INTERGOVERNMENTAL AGREEMENT
between

THE CITY OF PEORIA

and the

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

for the

CONSTRUCTION, CONSTRUCTION MANAGEMENT, OPERATION & MAINTENANCE

of the

PINNACLE PEAK & 67TH AVENUE DRAINAGE IMPROVMENTS

IGA FCD 2024A003

Agenda Item _____

This Intergovernmental Agreement IGA FCD 2024A003 (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 PROJECT PARTNERS (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 Glendale/Peoria Area Drainage Master Plan (ADMP) updated in 2002 calls for drainage and flood control improvements including constructing a channel to intercept flows and convey them to New River within the subject watershed.

4. In 2007, CITY in cooperation with DISTRICT completed a Design Concept Report (DCR) for 67th Avenue between Pinnacle Peak Rd and Happy Valley Rd.

5. In 2020, CITY in cooperation with DISTRICT, and pursuant to the terms of that certain intergovernmental agreement dated January 13, 2021 (IGA FCD 2020A013) (the DESIGN IGA) completed and updated a Design Concept Report (DCR) for the roadway, water system, and drainage system improvements.

6. The project area is bounded by Pinnacle Peak Road on the south, Happy Valley Road on the north, 67th Avenue on the east, and New River on the west (the PROJECT AREA) as depicted in Exhibit A attached hereto. This project will construct a regional storm drainage system along Pinnacle Peak Road between New River and 67th Avenue and along 67th Avenue between Pinnacle Peak Road and Hatfield Road (the PROJECT). The regional storm drain improvements are anticipated to include storm drains, box culverts, drainage inlets/outlets, structures, channels, and detention/retention basin improvements (the "Facilities"). The primary goal of the PROJECT is to provide 100-year flood protection to properties in the PROJECT AREA.

7. On December 5, 2001, the Board of Directors of the DISTRICT adopted Resolution FCD 2001R012 (C-69-02-058-6-00) authorizing the DISTRICT to cost-share in the PROJECT, and to negotiate Intergovernmental Agreements for the design, rights-of-way acquisition, construction, construction management, and operation and maintenance of the PROJECT.

PURPOSE OF THE AGREEMENT

8. This Agreement identifies and defines the responsibilities of the DISTRICT and the CITY, for PROJECT activities related to construction, construction management, operation & maintenance.

TERMS OF AGREEMENT

9. The PROJECT, as referenced herein, is defined by paragraph 6 of this Agreement.

10. The PROJECT COST, as defined in this Section, solely encompasses the following costs directly associated with the PROJECT activities and incurred after the EFFECTIVE DATE of this Agreement, which are: costs of construction, construction management, material testing, post-design services and construction surveying support related to the PROJECT.

    10.1 The PROJECT COST for this agreement is estimated to be $35,000,000. This amount is an estimate based on the best information available at the time of this Agreement. Upon recognition of anticipated costs above this estimated PROJECT COST, the PROJECT PARTNERS shall communicate these anticipated increases, and address them in the context of Paragraph 12.3.

11. The following are specifically excluded from the calculation of PROJECT COST:

    11.1 Any costs associated with non-flood control features added to the construction at the CITY's request. Such costs shall be funded solely by the CITY.

    11.2 The personnel and internal administrative costs associated with this PROJECT incurred by each PROJECT PARTNER, including costs associated with the issuance of PROJECT permits, unless specifically identified otherwise in this Agreement.

12. Not later than January 1st of each year during the life of the Project, the CITY shall provide to the DISTRICT a written estimate of the funds the CITY anticipates will be needed from the DISTRICT for the next fiscal year and for each of the remaining fiscal years of the Project until said Project is completed. The County fiscal year commences on July 1 and ends on June 30 of the following calendar year. The DISTRICT'S funding as shown in the table below is dependent on the availability of funding. The CITY should use these DISTRICT funding figures to derive its cash flow for the PROJECT. Depending on funding availability, the Parties may implement a payment plan by mutual agreement.

