

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE CITY OF PHOENIX AND THE CITY OF GLENDALE  
PERTAINING TO STORMWATER DISCHARGE VIA THE 51<sup>ST</sup>  
AVENUE AND PINNACLE PEAK DRAINAGE CHANNEL  
LOCATED IN GLENDALE**

This Intergovernmental Agreement (IGA) between the City of Phoenix, a municipal corporation of the State of Arizona (hereinafter called "Phoenix") and the City of Glendale, a municipal corporation of the State of Arizona (hereinafter called "Glendale") is entered into and effective this 22 day of October, 2013 ("Effective Date").

**Recitals**

A. Phoenix and Glendale have identified in Exhibit A that portion of the 51<sup>st</sup> Avenue and Pinnacle Peak Road drainage channel located within the boundaries of Glendale and generally described as that portion of Section 17, Township 4 North, Range 2 East along the 51<sup>st</sup> Avenue alignment south of Pinnacle Peak Road, to which Glendale will provide access as described herein, for Phoenix to discharge stormwater collected from Pinnacle Peak Road - 55<sup>th</sup> Avenue to 51<sup>st</sup> Avenue ("Pinnacle Peak Road").

B. Phoenix and Glendale agree that development of Pinnacle Peak Road is in the best interests of both Phoenix and Glendale.

C. Phoenix is funding and installing full roadway improvements on Pinnacle Peak Road from 55<sup>th</sup> Avenue to 45<sup>th</sup> Avenue with a roadway segment along a portion of the northern boundary of Glendale. Improvements include grading and drainage, paving, hardscape, street lighting and associated underground electrical utilities, 55<sup>th</sup> Avenue signalized intersection improvements (including entry into Glendale's Thunderbird Conservation Park parking lot), and an eastbound deceleration lane and driveway park entry improvements located approximately 623 feet east of the 55<sup>th</sup> Avenue signalized intersection.

D. Phoenix has no available drainage tributaries located within its jurisdiction in which to discharge captured stormwater from Pinnacle Peak Road.

E. Phoenix and Glendale agree that discharge of collected stormwater into the 51<sup>st</sup> Avenue drainage channel ("Outfall") is necessary to meet drainage requirements for the Pinnacle Peak Road improvements.

F. The parties have agreed that there is no related fee structure required of Phoenix beyond the stipulations and improvement exhibits in this IGA.

## **Agreement**

NOW, THEREFORE, in consideration of their respective rights, privileges, and obligations, the parties agree as follows:

### **1.0 Effective Date and Term**

This IGA is effective on the date first listed above. All covenants, rights, and obligations of this IGA are enforceable on that date unless a specific date is otherwise set forth herein.

The Parties intend this IGA to exist and be enforceable for a period of 50 years with additional terms renewing automatically unless terminated by either or both parties as set forth in this IGA.

### **2.0 Definitions**

For purposes of this IGA only, the following definitions apply:

2.1 “Outfall” means the concrete headwall and all immediately connecting appurtenances at the upstream inlet of the 51<sup>st</sup> Avenue drainage channel located on the south side of Pinnacle Peak Road within the City of Glendale.

2.2 “Stormwater” means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

2.3 “Pinnacle Peak Road” means Pinnacle Peak Road from 55<sup>th</sup> Avenue to 51<sup>st</sup> Avenue and its improvements including, but not limited to, grading and drainage, paving, hardscape, street lighting and associated electrical utilities, southbound 55<sup>th</sup> Avenue signalized intersection improvements (including the Thunderbird Conservation Park entry driveway and gate), eastbound Pinnacle Peak Road deceleration lane, and driveway park entry improvements located approximately 623 feet east of the 55<sup>th</sup> Avenue signalized intersection.

### **3.0 Glendale Responsibilities**

3.1 Allow Phoenix to convey stormwater from Pinnacle Peak Road into Glendale’s drainage channel located south of Pinnacle Peak Road at 51st Avenue.

3.2 Provide Phoenix with all necessary drainage and temporary construction easements needed to construct and maintain the storm drainage improvements and Outfall facilities at no cost to Phoenix. Phoenix will prepare and record, at its sole expense, all necessary easement documents.

3.3 Maintain all Thunderbird Conservation Park (“Park”) improvements built for Glendale by Phoenix that are located within the city limits of Glendale.

3.4 Allow the construction contractor the option of using the future Park driveway entrance area just south of 55th Avenue located west of the existing Park parking lot as a temporary staging area during construction.

