storm drain system in order to optimize the performance of the system in this area. The study will also address local drainage issues within the study area and provide recommendations for improvements to prevent flood damage in the future. A public involvement effort to engage public input on drainage problems will be conducted to assist in inventorying drainage issues. Currently known drainage concerns within the study area include the followings:
  - 5.1 Residential flooding in the Edwards extension area;
  - 5.2 Residential flooding along Roosevelt Street between 83rd Avenue and 81st Avenue;
  - 5.3 Residential flooding at the northwest corner of 79th Avenue and Cholla Street;
  - 5.4 Residential flooding on the west side of 82nd Avenue and Berry Lane;
  - 5.5 Inundation of the retention basin situated at the southwest corner of Shangri La and 82nd Avenue;
  - 5.6 Recommendation for modifications to Flood Hazard Zones within the study area impacted by the proposed improvements. Particularly those associated with areas of concern/known flooding.
6. On May 10, 2023, the Board of Directors of the DISTRICT adopted Resolution FCD 2023R001, authorizing the DISTRICT to cost-share in the PROJECT and to negotiate Intergovernmental Agreements for the rights-of-way acquisitions, utility relocation, design, construction, construction management, and operation and maintenance of the PROJECT.

#### **PURPOSE OF THE AGREEMENT**

7. This Agreement identifies and defines the responsibilities of the DISTRICT and the CITY, for PROJECT activities related to design, rights-of-way acquisition, and utility relocations.

#### **TERMS OF AGREEMENT**

8. The PROJECT, as referenced herein, is defined by paragraph 5 of this Agreement. The PROJECT includes the design, rights-of-way acquisition, and utility relocations of the PROJECT.
9. The PROJECT COST, as referenced herein, solely encompasses the following costs directly associated with the PROJECT and incurred after the Effective Date of this Agreement, unless noted otherwise below:

- 9.1 Development of pre-design and final design.
  - 9.2 Acquisition of fee simple estate rights-of-way and/or drainage easements required for the PROJECT.
  - 9.3 Relocation of conflicting utilities with prior rights, together with associated costs. Utilities in place without prior rights will be relocated at their owners' expense.
  - 9.4 Obtaining United States Army Corps of Engineers Section 404 Permits for the PROJECT, and costs associated with the mitigation efforts required by this permit process.
  - 9.5 Each PROJECT PARTNER shall pay for, and not seek reimbursement for, its own personnel and internal administrative costs associated with this PROJECT. Including costs associated with the issue of PROJECT permits, unless specifically identified otherwise in this Agreement.
10. The CITY shall be solely responsible for any costs that are not needed for the flood control features of the PROJECT, including but not limited to all costs associated with any fee simple estate rights-of-way and/or drainage easements acquired at the CITY's request for non-flood control purposes.
  11. The PROJECT COST associated with this agreement is estimated to be \$4,000,000. This amount is an estimate based on the best information available at the time of this Agreement and is subject to change without amendment to this Agreement. Upon recognition of anticipated costs above this estimated PROJECT COST, the PROJECT PARTNERS shall communicate these anticipated increases.
  12. DISTRICT funding for the PROJECT shall be from secondary flood control tax levy revenue and is contingent upon funding availability within the DISTRICT's Capital Improvement Program.
  13. CITY funding for the PROJECT shall be from the CITY's Capital Improvement Program (CIP) budget.
  14. The CITY shall:
    - 14.1 Plan and design the PROJECT to meet the recurrence interval of the 10-year flood as determined by generally applied technical data and methodology in use at the time of PROJECT design, and this level of protection is specifically approved by the Board of Directors of the Flood Control District of Maricopa County.
    - 14.2 Fund thirty-five (35%) of the PROJECT COST, making the CITY's estimated share \$1,400,000 (the "CITY's SHARE").
    - 14.3 Serve as the lead agency for PROJECT design and include the DISTRICT in the consultant selection process.
    - 14.4 Upon award of the different pre-design, design, utility relocation, or land acquisition phases for the PROJECT, and availability of DISTRICT funding, invoice the DISTRICT for fifty percent (50%) of the DISTRICT's SHARE of the PROJECT COST associated with each phase.
    - 14.5 Upon completion of each design phase for the PROJECT, and availability of DISTRICT funding, invoice the DISTRICT for the remaining DISTRICT's SHARE of all PROJECT COST associated with each phase incurred to date.
    - 14.6 Provide the DISTRICT with interim project submittals and allow three (3) weeks for review and comment. Incorporate the DISTRICT's comments into the PROJECT as appropriate.