    12.1 The DISTRICT's total Project funding under this IGA is estimated to be $22,750,000.

12.2 DISTRICT funding for its cost share of the entire PROJECT is contingent on funding availability for construction and all related activities, with an overall funding limit of $23,385,000 distributed for the DISTRICT fiscal year, as outlined in the table below:

Fiscal Year	Not to Exceed
FY 2025	$12,185,000
FY 2026	$11,200,000

12.3 Funding increases may be negotiated and are subject to written approval from the DISTRICT, contingent upon budget availability.

13. 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.

14. CITY funding for the PROJECT shall be from the CITY's Capital Improvement Program (CIP) budget and is contingent upon funding availability within the City's CIP.

15. The CITY shall:

15.1 Fund thirty-five percent (35%) of the PROJECT COST, making the CITY's estimated share $12,250,000.

15.2 Pursuant to the terms of the DESIGN IGA, The CITY hired a consultant for design related activities, which said design is at 90% completion. The City will continue to coordinate with the DISTRICT to understand its funding capabilities and timing for reimbursement of these PROJECT COSTS.

15.3 Beginning three (3) months after the award of the construction contract to a Contractor, the CITY will invoice the DISTRICT every quarter for its share of the incurred PROJECT COSTS to date as invoiced to the CITY by the Contractor.

15.4 Serve as the lead agency for the PROJECT construction, construction management, material testing, surveying, and post-design services.

15.4.1 If the construction management services are provided via CITY staff, then the construction management cost shall be assigned a value not to exceed eight percent (8%) of the actual PROJECT COSTS.

15.5 Serve as the lead agency for any PROJECT public involvement activities.

15.6 Obtain DISTRICT review and concurrence on construction change orders.

15.7 Assure the safety and appropriateness of any non-flood control uses of the PROJECT prior to offering to make or making the PROJECT available for such uses.

15.8 Obtain DISTRICT review and comments on the design and construction of any future modifications to the PROJECT and resolve and incorporate the DISTRICT's comments into these future PROJECT modifications.

15.9 Invite the DISTRICT to all progress meetings and inspections.

15.10 Be responsible for all operations and maintenance of the PROJECT including the development of an operation and maintenance plan to be shared with the DISTRICT.

15.10.1 The maintenance activities to be performed include, but are not limited to, maintaining the flood control function of the PROJECT, including sediment and vegetation removal, removal of trash and debris, electricity, vandalism repair and replacement, structural repair and replacement of the flood control structures, and other operation activities and costs related to the Facilities.

15.10.2 Schedule, and invite the DISTRICT to participate in, an annual inspection of the PROJECT. Any deficiencies relating to flood control for which the CITY is responsible shall be corrected by the CITY within thirty (30) calendar days. If the CITY determines that additional time is required to correct such deficiencies, the thirty (30) day period may be mutually extended, upon DISTRICT'S consent, which may not be unreasonably withheld. If the CITY has not taken corrective action, or requested an extension, within this time, the DISTRICT reserves the right to perform the corrective action and the CITY shall reimburse the DISTRICT for the total costs incurred by the DISTRICT within thirty 30 calendar days of receipt of an invoice from the DISTRICT.

15.10.3 On an annual basis, commencing on the first anniversary date of the completion and acceptance of the PROJECT, provide written notification to the DISTRICT that the PROJECT has been properly maintained by the CITY over the past year in accordance with the PROJECT design and to ensure proper hydraulic function.

16. The DISTRICT shall:

16.1 Fund sixty-five percent (65%) of the PROJECT COST, making the DISTRICT's estimated share $22,750,000.

16.2 Subject to the availability of funding, within 30 calendar days of receipt, pay invoices issued by the CITY in accordance with the terms of this Agreement.