3.5 Provide Phoenix with any Glendale right-of-way permits necessary at no cost to complete project construction.

3.6 Provide the Maricopa County Flood Control District with written documentation stating acceptance of project plans and design approval.

#### **4.0 Phoenix Responsibilities**

4.1 Assume all costs for design, construction, installation, operation and maintenance of pipes, inlets, Outfalls, or any other conveyance structures required by, and acceptable to Glendale, necessary for the release of stormwater from Pinnacle Peak Road into the Glendale channel at 51<sup>st</sup> Avenue. Phoenix shall construct in a good, workmanlike manner all pipes, Outfalls and conveyance structures delivering stormwater into the Glendale channel at 51<sup>st</sup> Avenue. During the Phoenix construction process, Phoenix shall comply with all laws, codes, rules and regulations and orders of all governmental authorities maintaining jurisdiction of the location.

4.2 Reimburse Glendale for all costs associated with controlling the vectors (mosquito breeding prevention protocols) associated with the release of additional stormwater at the 51<sup>st</sup> Avenue channel Outfall.

4.3 Obtain, at its sole expense, permits, other than City of Glendale permits, necessary under applicable federal, state, or local statutes, ordinances or regulations for the release of stormwater into the 51<sup>st</sup> Avenue channel.

4.4 Take all reasonable and necessary actions within its authority and jurisdiction to ensure that only stormwater meeting all state and federal standards and definitions for stormwater shall be released to the channel and that such releases into the channel comply with applicable requirements of the Clean Water Act, Arizona or National Pollutant Discharge Elimination System (AZPDES or NPDES) regulations or any other applicable Glendale, Phoenix, or Maricopa County permit requirements.

4.5 Assume liability for penalties assessed against Phoenix or Glendale in the event Phoenix stormwater entering the channel at 51<sup>st</sup> Avenue from the Pinnacle Peak Road is discovered to be non-compliant with the AZPDES or NPDES regulatory requirements.

4.6 As long as this or a successor IGA is in effect, maintain the 51<sup>st</sup> Avenue Outfall and inspect outfall storm-drain piping connections, headwall, channel erosion control mechanisms, and downstream degradation resulting from peak (2 year) flow events. Inspections shall be conducted in accordance with the schedule outlined in the Phoenix Storm Water Management Plan, but in no case shall inspections be performed less than annually.

4.7 If an illicit discharge, as defined in 40 CFR 122.26(b)(2) is identified in the channel at the Outfall, investigate such discharge as required by its Municipal Separate Storm Sewer System (MS4) permit and provide inspection results to Glendale within ten (10) days of investigation completion.

4.8 Complete construction of the signalized intersection (55<sup>th</sup> Avenue and Pinnacle Peak Road), driveway, drainage and Outfall improvements as reviewed and approved by Glendale as part of the Pinnacle Peak Road improvement project. Improvements include 55<sup>th</sup> Avenue/Pinnacle Peak Road signalized intersection improvements, park intersection surface entries, gates and the east park entrance driveway improvements as shown on attached approved project plan Exhibit A<sub>[T1][RR2]</sub>.

## **5.0 Indemnity**

5.1 Phoenix, to the extent permitted by law, agrees to indemnify, defend, and hold harmless, Glendale from and against all claims, losses, liability, including liability and costs associated with an illicit discharge, claim-related or court-related costs, or expenses (including such reasonable attorney fees as may be assessed by law) hereinafter collectively referred to as “claims” arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims are proximately caused by the negligence, misconduct or other fault of Phoenix, its agents or employees in the performance of its obligations under this IGA.

5.2 Glendale, to the extent permitted by law, agrees to indemnify, defend and hold harmless, Phoenix from and against all claims, losses, liability, costs or expenses (including such reasonable attorney fees as may be assessed by law) hereinafter collectively referred to as “claims” arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims are proximately caused by the negligence, misconduct or other fault of Glendale, its agents or employees in the performance of its obligations under this IGA.

## **6.0 Remedies**

If either party should default in the performance of its respective obligations under this IGA, the party not in default shall be entitled to recover in any suit or proceeding to enforce its rights under this IGA, reasonable attorney fees and all costs associated with such action as ordered by the court. The foregoing shall not in any way limit or restrict

any right or remedy at law or equity which would otherwise be available to such party not in default.

### **7.0 Amendment and Termination**

The parties may amend or terminate this IGA in whole or in part upon mutual written agreement. Either party may terminate this IGA upon a forty-eight (48) month written notice to the other party. Upon termination, Phoenix shall disconnect its stormwater connection from the headwall.

