

RESOLUTION NUMBER 2022-14

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA, AUTHORIZING THE TOWN TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY FOR DESIGN, ACQUISITION OF RIGHTS-OF-WAY, UTILITY RELOCATIONS, CONSTRUCTION, CONSTRUCTION MANAGEMENT AND OPERATION AND MAINTENANCE OF THE MOCKINGBIRD LANE DRAINAGE IMPROVEMENTS FROM 56TH STREET TO INVERGORDON ROAD.

WHEREAS, the Town of Paradise Valley (“Town”) and the Flood Control District of Maricopa County (“District”) desire to work in cooperation and cost-share in the Mockingbird Lane Drainage Improvements from 56th Street to Invergordon Road project (the “Project”) in order to reduce the potential flood hazard to properties; and

WHEREAS, the Town and the District County also desire enter into Intergovernmental Agreement FCD2022A011 (the “IGA”) to define responsibilities of the Town and the District related to design, rights-of-way acquisition, utility relocations, construction, construction management, and operation and maintenance of the Project; and

WHEREAS, pursuant to the IGA, the District will be responsible to reimburse the Town for fifty percent (50%) of the Project costs incurred; and

WHEREAS, pursuant to the IGA, the Town will be responsible to fund Project design and construction costs not reimbursed by the District, such as non-flood control related purposes.

NOW THEREFORE, BE IT RESOLVED, by the Town Council of the Town of Paradise Valley as follows:

Section 1. The Recitals above are incorporated as if fully set forth herein.

Section 2. Intergovernmental Agreement FCD2022A011 between the Town and Flood Control District of Maricopa County, is approved in substantially the form attached hereto as Exhibit A and incorporated herein. The Town’s approval of the IGA is conditioned upon the subsequent approval of the District.

Section 3. The Town Manager is authorized to execute the Intergovernmental Agreement FCD2022A011 on behalf of the Town and the Town Clerk is authorized and directed to attest to the same.

Section 4. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the Town of Paradise Valley,
Arizona this 9th day of June, 2022.

Jerry Bien-Willner, Mayor

ATTEST:

Duncan Miller, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney

EXHIBIT A
TO
RESOLUTION 2022-14

[Intergovernmental Agreement FCD2022A011]

See following pages.

INTERGOVERNMENTAL AGREEMENT

Between

THE TOWN OF PARADISE VALLEY

and the

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

for the

**DESIGN, RIGHTS-OF-WAY ACQUISITIONS, UTILITY RELOCATIONS, CONSTRUCTION,
CONSTRUCTION MANAGEMENT, AND OPERATION AND MAINTENANCE**

of the

MOCKINGBIRD LANE DRAINAGE IMPROVEMENTS PROJECT

IGA FCD 2022A011

Agenda Item _____

This Intergovernmental Agreement (this “Agreement”) is entered into by and between the Flood Control District of Maricopa County, a political subdivision of the State of Arizona, acting by and through its Board of Directors (the “DISTRICT”), and the Town of Paradise Valley, a municipal corporation, acting by and through its Mayor and Town Council, (the “TOWN”). The TOWN and the DISTRICT are collectively referred to as the “PROJECT PARTNERS” and individually as a “PROJECT PARTNER.”

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.) § 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 TOWN is empowered by A.R.S. § 9-240(B) and 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 TOWN.

BACKGROUND

3. The Lower Indian Bend Wash Area Drainage Master Study/Plan (ADMS/P) was completed by the DISTRICT in December 2017. The ADMS/P evaluated existing drainage structures, identified drainage problems, analyzed the extent of flooding, and developed alternative drainage solutions and a Recommended Drainage Master Plan (PLAN) was selected for the area.
4. The Lower Indian Bend Wash watershed extends from Shea Boulevard to the north, Middle Indian Bend Wash to the east, Salt River to the south, and 56th Street to the west.
5. The Mockingbird Lane Drainage Improvement Project (PROJECT) is one of the recommended structural drainage solutions to mitigate flooding hazards of the PLAN. The PROJECT starts from 56th Street along Mockingbird Lane to Invergordon Road then heads north along Invergordon Road to outfall into Indian Bend Wash.

