

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

INTERGOVERNMENTAL AGREEMENT

between the

City of Chandler

and the

Flood Control District of Maricopa County

for the

Chandler Stormwater Management Master Plan Update

FCD 2020A017

Agenda Item _____

This Agreement is entered into by and between the City of Chandler, a municipal corporation, acting by and through its City Council, hereinafter called CHANDLER, 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.

This Agreement 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 Section (A.R.S.) 48-3603, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the DISTRICT.
2. CHANDLER is empowered by A.R.S. Section 11-952 as amended, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of CHANDLER.

BACKGROUND

3. The Chandler Stormwater Management Master Plan Update (STUDY) will evaluate existing conditions and identify deficiencies and areas of flooding, including known areas of concern along Hunt Highway. The Comprehensive Master Plan may result in future Capital Improvement Program (CIP) Projects. The Projects will be developed to provide mitigation for storms of 10-year return period or greater. The Master Plan may cover a planning horizon of up to 20 years. CHANDLER will be the lead agency for the study. This IGA will define roles and responsibilities, cost share agreements and operation & maintenance responsibilities between CHANDLER and the DISTRICT.
4. The cost of the STUDY, currently estimated at Eight Hundred Thousand Dollars (\$800,000) will be shared equally by the DISTRICT and CHANDLER.

PURPOSE OF THE AGREEMENT

5. The purpose of this Agreement is to identify and define the responsibilities of the DISTRICT and CHANDLER, for the STUDY.

TERMS OF AGREEMENT

6. The current estimated STUDY COST is Eight Hundred Thousand Dollars (\$800,000). If the costs exceed the current estimated cost, both CHANDLER and the DISTRICT must agree in writing to any additional cost or funding obligations above the agencies' cost shares.
7. The DISTRICT shall:
 - 7.1 Fund fifty percent (50%) of the STUDY, making the DISTRICT's estimated share Four Hundred Thousand Dollars (\$400,000). DISTRICT's share will be funded from the DISTRICT's secondary tax levy revenues, and DISTRICT funding shall be subject to its availability within the DISTRICT's Operating Budget.
 - 7.2 Upon award of a contract for the STUDY and within thirty (30) calendar days of receipt of an invoice, reimburse CHANDLER for one-half (1/2) of the DISTRICT's total cost share obligation, which is estimated to be Two Hundred Thousand Dollars (\$200,000).
 - 7.3 Participate in public involvement activities.
 - 7.4 Provide to CHANDLER review comments for report submittals, alternatives analyses, and conceptual plans and cost estimates within three (3) weeks of receipt of the submittals. If the DISTRICT does not respond within the three (3) weeks, the DISTRICT shall be deemed to have accepted the report without comment.
 - 7.5 Accept the STUDY in writing within 30 (thirty) calendar days of adoption of the STUDY by the Chandler City Council.

7.6 Upon completion of the contract and acceptance of the STUDY in writing, and within thirty (30) calendar days of receipt of an invoice, reimburse CHANDLER for the remainder of the DISTRICT's total cost share obligation.

7.7 DISTRICT funding for this Agreement shall be from secondary flood control tax levy revenue and is contingent upon funding availability within the DISTRICT's Operating Budget. The District's share of the cost for the STUDY will be distributed between FY22 and FY23.

8. CHANDLER shall:

8.1 Fund fifty percent (50%) of the STUDY. The estimated STUDY COST is Eight Hundred Thousand Dollars (\$800,000), making CHANDLER'S estimated share Four Hundred Thousand Dollars (\$400,000).

8.2 Serve as lead agency for the STUDY. The STUDY will be developed to provide mitigation for storms of 10-year return period or greater.

8.3 Upon award of a contract for the STUDY, invoice DISTRICT for one-half (1/2) of its total cost share obligation, which is estimated to be Two Hundred Thousand Dollars (\$200,000).

8.4 Be responsible for initiating public involvement activities.

8.5 Provide to the DISTRICT the interim STUDY submittals, and allow three (3) weeks from the date of the DISTRICT's receipt of the interim STUDY submittals for review and comment. CHANDLER shall incorporate the DISTRICT's comments into the STUDY as appropriate. If the DISTRICT has not responded within the three (3) week review period, it will be assumed that the DISTRICT has no comments.

8.6 Adopt the STUDY by the Chandler City Council after the completion of the contract for the STUDY.

8.7 Prior to the District's final cost share payment being made for the STUDY contract(s), provide written notification to the DISTRICT that all contract obligations have been met, all project contracts closed, and all Certificates of Performance have been received by CHANDLER.

8.8 Upon completion of the contract for the STUDY and acceptance of the STUDY in writing by the DISTRICT, prepare a final accounting including change orders and costs not previously paid and invoice the DISTRICT for the remainder of the DISTRICT's total cost share obligation, which is estimated to be Two Hundred Thousand Dollars (\$200,000).

8.9 Provide funding for this Agreement from CITY's General Fund Budget contingent on approval by the Chandler City Council. The City's share of the cost for the STUDY will be distributed between FY22 and FY23.

- 9 Permits and information from the DISTRICT and CHANDLER required for performing the STUDY shall be issued by the DISTRICT or CHANDLER at no cost to the STUDY.
- 10 Either party to this Agreement 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.
- 11 In the case of any dispute over any item 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.
- 12 The parties shall equally share the cost of project compliance and cost audit to be initiated within sixty (60) days of STUDY completion, if requested by either party. An independent auditing firm agreed to by all parties and on contract to the DISTRICT will perform the audit. Any payments or reimbursements necessary to bring the STUDY into compliance with the audit findings shall be made within forty-five (45) days of acceptance by all parties of the audit report.
- 13 Each party to this Agreement (indemnitor) shall, to the extent permissible by law, indemnify, defend and save harmless the others (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. Such indemnification obligation 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's 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.
- 14 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, Arizona 85009-6399

City of Chandler
City Manager
Mail Stop 605
P.O. Box 4008
Chandler, Arizona 85244-4008

- 15 Each party to this Agreement will pay for and not seek reimbursement for its own personnel and administrative costs associated with this STUDY, including but not limited to the following, unless specifically identified otherwise in this Agreement: engineering, permitting, management and administration.
- 16 This Agreement shall expire five (5) years from the effective date or upon completion of the STUDY 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.

- 17 This Agreement is subject to cancellation by either party pursuant to the provisions of A.R.S. Section 38-511.
- 18 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.
- 19 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.
- 20 Each party to this Agreement shall comply with A.R.S. Sections 41-4401 and 23-214, subsection A.
- 21 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.
- 22 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.
- 23 Pursuant to A.R.S. Sections 35-391.06 and 35-393.06, each party to this Agreement certifies that it does not have a scrutinized business operation, as defined in A.R.S. Section 35-391 and 35-393, in either Sudan or Iran.

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
A Municipal Corporation

Recommended by:

Michael A. Fulton, Director

Date

Approved and Accepted:

By: _____
Chairman, Board of Directors Date

Attest:

By: _____
Clerk of the Board Date

The foregoing Intergovernmental Agreement FCD 2020A017 has been reviewed pursuant to A.R.S. Section 11-952, 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 the Flood Control District of Maricopa County under the laws of the State of Arizona.

Deputy County Attorney

Date

CITY OF CHANDLER

City of Chandler, a Municipal Corporation

Kevin Hartke, Mayor

Date

ATTEST:

Dana DeLong, City Clerk

Date

The foregoing Intergovernmental Agreement FCD 2020A017 has been reviewed pursuant to A.R.S. Section 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 Chandler under the laws of the State of Arizona.

Kelly Schwab, City Attorney

Date

