

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

**Intergovernmental Agreement**

for the

**Design, Rights-of-Way Acquisition, Utility Relocations, Construction,  
Construction Management and Operation and Maintenance**

of the

**Beardsley Road and 55th Avenue Drainage Improvement Project**

between the

**City of Glendale**

and the

**Flood Control District of Maricopa County**

**IGA FCD 2011A016**

**Agenda Item** 3

This Intergovernmental Agreement, hereinafter the Agreement, is entered into by and between the Flood Control District of Maricopa County, a municipal corporation and political subdivision of the State of Arizona, acting by and through its Board of Directors, hereinafter the DISTRICT, and the City of Glendale, a municipal corporation, acting by and through its City Council, hereinafter the CITY.

This Agreement shall become effective as of the date it has been executed by all parties and may be recorded by the Maricopa County Recorder.

**DATE FILED WITH THE MARICOPA COUNTY RECORDER** \_\_\_\_\_

**STATUTORY AUTHORIZATION**

1. The DISTRICT is empowered by Arizona Revised Statutes (A.R.S.) § 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., as amended, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the CITY.

COB554-9-1-1--  
mcdevittr

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**Agenda Item C.69.12.045.3.00**

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This Agreement shall become effective as of the date it has been executed by all parties and may be recorded by the Maricopa County Recorder.

**DATE FILED WITH THE MARICOPA COUNTY RECORDER March 19, 2012**

**STATUTORY AUTHORIZATION**

1. The DISTRICT is empowered by Arizona Revised Statutes (A.R.S.) § 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.) § 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. On April, 27 2011 the Board of Directors of the DISTRICT (the Board) adopted Resolution FCD 2009R003A (C-69-09-062-6-01) authorizing the DISTRICT to cost-share in projects recommended under the DISTRICT's Small Project Assistance Program.
4. Under the DISTRICT's Small Project Assistance Program for Fiscal Year 2013, the CITY proposed the Beardsley Road and 55th Avenue Drainage Improvement project to provide the following benefits:
  - 4.1 Reduce the flood hazard to Maricopa County Assessor's Parcel Number (APN) 200-24-011E, that has experienced historic flooding; and
  - 4.2 Reduce the flood hazard to roadways in the vicinity of the PROJECT that have experienced historic flooding.
5. The Beardsley Road and 55th Avenue Drainage Improvement project scored 6th among 16 submittals for the Fiscal Year 2013 program, and has been recommended by DISTRICT staff.

## PURPOSE OF THE AGREEMENT

6. The purpose of this Agreement is to identify and define the responsibilities of the DISTRICT and the CITY for the design, rights-of-way acquisition, utility relocations, construction, construction management, and operation and maintenance of the Beardsley Road and 55th Avenue Drainage Improvement project.

## TERMS OF AGREEMENT

7. The PROJECT is defined as the features required to accomplish the benefits enumerated in paragraph 4 of this Agreement. Features of the PROJECT, as envisioned at the time of this Agreement, are represented in Exhibit A but are subject to change without amendment to this Agreement.
8. Construction costs associated with the flood control features of the PROJECT completed and invoiced (by the CITY to the DISTRICT) between July 1, 2012 and June 30, 2013 are hereinafter referred to as the PROJECT CONSTRUCTION COST. This term shall not be amended.
  - 8.1 The PROJECT CONSTRUCTION COST is estimated to be \$60,000 but is subject to change without amendment to this Agreement.
  - 8.2 The following costs are expressly excluded from the PROJECT CONSTRUCTION COST shared under this Agreement:
    - 8.2.1 Costs associated with design, rights-of-way acquisition, permitting, construction management (including materials testing and survey work), operations and maintenance.
    - 8.2.2 Costs associated with multi-use, landscaping or aesthetic features.
    - 8.2.3 Personnel and administrative costs incurred by either party.

9. The DISTRICT shall:

- 9.1 Fund seventy-five percent of the PROJECT CONSTRUCTION COST incurred and invoiced before June 30, 2013, not to exceed \$250,000 in accordance with the DISTRICT's Small Project Assistance Program, making the DISTRICT's estimated share \$45,000. DISTRICT funds will be from the DISTRICT's secondary tax levy revenues and DISTRICT funding shall be contingent upon the availability of DISTRICT Capital Improvement Program Budget funding. This term shall not be amended.
- 9.2 Remit, within 30 days of receipt, payment for invoices issued per paragraph 10.2.
- 9.3 Participate in a final inspection of the completed PROJECT with the CITY.