- 14.7 Serve as the lead agency for obtaining any necessary USACE Section 404 Permit, and for completing mitigation efforts required by any such permit process.
- 14.8 Should the study phase identify the potential modification of an existing flood hazard area the PROJECT will include pursuing a Conditional Letter of Map Revision (CLOMR) during the design phase. A Letter of Map Revision (LOMR) will be obtained following construction phase activities.
- 14.9 Serve as the lead agency for rights-of-way acquisition and, in that capacity:
- 14.9.1 Obtain fee simple estate rights-of-way and/or easements required for the PROJECT. If it is mutually agreed between the PROJECT PARTNERS that, the project property is no longer needed for flood control purposes and therefore available for sale, the CITY may sell the property under the stipulation that the DISTRICT shall be paid the DISTRICT's cost share percentage of the original acquisition cost, along with its pro-rata share of any appreciation in land value from the original acquisition price of the property for the PROJECT to the final disposition price at the time that the CITY disposes of the property.
  - 14.9.2 Invoice the DISTRICT for the DISTRICT's share of the PROJECT COST for fee simple estate right-of-way and/or easement acquisition as it is incurred and upon availability of DISTRICT funding, no more frequently than quarterly, and no less frequently than annually.
  - 14.9.3 Provide all CITY owned and controlled rights-of-way necessary for the PROJECT, and not specifically purchased for this PROJECT, at no cost to the PROJECT.
- 14.10 Serve as the lead agency for PROJECT public involvement activities.
- 14.11 Prior to offering to make or making the PROJECT property available for any non-flood control uses, assure the safety and appropriateness of such use and ensuring such use will not interfere with the operation and function of the PROJECT.
- 14.12 Obtain DISTRICT review and comments on the design and/or construction of any future changes or modifications to the PROJECT that may affect the hydraulic function of the PROJECT and resolve and/or incorporate the DISTRICT's comments into these future PROJECT modifications.
- 14.13 Prior to DISTRICT's final cost share payment for the design contract(s), provide written notification to the DISTRICT that all contractual obligations have been met, all project contracts closed, and all certificates of performance have been received by the CITY.
- 14.14 Warrant and certify that it does not currently, and agrees for the duration of the contract that it will not, use:
- The forced labor of ethnic Uyghurs in the People's Republic of China.
  - Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China
  - Any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If the CITY becomes aware during the term of the Agreement that any Contractor is not in compliance with this paragraph, the CITY shall notify the DISTRICT within five (5) business days after becoming aware of the noncompliance. Failure of CITY to provide a written certification that the appropriate contractor has remedied the noncompliance within one hundred eighty (180) days after notifying the public entity of its noncompliance, this Agreement shall terminate unless the Term of this Agreement shall end prior to said one hundred eighty (180) day period.

15. The DISTRICT shall:

- 15.1 Fund sixty-five percent (65%) of the PROJECT COST, making the DISTRICT's estimated share \$2,600,000 (the "DISTRICT's SHARE").
- 15.2 Subject to the availability of funding, within thirty (30) calendar days of receipt, pay all invoices issued by the CITY in accordance with the terms of this Agreement. Currently the DISTRICT's 5-year Capital Improvement Program budget has funding for this PROJECT starting in FY23.
- 15.3 Participate in PROJECT public involvement activities.
- 15.4 Provide review comments to the CITY within three (3) weeks of receipt of the periodic PROJECT submittals during the design process.

16. Each PROJECT PARTNER, and the PROJECT PARTNERS collectively:

- 16.1 Shall comply with A.R.S. Sections 41-4401 and 23-214, subsection A.
  - 16.1.1 Each party to this Agreement retains the legal right to inspect the records of the other party's and any contractors' or subcontractors' employees performing work under this Agreement to verify compliance with A.R.S. Sections 41-4401 and 23-214, subsection A.
  - 16.1.2 Failure by either party to this Agreement to comply with A.R.S. Sections 41-4401 and 23-214, subsection A shall be deemed a breach of this Agreement and is subject to penalties up to and including termination of the Agreement.
- 16.2 Shall require that any contractor selected for the PROJECT:
  - 16.2.1 Warrant compliance with all federal immigration laws and regulations that relate to its employees and their compliance with A.R.S. section 23-214(A);
  - 16.2.2 Agrees that a breach of the warranty shall be deemed a material breach of this Agreement which entitles the other party to obtain appropriate relief including termination of this Agreement;
  - 16.2.3 Consent to inspection of all papers of the contractor or subcontractor employee(s) who work(s) on the PROJECT to ensure that contractor or subcontractor is complying with the warranty.
  - 16.2.4 Who engages in for-profit activity and has 10 or more employees, certify it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