### **8.0 Entire Agreement**

The terms, covenants, and conditions of this IGA constitute the entire agreement between the parties and no understanding or obligation not herein expressly set forth shall be binding upon them. This IGA may not be modified or amended in any way unless the modification or amendment is in writing and signed by the parties.

### **9.0 Notice**

Any notice, demand or request provided for in this IGA must be in writing and shall be deemed properly served, given, or made, if delivered in person or sent by registered or certified mail, postage pre-paid to the person specified below:

City of Phoenix  
Street Transportation Director  
200 W. Washington, Suite 900  
Phoenix, Arizona 85003-1611

City Manager  
City of Glendale  
5850 W. Glendale Avenue  
Glendale, Arizona 85301

and copy to

and copy to

City of Phoenix  
c/o City Attorney  
200 W. Washington, Suite 1300  
Phoenix, Arizona 85003-1611

City Attorney  
c/o City of Glendale  
5850 W. Glendale Avenue  
Glendale, Arizona 85301

### **10.0 Cancellation of Contract**

All parties hereby acknowledge that this IGA is subject to cancellation by either party under the provisions of A.R.S. § 38-511.

### **11.0 Assignment**

Neither party shall have the right to assign, sublet, or lease the rights or obligations of this IGA, or any interest herein, without the prior written consent of the other party which consent shall not be unreasonably withheld. Any attempt to assign, sublet or lease the

rights or obligations of this IGA without the consent of the non-assigning party shall be cause for immediate termination of this IGA by the non-assigning party.

**12.0 No Third Party Beneficiaries**

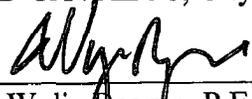
This IGA is solely for the benefit of the parties, and does not create, nor shall it be construed to create, rights in any third party. No third party may enforce the terms and conditions of this IGA.

**13.0 Iran/Sudan Prohibitions**

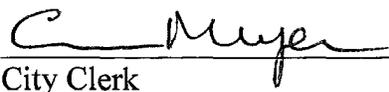
The parties certify under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that they do not have, and during the term of this IGA will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

IN WITNESS WHEREOF, the parties have executed this IGA as of the Effective Date first written above.

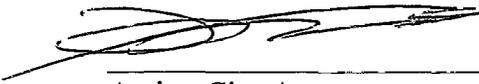
CITY OF PHOENIX, a municipal corporation  
DAVID CAVAZOS, City Manager

By:   
Wylie Gearup, P.E., PhD  
Street Transportation Director

ATTEST:

  
City Clerk

APPROVED AS TO FORM

  
Acting City Attorney



CITY OF GLENDALE, an Arizona municipal corporation,

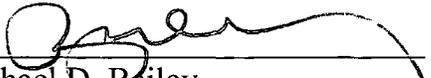
  
Brenda S. Fischer  
City Manager

CITY CLERK DEPT.  
2013 JUN 22 PM 3:31

ATTEST:

  
City Clerk

APPROVED AS TO FORM

  
Michael D. Bailey  
City Attorney, City of Glendale

## **EXHIBIT A**

**Exhibit A – Page 1 of 5**

***Exhibit A (5 pages total) is intended to identify general improvements such as the 51<sup>st</sup> Avenue drainage channel outfall and piping, 55<sup>th</sup> Avenue SB southern signalized intersection, EB Pinnacle Peak secondary parking lot entry / exit and gate improvement details as referenced in this IGA. Excessive information that would have obstructed the exhibits intent such as survey data, offsets etc. were removed only for the purpose of presentation of these exhibits.***

Exhibit A – Page 1 of 5 – Content summary of Exhibit A documentation

Exhibit A – Page 2 of 5 – Plan sheet identifying outfall location improvements to 51<sup>st</sup> Avenue Drainage Channel:

Outfall piping, headwall, channel & slope protection and rip-rap stream bed protection.

Exhibit A – Page 3 of 5 – Plan sheet identifying southern south bound signalized intersection improvements:

Park entryway utilizing colored concrete, gate and gate entry location, associated curb/gutter/sidewalks and drainage features.

Exhibit A – Page 4 of 5 – Plan sheet identifying secondary parking lot entry at STA 56+46.5:

Park entryway utilizing colored concrete, gate and gate entry location, associated curb/gutter/sidewalks and drainage features.

