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

INTERGOVERNMENTAL AGREEMENT

between the

CITY OF CHANDLER

and the

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

for the

DESIGN, RIGHTS-OF-WAY ACQUISITIONS AND UTILITY RELOCATIONS

of

DETROIT BASIN AREA DRAINAGE IMPROVEMENTS

IGA FCD 2021A001

Agenda Item ____________________

This Intergovernmental Agreement (Agreement) is entered into by and between the City of Chandler, a municipal corporation, acting by and through its City Council, 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.

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, as amended, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the CITY.

BACKGROUND

3. The City of Chandler Storm Water Master Plan Update was completed in 2006 and recommended several improvements that would provide a regional flood control benefit by reducing flooding at various locations within downtown Chandler.

4. In July 2007, the CITY submitted the proposed improvements to the DISTRICT's Capital Improvement Program (CIP) prioritization procedure for fiscal year 2008-2009 The submission received a favorable rating and was recommended for inclusion in the future CIP budgets.

5. On July 8, 2008, the Board of Directors of the DISTRICT adopted Resolution FCD 2008R004 (C-69-08-058-6-00), authorizing the DISTRICT to negotiate and prepare Intergovernmental Agreements for the cost-sharing, design, rights-of-way acquisitions, construction, construction management, and future operation and maintenance of Central Chandler Storm Drain Improvements.

6. In 2009, the CITY completed the Downtown Chandler Drainage Improvements Candidate Assessment Report (CAR) to further define the recommended improvements.

7. This Agreement is for the design, rights-of-way acquisition and utility relocations for the Detroit Basin Area Drainage Improvements (herein known as the PROJECT) which will consist of a storm drain and other storm water conveyance improvements in the vicinity of the Detroit Basin to mitigate flooding caused by a 10-year storm event. The preliminary PROJECT elements are shown on Exhibit A, attached hereto and made a part hereof.

PURPOSE OF THE AGREEMENT

8. 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

9. The BACKGROUND and PURPOSE OF THE AGREEMENT provisions are hereby incorporated into the terms of this Agreement.

10. The PROJECT, as referenced herein, is described in section 7 of this Agreement.

11. The PROJECT COST, as referenced herein, solely encompasses the following costs directly associated with the PROJECT activities that are incurred after the effective date of this Agreement:

    11.1 Costs of final design.

    11.2 Costs associated with acquiring land and land rights (rights-of-way) required for the PROJECT.

    11.3 Costs of relocating conflicting utilities in place with prior rights. Conflicting utilities in place without prior rights will be relocated at their owners' expense and are not components of the PROJECT COST.

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

    12.1 Any costs associated with additional rights-of-way acquired at the CITY's request for non-flood control purposes. Such costs shall be funded solely by the CITY.

    12.2 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.

13. The PROJECT COST associated with this Agreement is estimated to be $1,200,000.

    13.1 The PROJECT COST is estimated based on the best information available at the time of this Agreement and is subject to change without amendment to this Agreement. In the event the PROJECT COST exceed the estimated amount, each PROJECT PARTNER shall be notified of such increase and, unless objection is provided, the PROJECT COST will be deemed amended with such additional costs being shared according to the same formula as is applicable to the PROJECT COST.

14. DISTRICT funding for this PROJECT shall be from secondary flood control tax levy revenue and is contingent upon funding availability within the DISTRICT's CIP.

15. CITY funding for this PROJECT is available as identified in the CITY's Capital Improvement Plan.

16. The CITY shall:

16.1 Fund 50% of the PROJECT COST, making the CITY's estimated share $600,000.

16.2 Serve as the lead agency for PROJECT design.

16.2.1 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.

16.3 Serve as the lead agency for PROJECT rights-of-way (fee or easement) acquisition.

16.3.1 Obtain permanent and temporary rights-of-way required for the PROJECT.

16.3.2 Provide use of 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.

16.3.3 If, in the future, it is mutually agreed between the PROJECT PARTNERS that, property acquired for the PROJECT 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 its 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.