- 16.3 Shall provide in-kind services and any permit(s) that a PROJECT PARTNER has the authority to issue and that is required for the PROJECT.
- 16.4 Has the right, following written agreement of all PROJECT PARTNERS, to delegate its responsibilities under this Agreement to another party. Any delegation, however, shall not relieve the delegating PROJECT PARTNER of its original responsibilities as defined herein.
- 16.5 Shall, in the event of any dispute arising pursuant to this Agreement, use their best efforts and enter into good faith negotiations to resolve the disputed matters. However, this shall not limit the rights of the PROJECT PARTNERS to seek any remedies provided by law.
- 16.6 Shall take reasonable and necessary actions within its authority to ensure that only storm water is discharged into the PROJECT, and that such discharges into the PROJECT comply at the point of discharge with any applicable requirements of the U.S. Environmental Protection Agency Clean Water Act, Arizona Pollutant Discharge Elimination System or any other applicable discharge requirements, including any permit requirements.
- 16.7 Shall equally share the cost of a PROJECT compliance and cost audit to be initiated within sixty (60) days of PROJECT completion, if requested by either PROJECT PARTNER. An independent auditing firm agreed to by the PROJECT PARTNERS will perform the audit. Any payments or reimbursements necessary to bring the PROJECT into compliance with the audit findings shall be made within forty-five (45) days of acceptance by the PROJECT PARTNERS, and at the agreed upon cost share percentages set forth in Sections 14 and 15 herein.
- 16.8 Shall comply with applicable federal, state and local privacy laws. A PROJECT PARTNER may withhold CITY or DISTRICT information from the other PROJECT PARTNER if required by such privacy laws or by CITY or DISTRICT policy or regulation. This Agreement is subject to the restrictions of A.R.S. Sections 44-1373 and 44-7601.
17. If acceptable to all PROJECT PARTNERS, PROJECT invoicing may be conducted periodically based on actual PROJECT COST incurred, no more frequently than quarterly, in lieu of invoicing timelines otherwise established in this Agreement.
18. Each party to this Agreement shall, as "Indemnitor," to the extent permissible by law, indemnify, defend and hold harmless the other PROJECT PARTNER ("Indemnitee") including agents, officers, directors, governors and employees thereof, from and against any and all loss or expense incurred as a result of any claim or suit of any nature whatsoever, which arises out of any act or omission of Indemnitor pursuant to this Agreement, including but not limited to, reasonable attorneys' fees, court costs, and other expenses relating to the defense against claims or litigation, incurred by the Indemnitee. Notwithstanding the above, Indemnitee shall be liable for its own negligence or wrongful acts as provided by law. In no event shall the Indemnitor owe or be obligated to pay any amounts which the Indemnitee has not actually paid or has no actual obligation to pay. In the event any agreement to pay to resolve issues of liability is not enforceable, or any agreement or settlement results in an actual obligation lower than the full amount of liability, the Indemnitor's obligation to pay shall be limited to the amount Indemnitee has paid or would be obligated to pay in the absence of any agreement to indemnify. Should any PROJECT PARTNER offer to make the PROJECT available for any non-flood control uses, the offering PROJECT PARTNER shall, to the extent permissible by law, indemnify, defend and save harmless the other PROJECT PARTNER, including agents, officers, directors, governors and employees thereof, from any and all loss or expense incurred as a result of any claim or suit without limitation related solely to the non-flood control use of the PROJECT or portions of the PROJECT. Such indemnification obligation is intended to be a specific indemnity obligation rather than the general indemnity obligations set forth in this paragraph regarding all other types of claims or suits and shall include the obligation to provide

reasonable attorneys' fees, court costs, and other expenses relating to the defense of such claims or litigation related solely to the non-flood control use of the PROJECT or portions of the PROJECT. This paragraph shall survive the completion and/or termination of this Agreement.

19. 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:

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

City of Peoria  
City Manager  
8401 West Monroe Street  
Peoria, AZ 85345

Copy to:  
City of Peoria  
City Attorney's Office  
8401 West Monroe Street  
Peoria, AZ 85345

20. This Agreement shall expire ten (10) years from the Effective Date. This Agreement is subject to cancellation by any party pursuant to the provisions of Arizona Revised Statutes Section 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 any party, subject to any additional authorization required by the DISTRICT's Board of Directors or the CITY's City Council.

[SIGNATURES ON FOLLOWING PAGES]

**FLOOD CONTROL DISTRICT OF MARICOPA COUNTY**  
**A Political Subdivision of the State of Arizona**

Recommended by:

\_\_\_\_\_  
Michel A. Fulton, Director

\_\_\_\_\_  
Date

Approved and Accepted:

By: \_\_\_\_\_  
Chairman, Board of Directors      Date

Attest:

By: \_\_\_\_\_  
Clerk of the Board                      Date

The foregoing Intergovernmental Agreement IGA FCD 2022A024 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 PEORIA**  
**A Municipal Corporation,**

Jason Beck Mayor

By: \_\_\_\_\_  
Mayor Date

Attest:

By: \_\_\_\_\_  
Lori Dyckman  
City Clerk Date

The foregoing Intergovernmental Agreement IGA FCD 2022A024 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: \_\_\_\_\_  
Emily Jurmu  
City Attorney Date

IGA FCD 2022A024  
 EXHIBIT "A"  
 Project Site Map