6. The PROJECT will provide 10-year flood protection to properties from 56th Street on the west, Invergordon Road on the east, Mockingbird Lane on the south, and Indian Bend Wash on the north.
7. In October 2020, the TOWN submitted the PROJECT for consideration in the DISTRICT's Fiscal Year 2021/2022 Capital Improvements Program.
8. In December 2020, the DISTRICT'S Flood Control Advisory Board reviewed the submitted PROJECT, and with DISTRICT Director concurrence, recommended the PROJECT for future implementation.
9. On May 23, 2018, the Board of Directors of the DISTRICT adopted Resolution FCD 2018R007 (C-69-18-036-6-00), authorizing the DISTRICT to cost-share in the PROJECT, and to negotiate Intergovernmental Agreements for the design, rights-of-way acquisitions, construction, construction management, and operation and maintenance of the PROJECT.

PURPOSE OF THE AGREEMENT

10. This Agreement identifies and defines the responsibilities of the DISTRICT and the TOWN for PROJECT activities related to design, rights-of-way acquisitions, construction, utility relocations, construction management, and operation and maintenance.

TERMS OF AGREEMENT

11. The PROJECT COST is estimated to be \$7,000,000. This amount is based on the best information available at the time of the execution of this Agreement and is subject to change without amendment to this Agreement. Upon recognition of anticipated cost increases above this estimated PROJECT COST, PROJECT PARTNERS shall communicate these anticipated increases and take appropriate actions to address the situation.
 - 11.1 The PROJECT COST includes all expenses related to the design, rights-of-way acquisitions, utility relocations, construction, and construction management of the PROJECT, including but not limited to, obtaining United States Army Corps of Engineers (USACE) Section 404 Permits including the mitigation efforts required by that permit process, and landscaping and aesthetic features in accordance with and not to exceed the DISTRICT's Policy for the Aesthetic Treatment and Landscaping of Flood Control Projects.
 - 11.2 All costs associated with additional rights-of-way acquired at the request of the TOWN for non-flood control purposes, landscaping, aesthetic features and amenities requested by the TOWN that are above and beyond those allowed by the DISTRICT's Policy for the Aesthetic Treatment and Landscaping of Flood Control Projects and are compatible with the PROJECT function, shall be funded by the TOWN.
 - 11.3 Personnel and internal administrative costs of either PROJECT PARTNER, including costs associated with the issuance of PROJECT permits shall be funded by the respective PROJECT PARTNERS.
12. The target date for completion of PROJECT is DISTRICT Fiscal Year 2024/2025. The PROJECT PARTNER assigned lead agency responsibility for a task shall inform the other PROJECT PARTNER of delays impacting this target completion date.
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. TOWN funding for the PROJECT shall be from the TOWN's Capital Improvement Program (CIP) budget and is subject to availability of funds appropriated to the CIP budget.
15. The DISTRICT shall:
 - 15.1 Fund fifty percent (50%) of the PROJECT COST, making the DISTRICT's estimated share \$3,500,000.
 - 15.2 Within thirty (30) calendar days of receipt, pay all invoices issued by the TOWN pursuant to the PROJECT in accordance with the terms of this Agreement.
 - 15.3 Participate in PROJECT public involvement activities.
 - 15.4 Within three (3) weeks of receipt of interim project submittals, provide review comments to the TOWN.
 - 15.5 Participate in a final inspection of the completed PROJECT with the TOWN.
16. The TOWN shall:
 - 16.1 Fund fifty percent (50%) of the PROJECT COST, making the TOWN's estimated share \$3,500,000.
 - 16.2 Serve as lead agency for: PROJECT design, obtaining all necessary USACE Section 404 permits, approvals, public involvement activities, the relocation of all conflicting utilities in place via prior rights, acquisition of all required rights-of-way, construction, construction management, and operation and maintenance.
 - 16.3 Obtain rights-of-way required for the PROJECT.
 - 16.3.1 The PROJECT PARTNERS agree that continuation of the PROJECT is conditioned upon the TOWN being able to obtain rights-of-way, temporary construction easements, or such other property interests as may be necessary to complete the PROJECT in a form and an expense that is satisfactory to the TOWN. In the event that the TOWN is unable to satisfactorily obtain such property interests within a reasonable time following execution of this Agreement, the TOWN may notify DISTRICT of the same and this Agreement may be terminated without further obligation of the PROJECT PARTNERS.
 - 16.4 Upon the awarding of the appropriate contract(s), invoice the DISTRICT for fifty percent (50%) of its share of the PROJECT COST associated with such contract(s) and, upon completion of the contract(s), invoice the DISTRICT for its remaining share of all PROJECT COST associated with said contract(s) incurred to date.
 - 16.5 Provide the DISTRICT with interim design submittals, allow three (3) weeks for review and comment, and incorporate any comments from the DISTRICT into the PROJECT design as appropriate. If the DISTRICT has not responded within the three (3) week review period, the design submitted for review shall be deemed to have been approved by the DISTRICT.
 - 16.6 Require that any contractor selected for the PROJECT:
 - 16.6.1 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).

