

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Agreement") is made and entered into this _____ day of _____, 2017 ("Effective Date"), by and between the Town of Paradise Valley ("Paradise Valley" or "Town"), a municipal corporation duly organized and existing under the laws of the State of Arizona, and the City of Phoenix ("Phoenix" or "City of Phoenix"), a municipal corporation duly organized and existing under the laws of the State of Arizona. The entities are referred to jointly herein as "Parties" and individually as "Party." This Agreement constitutes the entire understanding and agreement of the Parties.

RECITALS

- A. Arizona Revised Statutes (A.R.S.) § 11-951 through § 11-954, provide that public agencies may enter into intergovernmental agreements for the provisions of services or for joint and cooperative action.
- B. Paradise Valley is authorized by Arizona Revised Statutes (A.R.S.) § 11-952 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.
- C. Phoenix is authorized by the Charter of the City of Phoenix, Chapter II, Section 2, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
- D. The Parties have agreed to collaborate on the 52nd Street and Turquoise Avenue Project (the "PROJECT"), which is more fully described in Exhibit A. The PROJECT is intended to (a) reduce flood hazard to several properties in the vicinity of the PROJECT that have experienced historic flooding, and (b) reduce flood hazard to certain roadways in the vicinity of the PROJECT that have experienced historic flooding.
- E. The PROJECT shall mean the features represented in Exhibit A to this Agreement. The features of the PROJECT are listed as Elements 1, 2, 3, 9, 9a. (Exhibit A)

Descriptions of the Elements of the PROJECT are as following:

- Element 1: Removal of the traffic calming chicane as requested by residents;
- Element 2: Landscape modification to gain elevation behind the sidewalk to minimize storm runoff flowing east;
- Element 3: Re-grade (asphalt paving) 52nd Street from the wash outlet south toward Mountain View Road (approximately 300 feet) to eliminate the "high point" and allow the initial surface runoff to flow south along 52nd Street;
- Element 9: Construct a bio retention basin with storage volume of 0.20 ac-ft (8,700 cubic ft) on the west side of 52nd Street near the wash outlet as a sediment stilling basin. This basin will slow down the flow velocity and reduce the sediment deposition on 52nd Street.
- Element 9a: Remove 200 lineal feet of Maricopa Association of Governments (MAG) Type C Roll Curb and Gutter, which has a curb height of 4" and replace with MAG type A Vertical Curb and Gutter with a height of 7" along east side of 53rd Place south of Mountain View Road. This measure will protect the home on the southeast corner of the intersection from additional flows along Mountain View Road caused by elements 3 and 7.

- F. The PROJECT construction costs are estimated to be \$390,000, but are subject to change without amendment to this agreement. The Flood Control District of Maricopa County (FCDMC) will reimburse the City of Phoenix a maximum of \$250,000 in accordance with their Small Project Assistance Program under a separate Intergovernmental Agreement between the City of Phoenix and the FCDMC.
- G. The Parties desire for the City of Phoenix and the Town of Paradise Valley to act as the lead fiscal, design and construction agent for certain features of the PROJECT, with responsibilities as set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and the covenants and promises set forth below, the Parties hereby mutually agree as follows:

AGREEMENT

1. **Purpose.** The purpose of this Agreement is to set forth the rights and responsibilities of the Parties with respect to the design, construction, payment and distribution of the funds dedicated for the benefit of the PROJECT.

2. **Lead Fiscal, Design and Construction Agents.** (a) The Parties to this Agreement hereby designate City of Phoenix as the lead fiscal, design and construction agent for the PROJECT Elements 2, 3, 9, and 9a. (b) The Parties to this Agreement hereby designate Town of Paradise Valley as the lead fiscal, design and construction agent for the PROJECT Element 1. (c) The City of Phoenix will acquire temporary construction easements within City of Phoenix that are required to construct the PROJECT. (d) The Town of Paradise Valley will acquire temporary construction easements within Town of Paradise Valley that are required to construct the PROJECT.

3. **Operation and Maintenance by Town of Paradise Valley.** The Town of Paradise Valley shall maintain 52nd Street and 53rd Place in the same manner as it maintains its other public streets. The Town will maintain all elements of the completed PROJECT with the exception of Element 2. This element will remain the responsibility of the private resident within the City of Phoenix jurisdiction. Paradise Valley shall own the completed retention basin and shall be responsible for operation and maintenance of the retention basin. The maintenance activities to be performed include, but are not limited to, maintaining the flood control function of the retention basin, including sediment and vegetation removal, vandalism repair and replacement, and structural repair and replacement of the (retention basin). The Town of Paradise Valley may delegate this responsibility to a third party but will remain ultimately accountable to the City of Phoenix under this Agreement. Element 2 will remain the responsibility of the private resident within the City of Phoenix jurisdiction.

4. **Contribution of funds by Town of Paradise Valley.** The Town of Paradise Valley agrees to reimburse the City of Phoenix, in an amount not to exceed \$90,000 within thirty (30) days of receipt of an invoice from City of

Phoenix for its share of the funding necessary to construct the elements of the PROJECT. City of Phoenix shall invoice Paradise Valley after award of a PROJECT construction contract, between July 1, 2017 and June 30, 2018. The Town's contribution shall not exceed \$90,000, regardless of whether the total construction costs exceed the estimates set forth in Recital F, above.