10. The CITY shall:

- 10.1 Fund the PROJECT CONSTRUCTION COST, less the DISTRICT's cost-share, making the CITY's estimated PROJECT CONSTRUCTION COST share \$15,000; and fully fund all PROJECT costs outside the PROJECT CONSTRUCTION COST. Explicitly, funding for any work completed and/or invoiced before July 1, 2012 or after June 30, 2013 will be the full responsibility of the CITY. This term shall not be amended.
- 10.2 Invoice the DISTRICT as follows:
  - 10.2.1 Within 30 days of award of a PROJECT construction contract, invoice the DISTRICT for one-half (1/2) of its share of the PROJECT CONSTRUCTION COST.
  - 10.2.2 Within 30 days of completion of construction of the PROJECT, or no later than June 30, 2013 (whichever occurs first), prepare a final accounting including change order costs not previously paid, and invoice the DISTRICT for the remainder of its share of the PROJECT CONSTRUCTION COST incurred to date; or reimburse the DISTRICT for any previous over-payments.
- 10.3 Design the PROJECT, provide PROJECT plans and specifications to the DISTRICT (including interim submittals as appropriate) for review and comment, allow three weeks for review, and incorporate DISTRICT comments, if any, into the PROJECT as appropriate.
- 10.4 Obtain all permits required for the PROJECT.
- 10.5 Relocate conflicting utilities.
- 10.6 Construct the PROJECT, provide construction management, and provide any proposed construction change orders to the DISTRICT for concurrence.
- 10.7 Coordinate a final inspection of the completed PROJECT with the DISTRICT.
- 10.8 Be responsible for operation and maintenance of the completed PROJECT. 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 and any and all aesthetic, park, and public use features, maintenance of landscaping, irrigation, multi-use trails and berms, removal of trash and debris, electricity and other operation

costs for the facilities, vandalism repair and replacement, and structural repair and replacement of the flood control structures.

10.8.1 The CITY may delegate this responsibility to a third party but will remain ultimately accountable to the DISTRICT under this Agreement.

10.9 Require that any contractor selected for the PROJECT:

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

10.9.2 Agree that a breach of the warranty under paragraph 10.9.1 shall be deemed a material breach of contract and is subject to penalties up to and including termination of the contract;

10.9.3 Agree that the DISTRICT retains 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 10.9.1;

10.9.4 Certify that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.

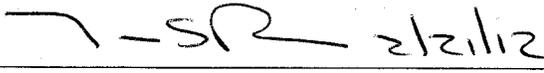
11. Any local permits required for the PROJECT that are issued by either party shall be issued at no cost to the PROJECT.
12. Either party to this Agreement may, with mutual written agreement of all parties, delegate responsibilities to another party. Any delegation, however, shall not relieve the delegating party of its original responsibilities as defined herein.
13. Each party certifies that it has disclosed to the other party any known ongoing or anticipated litigation (to which it is a party) related to the PROJECT or PROJECT-affiliated flooding hazards, and shall continue to make such disclosures through the duration of this Agreement.
14. In the case of any dispute over any items 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.
15. Each party to this Agreement 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. The parties to this Agreement agree to equally share the cost of a PROJECT compliance and cost audit to be initiated within 60 days of PROJECT completion, if requested by either party. An independent auditing firm agreed to by both parties and on contract to the DISTRICT 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 acceptance by all parties of the audit report.

17. 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. The CITY shall further, to the extent permissible by law, indemnify, defend and save harmless the DISTRICT 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 recreational use of the PROJECT in the event that it elects to invite such use (with or without DISTRICT concurrence). Such indemnification obligations 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 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.
18. Each party to this Agreement shall comply with A.R.S. §§ 41-4401 and 23-214(A).
- 18.1 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. §§ 41-4401 and 23-214(A).
- 18.2 Failure by either party to this Agreement to comply with A.R.S. §§ 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 the Agreement.
19. Pursuant to A.R.S. §§ 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. §§ 35-391 and 35-393, in either Sudan or Iran.
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 | City of Glendale          |
| Chief Engineer and General Manager        | Engineering Director      |
| 2801 West Durango Street                  | 5850 West Glendale Avenue |
| Phoenix, Arizona 85009-6399               | Glendale, Arizona 85301   |
21. This Agreement shall expire either (a) two years from the date of execution by all parties, or (b) upon both completion of the PROJECT and satisfaction of all funding obligations and reimbursements associated with this Agreement, whichever is the first to occur. However, by mutual written agreement of all parties, this Agreement may be amended or terminated except as expressly stated in this Agreement. The operation and maintenance and indemnification provisions of this Agreement shall survive the expiration of this Agreement.
22. This Agreement is subject to the provisions of A.R.S. § 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.

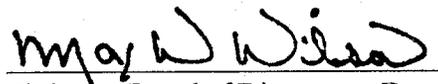
24. If legislation is enacted after the effective date of this Agreement that changes the relationship or structure of one or more parties to this Agreement, the parties agree that this Agreement shall be renegotiated at the written request of either party.