- 16.6.2 Agree that a breach of the warranty under paragraph 16.6.1 shall be deemed a material breach of contract and is subject to penalties up to and including termination of the contract.
- 16.6.3 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 16.6.1
- 16.7 Be responsible for assuring the safety and appropriateness of any non-flood control uses of the PROJECT prior to making the PROJECT available for such uses.
- 16.8 Coordinate a final inspection of the completed PROJECT with the DISTRICT.
- 16.9 Obtain DISTRICT review and comments on the design and/or construction of any future modifications to the PROJECT improvements and resolve and/or incorporate the DISTRICT's comments into these future PROJECT improvement modifications.
17. Any local permits required for the PROJECT that are issued by either PROJECT PARTNER shall be issued at no cost to the PROJECT. Notwithstanding, any permitting costs incurred from jurisdictions that are not a PROJECT PARTNER shall be included as PROJECT costs.
18. All permanent rights-of-way acquired for the PROJECT shall provide that the land and/or land rights acquired by the TOWN shall specifically be used for flood control purposes. If it is mutually agreed between the PROJECT PARTNERS that land and/or land rights acquired for the PROJECT are no longer needed for flood control purposes and therefore available for sale, the TOWN may sell the land or release land rights provided that upon such sale, and the DISTRICT shall be paid an amount equal to fifty percent (50%) of the final disposition price at the time that the TOWN disposes of said land or releases said land rights. This provision shall survive the termination of this Agreement.
19. Each PROJECT PARTNER, and the PROJECT PARTNERS collectively, shall:
- 19.1 Comply with all federal, state and local laws, regulations, ordinances, and resolutions applicable to the PROJECT or the conduct of the PROJECT PARTNERS and ensure adherence to all requirements imposed by law on any contractor or subcontractor performing work on or in connection with the PROJECT.
- 19.2 Comply with A.R.S. Sections 41-4401 and 23-214, subsection A.
- 19.2.1 Each party to this Agreement retains the legal right to inspect the records of the contractors' or subcontractors' employees performing work on this PROJECT to verify compliance with A.R.S. Sections 41-4401 and 23-214, subsection A.
- 19.2.2 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.
- 19.3 Provide any permit(s) required for the PROJECT at no cost to the PROJECT.
- 19.4 Following mutual written agreement of all PROJECT PARTNERS, be allowed 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 in this Agreement. The use of a contractor to perform any services necessary to complete the Project as designed shall not be construed as being a delegation of responsibilities.

- 19.5 In the case of any dispute over any items in this Agreement, use their best efforts and enter into good faith negotiations to resolve the disputed matters. However, this shall not limit the rights of the PROJECT PARTNERS to seek any remedies provided by law.
- 19.6 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.
20. Each PROJECT PARTNER shall, as “Indemnitor,” to the extent permissible by law, indemnify, defend and hold harmless the other PROJECT PARTNER (“Indemnatee”), including agents, officers, directors, 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 Indemnatee. Notwithstanding the above, Indemnatee 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 Indemnatee 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 Indemnatee has paid or would be obligated to pay in the absence of any agreement to indemnify. Should the TOWN offer to make or make the PROJECT available for any non-flood control uses, the TOWN 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 resulting from that non-flood control use 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.
21. 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:
- | | |
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| Flood Control District of Maricopa County
Director
2801 West Durango Street
Phoenix, Arizona 85009-6399 | Town of Paradise Valley
Town Manager
6401 East Lincoln Drive
Paradise Valley, AZ. 85253-4328 |
|--|---|
22. This Agreement shall expire either (a) ten (10) years from the date of its full execution or (b) upon closing 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.
23. This Agreement is subject to cancellation by any party pursuant to the provisions of A.R.S. Section 38-511.

24. 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.
25. 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.

[Signatures on following pages.]

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

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 IGA FCD 2022A011 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

TOWN OF PARADISE VALLEY
A Municipal Corporation

Approved and Accepted By:

Jill Keimach, Town Manager

Date

Attest:

By: _____
Duncan Miller, Town Clerk

Date

The foregoing Intergovernmental Agreement FCD2022A011 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 Town of Paradise Valley under the laws of the State of Arizona.

By: _____
Town Attorney

Date

**IGA FCD 2022A001
EXHIBIT "A"
Project Site Map**