16.3 Participate in PROJECT public involvement activities.

16.4 Participate in a final inspection of the PROJECT with the CITY.

16.5 Participate, as desired by the DISTRICT, with the CITY in an annual inspection of the PROJECT.

16.6 Provide review and comments on post-design or post-construction changes or modifications to the PROJECT that may affect the hydraulic function of the PROJECT.

17. Each PROJECT PARTNER, and the PROJECT PARTNERS collectively, shall:

17.1 Comply with A.R.S. Sections 41-4401 and 23-214(A).

17.1.1 Each party to this Agreement retains the legal right to inspect the records of the PROJECT PARTNERS' and any contractors' or subcontractors' employees performing work under this Agreement to verify compliance with Title 34 of the Arizona Revised Statutes, as well as A.R.S. Sections 41-4401 (as applicable) and 23-214(A).

17.1.2 Failure by either party to this Agreement to comply with Title 34 of the Arizona Revised statutes, A.R.S. Section 41-4401, or A.R.S. Section 23-214(A) shall be deemed a breach of this Agreement and is subject to penalties up to and including termination of the Agreement.

17.2 Require that any contractor selected for the PROJECT:

17.2.1 Warrant its compliance with all federal immigration laws and regulations that relate to its employees and their compliance with A.R.S. Section 23-214(A).

17.2.2 Agree that a breach of the warranty under paragraph 17.2.1 shall be deemed a material breach of contract and is subject to penalties up to and including termination of the contract.

17.2.3 Agree that the PROJECT PARTNERS retain the legal right to inspect the papers of the contractor or subcontractor employee(s) who work(s) on this Agreement to ensure that contractor or subcontractor is complying with the warranty under paragraph 17.2.1.

17.2.4 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. Section 4842, or a regulation issued pursuant to 50 U.S.C. Section 4842.

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

17.3 Have the right, when approved by the other PROJECT PARTNER in writing 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.

17.4 Use their best efforts and enter into good faith negotiations to resolve any disputed items of this Agreement. However, this shall not limit the rights of the PROJECT PARTNERS to seek any remedies provided by law.

17.5 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.

17.6 Equally share the cost of 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 the audit findings by the PROJECT PARTNERS.

18. The PROJECT may be phased due to funding or other coordination issues. Responsibilities of the DISTRICT and the CITY shall be phased accordingly, including, but not limited to, invoicing, reimbursements, and transfer of land rights.

19. 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 DISTRICT, 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.

20. 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
Chief Engineer and General Manager
2801 West Durango Street
Phoenix, AZ 85009-6399

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

21. This Agreement shall expire either (a) 10 years from the effective date, or (b) upon completion of the PROJECT and after all funding obligations and reimbursements have been satisfied in accordance with this Agreement, whichever is the first to occur. However, by mutual written agreement of all parties, this Agreement may be amended or terminated. The operation, maintenance, and indemnification provisions, of this Agreement, shall survive the expiration of this Agreement.

22. This Agreement is subject to cancellation by any party pursuant to the provisions of A.R.S. Section 38-511.

23. 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.

24. 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.

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

Recommended by:

_____
Paul Baughman, Chief Engineer/General Manager Date

Approved and Accepted:

By: _____
Chairman, Board of Directors Date

Attest:

By: _____
Clerk of the Board Date

The foregoing Intergovernmental Agreement IGA FCD 2024A003 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: _____
Date