16.4 Serve as the lead agency for utility relocations required for the PROJECT.

16.4.1 Cause to be relocated conflicting utilities within the CITY's rights-of-way.

16.4.2 Cause to be relocated at no cost to the PROJECT all private utilities that are in place by permit and/or without prior rights that are in conflict with the PROJECT.

16.4.3 As part of the PROJECT COST, cause to be relocated all private utilities that are in place by permit and with prior rights that are in conflict with the PROJECT.

16.5 Provide to the DISTRICT interim PROJECT submittals, allow 3 weeks for review and comment, and incorporate the DISTRICT comments into the PROJECT as appropriate.

16.6 For design PROJECT COST, the CITY shall invoice the DISTRICT for 50% of its cost share at the time of award of the design contract, and the other 50% of the cost share at the completion of the contract including any change orders.

16.7 Prior to invoicing the DISTRICT for its final cost share payment for the design contract(s), the CITY shall 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 the CITY.

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

17. The DISTRICT shall:

17.1 Fund 50% of the PROJECT COST, making the DISTRICT's estimated share $600,000.

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

17.3 Participate in PROJECT public involvement activities.

17.4 Provide review comments to the CITY on periodic PROJECT submittals within 3 weeks of receipt.

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

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

18.1.1 Each party to this Agreement retains the legal right to inspect the records of the other party and any contractors' or subcontractors' employees performing work under this Agreement to verify compliance with A.R.S. Sections 41-4401 and 23-214(A).

18.1.2 Failure by either party to this Agreement to comply with A.R.S. Sections 41-4401 and 23-214(A) shall be deemed a breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

18.2 Require that any contractor selected for the PROJECT:

18.2.1 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);

18.2.2 Agree that a breach of the warranty under paragraph 18.2.1 shall be deemed a material breach of contract and is subject to penalties up to and including termination of the contract;

18.2.3 Agree that the other party to this Agreement retains the legal right to inspect the papers of the contractor or subcontractor employee(s) who work(s) on this PROJECT to ensure that contractor or subcontractor is complying with the warranty under paragraph 18.2.1.

18.2.4 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.

18.3 Have the right, following mutual 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.

18.4 Agree to use their best efforts and enter into good faith negotiations to resolve any disputed matters. However, this shall not limit the rights of the PROJECT PARTNERS to seek any remedies provided by law.

18.5 Agree to equally share the cost of PROJECT compliance and cost audit to be initiated within 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 45 days of the audit findings by the PROJECT PARTNERS.

19. 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 or reimbursements.

20. If mutually acceptable to the PROJECT PARTNERS, PROJECT invoicing may be conducted periodically based on actual PROJECT costs incurred, no more frequently than quarterly, and no less frequently than annually, in lieu of invoicing timelines otherwise established in this Agreement.

21. Each PROJECT PARTNER shall, as "Indemnitor," to the extent permissible by law, indemnify, defend and hold harmless the other PROJECT PARTNER ("Indemnitee") 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 the CITY offer to make or make the PROJECT available for any non-flood control uses, the CITY shall, to the extent permissible by law, indemnify, defend, and save harmless the DISTRICT, including agents, officers, directors, and employees thereof, from any and all loss or expense incurred as a result of any claim or suit without limitation. 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.

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

23. 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 indemnification provisions of this Agreement shall survive the expiration of this Agreement.

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

25. 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.

26. 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.

SIGNATURE PAGES FOLLOW

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 2021A001 has been reviewed pursuant to A.R.S. Section 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 CHANDLER
A Municipal Corporation

By: ____
Kevin Hartke, Mayor Date

Attest:

By: ____
Dana DeLong, City Clerk Date

The foregoing Intergovernmental Agreement IGA FCD 2021A001, 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.

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

____
Kelly Schwab, City Attorney Date MWB

IGA FCD 2021A001

EXHIBIT A
Drainage Improvements