5. Use or Disbursement of Funds by Paradise Valley.

a. **Use and Purpose of Funds.** All payments made by the Town of Paradise Valley pursuant to this Agreement shall be collected by the City of Phoenix, and used solely for the purpose of reimbursing the cost of Paradise Valley's share of the PROJECT.

b. **Inspection and Audit.** To ensure compliance with this Agreement, Town of Paradise Valley hereby reserves the right to inspect any and all records maintained by City of Phoenix with respect to any transactions related to the PROJECT upon seven (7) days prior, written notice to City of Phoenix. The City of Phoenix shall allow Paradise Valley access to the records pertaining thereto. This section shall survive termination, cancellation, or revocations, whether in whole or in part, of this Agreement for a period of seven (7) years following the date of such termination, cancellation, or revocation.

6. Term of Agreement. The term of this Agreement shall begin on the date of execution by the Parties. This agreement shall remain in full force and effect until the latter of completion of the PROJECT (including acceptance of improvement) or Paradise Valley's final disbursement of any remaining contribution as set forth in Paragraph 4 of this Agreement.

7. Transactional Conflict of Interest. The Parties acknowledge that this Agreement is subject to cancellation by any party pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

8. Indemnification.

a. **Indemnification.** Each Party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "Indemnatee") from and against any and all claims, losses, liability, costs, or expenses including reasonable attorneys fees), (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 which result in vicarious/derivative liability to the Indemnatee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

b. **Severability.** This section shall survive termination, cancellation, or revocation whether in whole or in part, of this Agreement for a period of one year from the date of such termination, cancellation or revocation unless a timely claim is filed under A.R.S. §12-821.01, in which case this paragraph shall remain in effect for each claim and/or lawsuit filed thereafter, but in no event shall this paragraph survive more

than five (5) years from the date of termination, cancellation or revocation of this Agreement.

9. Interpretation of Agreement.

a. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained herein, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.

b. Amendment. This Agreement shall not be modified, amended, altered, or changed, except by written agreement signed by both parties.

c. Construction and Interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the Parties as expressed in the Recitals contained herein.

d. Waiver. No waiver, whether written or tacit, of any remedy or provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof or a permanent waiver of the provision concerned, unless otherwise stated in writing by the Party to be bound thereby.

e. Relationship of the Parties. Neither Party shall be deemed to be an employee or agent of the other Party to this Agreement.

f. Severability. In the event that any provisions of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application which can be given effect without the valid or void provision or application, and to this extent the provisions of the Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the Parties agree to meet promptly upon request of the other Party in an attempt to reach an agreement on a substitute provision.

10. **Authority.** Town of Paradise Valley and Phoenix each represent, warrant and covenant to the other that they have the right and the authority to enter into and make this Agreement.

11 Termination.

a. For Cause. Either Party hereto may terminate this Agreement for material breach of the Agreement by another Party. Prior to any termination under this section, the Party allegedly in default shall be given written notice by the other Party of the nature of the alleged default. The Party said to be in default shall have forty-five (45) days to cure the default. If the default is not cured within that time, the other Party may terminate this Agreement. Any such termination shall not

relieve either Party from liabilities or costs already incurred under this Agreement.

b. Force Majeure. A Party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purposes of this Agreement, any cause beyond the control of the Party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to negligence or willful action of the Parties, order of any government officer or court (excluding orders promulgated by the Parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove any such inability with all reasonable dispatch.

12 **Notices.** Any notice, consent or other communication or modification ("Notice") required or permitted under this Agreement shall be in writing and shall be given by registered or certified mail or in person to the following individuals. The date of receipt of such Notices shall be the date the Notice shall be deemed to have been given.

For Paradise Valley:

Paradise Valley Town Council
Mayor Michael Collins
Town of Paradise Valley
6401 East Lincoln Drive
Paradise Valley, AZ 85253-4328

For Phoenix:

Phoenix City Council
Mayor Greg Stanton
City of Phoenix
200 West Washington Street
Phoenix, AZ 85003-1611

With a copy to:
Town Manager
Town of Paradise Valley
6401 East Lincoln Drive
Paradise Valley, AZ 85253-4328

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Intergovernmental Agreement on the dates indicated below.

TOWN OF PARADISE VALLEY,
An Arizona Municipal Corporation

CITY OF PHOENIX
An Arizona Municipal Corporation
Ed Zuercher, City Manager

By: _____

By: _____

Name: Kevin Burke

Name: Ray Dovalina, Jr., P.E.

Its: Town Manager

Its: Street Transportation Director

Date: _____

Date: _____

APPROVAL OF TOWN ATTORNEY

In accordance with the requirements of A.R.S. §11-952(D), the undersigned attorney acknowledges that (i) s/he has reviewed the above Agreement on behalf of the TOWN OF PARADISE VALLEY and (ii) as to the Town of Paradise Valley only, has determined that this Agreement is in proper form and within the powers and authority granted to the Town of Paradise Valley under the laws of the State of Arizona.

Town Attorney

Date

APPROVAL OF CITY ATTORNEY

In accordance with the requirements of A.R.S. §11-952(D), the undersigned attorney acknowledges that (i) s/he has reviewed the above Agreement on behalf of the CITY OF PHOENIX and (ii) as to the City of Phoenix only, has determined that this Agreement is in proper form and within the powers and authority granted to the City of Phoenix under the laws of the State of Arizona.

City Attorney

Date

ATTEST

City Clerk

Town Clerk

Exhibit A: 52nd Street and Turquoise Avenue