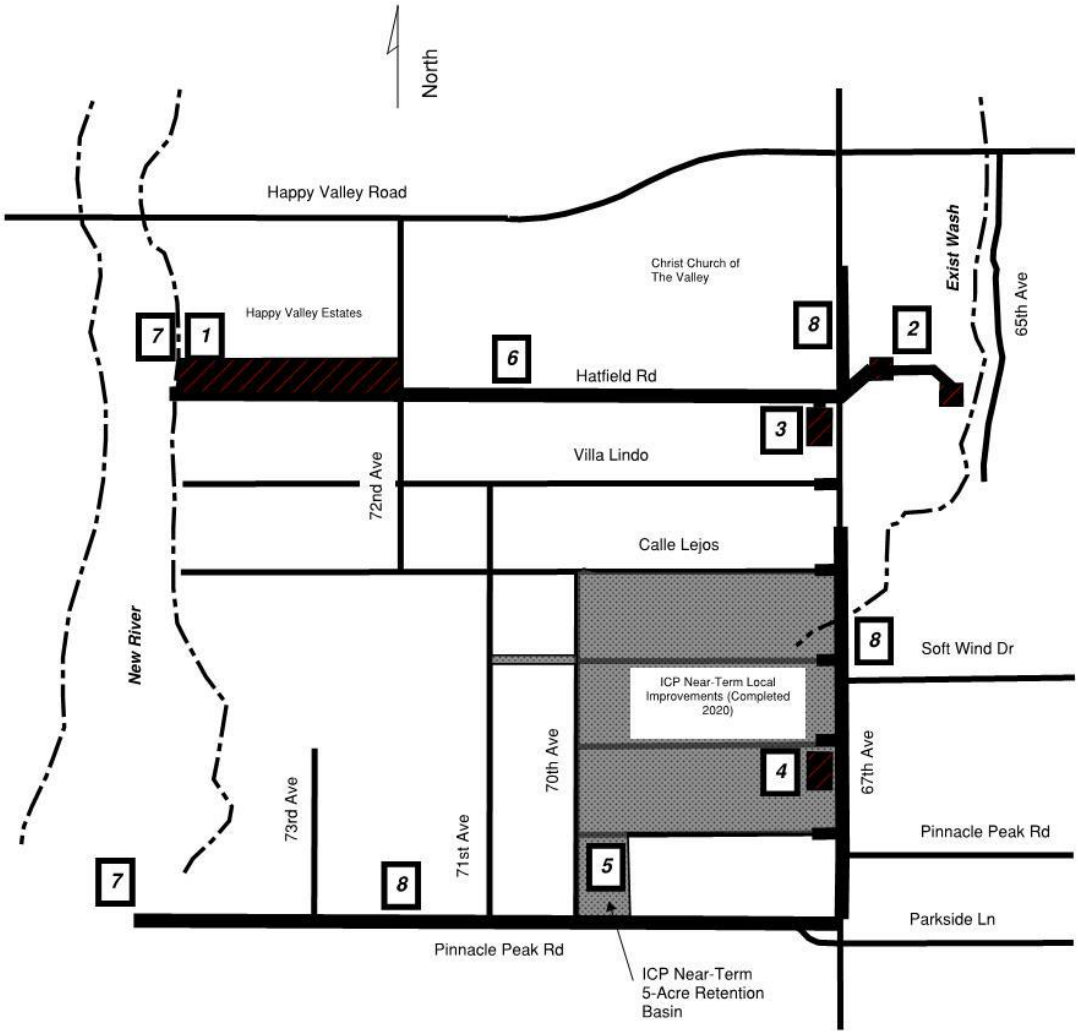
Attest:

By: _____
Agnes Goodwine
City Clerk Date

The foregoing Intergovernmental Agreement IGA FCD 2024A003 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 2024A003
EXHIBIT "A"
Project Site Map



Key Notes (Improvements Subject To This IGA)

1 *Capacity Improvements Exist Happy Valley Est Basin*

2 *Two New Regional Retention Basins and Diversion Weir Structure*

3 *New Regional Retention Basin (Currently Under Construction - Spring 2020)*

4 *New Regional Retention Basin (Alternate Location)*

5 *Existing Retention Basin Capacity Upgrades*

6 *New Regional CBC (8 feet x 5 feet)*

7 *New Outfall Bleed off Pipe To New River*

8 *New Local and Regional Storm Drain System in 67th Ave and Pinnacle Peak Rd*