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY  
A Municipal Corporation

Recommended by:

  
\_\_\_\_\_  
Timothy S. Phillips, P.E. Date  
Chief Engineer and General Manager

Approved and Accepted:

By:  MAR 14 2012  
\_\_\_\_\_  
Chairman, Board of Directors Date

Attest:

  
By: \_\_\_\_\_ MAR 14 2012  
Clerk of the Board Date

The foregoing Intergovernmental Agreement FCD 2011A016 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 GLENDALE  
A Municipal Corporation

Approved and Accepted By:

Haratis Skuth for 1-12-12  
Ed Beasley Date  
City Manager

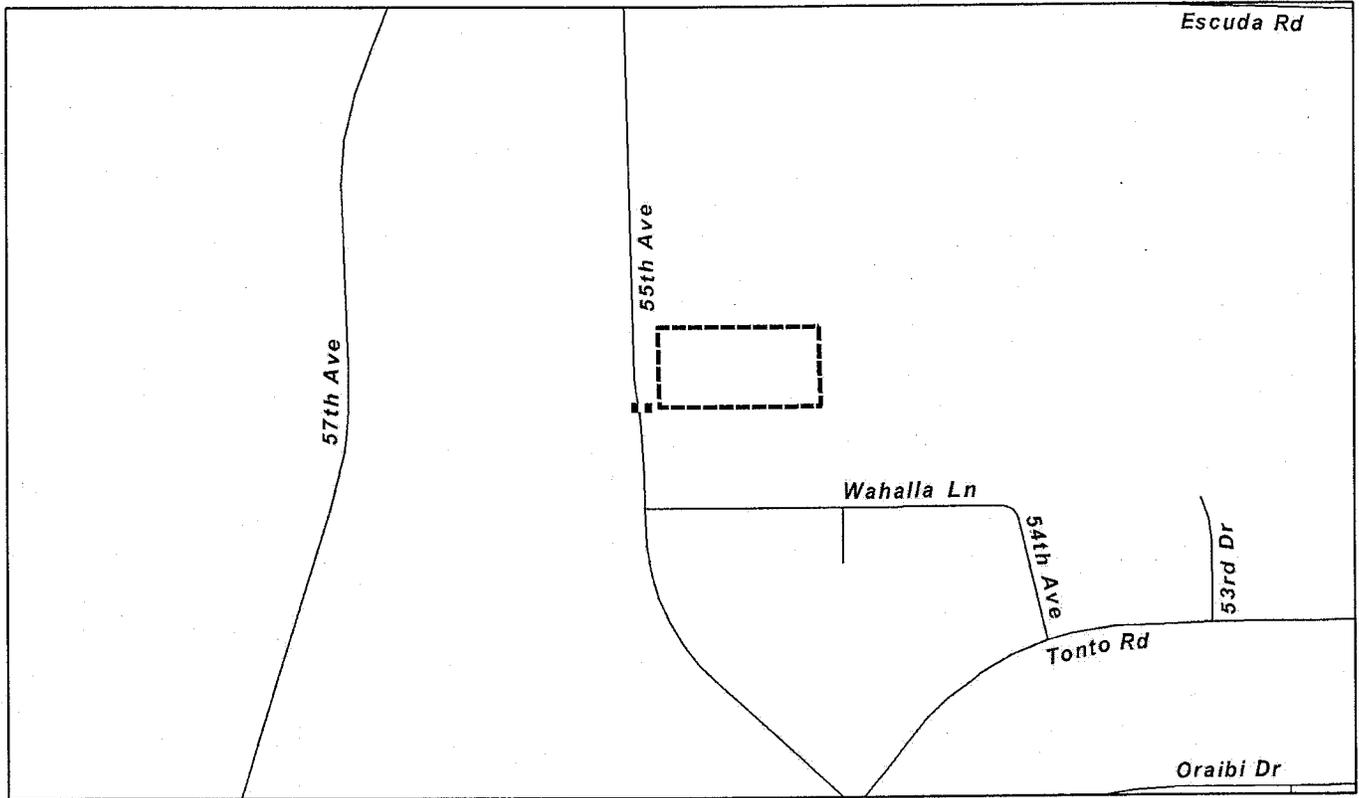
Attest:

By: Samuel Hernandez 01/12/12  
City Clerk Date

The foregoing Intergovernmental Agreement FCD 2011A016 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 Glendale under the laws of the State of Arizona.

[Signature] 1-17-12  
City Attorney Date

# Exhibit A: Beardsley Road and 55th Avenue Drainage Improvement Project



..... Proposed Valley Gutter

□ Flooded Property