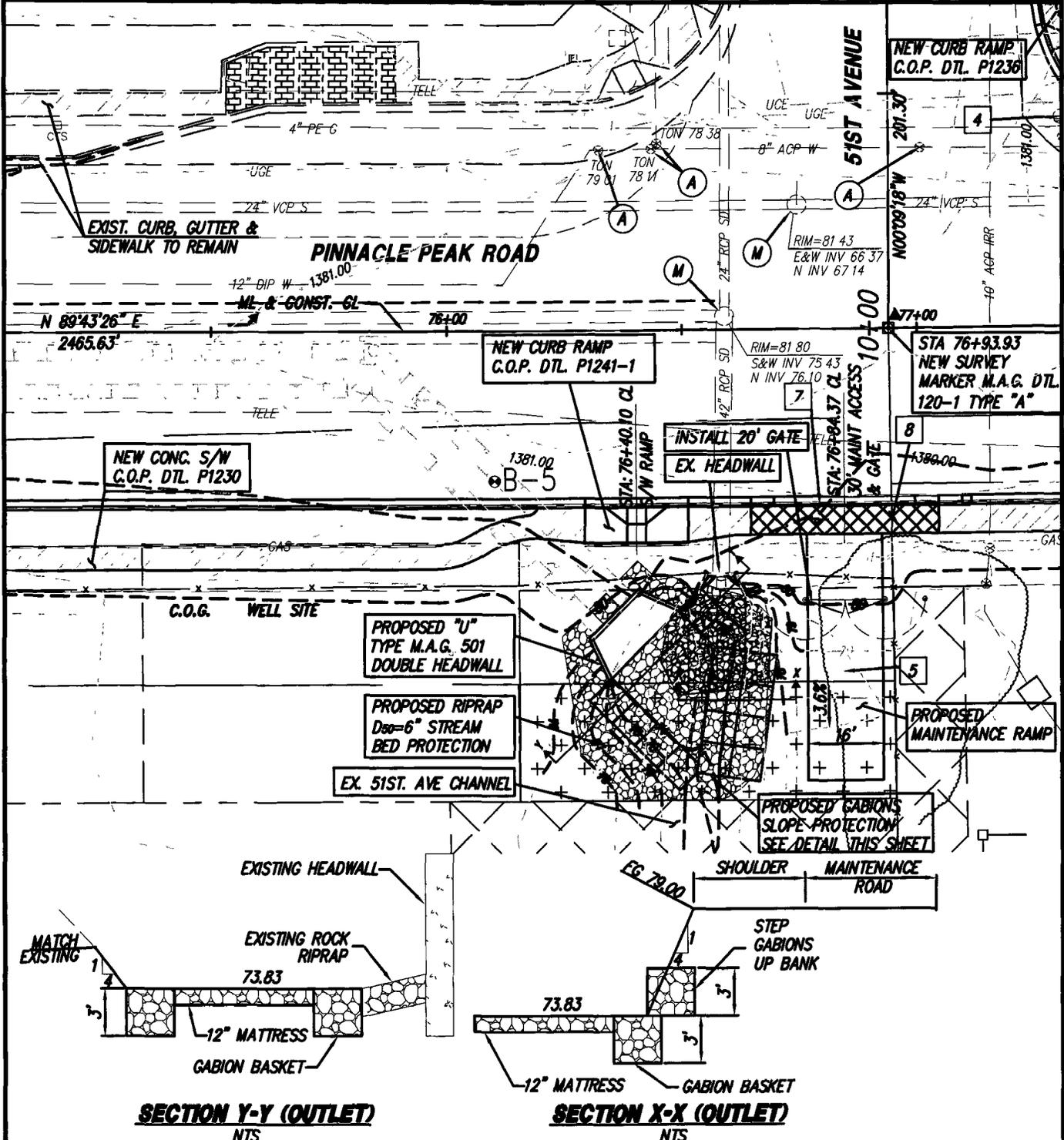
Exhibit A – Page 5 of 5 – Plan sheet identifying entry / exit gate details for parking lot entry points (55<sup>th</sup> Avenue signalized intersection and EB Pinnacle Peak).



**HUBBARD  
ENGINEERING**

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1840 S Stapley Dr  
Suite 137  
Mesa, AZ 85204  
Ph 480 892 3313



**SECTION Y-Y (OUTLET)**  
NTS

**SECTION X-X (OUTLET)**  
NTS

**PINNACLE PEAK ROAD  
EXHIBIT A  
51st AVE. OUTFALL LOCATION  
City of Phoenix, Maricopa County, Arizona**

Project No. 11153	Date 04/08/13	Page 2 of 5
Project Manager MICHAEL WOLF	Project Eng.	





