

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: 6C
Amend No. _____

Date prepared: March 13, 2008

Council Meeting Date: April 1, 2008

TO: Terry Ellis, City Manager
FROM:  David A. Moody, P. E., Engineering Director
THROUGH: Dan Nissen, P. E., Assistant City Engineer
PREPARED BY: Geoffrey Zinnecker, P. E., Civil Engineer 
SUBJECT: Approval of Intergovernmental Agreement between Flood Control District of Maricopa County and the City of Peoria to cost share 50/50 for work performed on the Thunderbird Road Bridge over New River. (Project No. P-0505, IGA No. 2007A006)

RECOMMENDATION:

That Mayor and Council approve the Intergovernmental Agreement No. 2007A006 between Flood Control District of Maricopa County and the City of Peoria to cost share 50/50 for work performed on the Thunderbird Road Bridge over New River. This cost sharing will be for only that part of the project that is specifically designed to increase the amount of water that will flow beneath the bridge during times of flooding.

SUMMARY:

The Thunderbird Road Widening Project, P-0505, adds lanes to Thunderbird Road from the loop 101 to 94th Avenue. Contained within that project is the widening of the Thunderbird Road Bridge, which crosses the New River. The existing bridge is a concrete AASHTO girder type bridge that spans the river and allows traffic to cross over the river east to west. The proposed roadway widening will be translated across the existing bridge and will require approximately 22 feet to be added to both the north and south side of the bridge. The bridge will be widened from the existing two lanes in each direction to a total of three lanes in each direction with a wide sidewalk and median that accommodates westbound to southbound dual left turn lanes at the Rio Vista and Thunderbird Road intersection.

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# 02708 LIC. # _____
Action Date: _____

Council Communication

FCDMC IGA – Thunderbird Road Bridge over New River

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Several years ago the Flood Control District of Maricopa County (FCDMC) changed the way that flood waters were conveyed through the north part of the Phoenix valley. In the past, when rain fell on the watershed north of Scottsdale, the water was allowed to flow down the washes through that city and eventually into the Salt River. A decision was made to direct some of the flow into the Arizona Canal Diversion Channel (ACDC) canal that was built to accept the flood water. The ACDC travels west across the north part of the valley and discharges into Skunk Creek west of 75th Avenue. Skunk Creek discharges into New River about one mile north of the Thunderbird Road Bridge.

The Board of Directors of the Flood Control District of Maricopa County (Board) adopted Resolution FCD 97-12, authorizing the District to undertake the Middle New River Watercourse Master Plan (Study). The Study identified existing and future drainage problems along the reach of New River from Bell Road to Grand Avenue. The Study included recommendations for flood control improvements to this reach of New River.

Improvements have been made to most, but not all of New River downstream of its confluence with Skunk Creek, allowing New River to convey the Standard Project Flood (SPF) flow generated by Skunk Creek and the ACDC project.

Channel and bank improvements to New River to convey the SPF flows between Grand Avenue and the Skunk Creek confluence with the New River have been constructed as agreed in IGA FCD2004A004. IGA FCD2004A004 specified that improvements to New River Channel at the Thunderbird Road Bridge would be part of a future Peoria project to improve the bridge, and that cost sharing for implementation of the New River channel improvements at the bridge would be included in a future IGA.

The FCDMC and the City are now prepared to enter into the "future" IGA No. 2007A006. This IGA includes channel and bank improvements to New River, approximately 300 feet upstream and downstream of the Thunderbird Road Bridge, and other features include removals for, and construction of, vertical channel walls, channel excavation and fill, bank erosion protection, and maintenance/pedestrian trails. Specifically, large slopes reduce the amount of area underneath the bridge and the water that can flow underneath it. In essence, the dirt slopes get turned into vertical walls so that the area under the bridge that used to look like a trapezoid will now look like a box and it will allow much more water to flow unobstructed under the bridge.

The Board adopted Resolution FCD 2000R013 on February 7, 2001 (C-69-01-043-6-00), authorizing the District to cost share, negotiate Intergovernmental Agreements for the Thunderbird Road Bridge project, and to undertake the design, right-of-way acquisitions, construction and construction management of the project.

Council Communication

FCDMC IGA – Thunderbird Road Bridge over New River

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The purpose of IGA No. 2007A006 is to identify and define the responsibilities of the District and Peoria, hereinafter called the Project Partners, for the construction, construction management, operation and maintenance of the Thunderbird Road Bridge project. The Project Partners shall share equally (50/50), as described in this Agreement, in the project construction and construction management costs, hereinafter called the Project Cost, estimated to be \$2,200,000.

A summary of each party's responsibilities is provided below:

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

1. Fund fifty percent (50%) of the Project Cost, estimated to be \$2,200,000, making the District's estimated share \$1,100,000. District funds will be from the District's secondary tax levy revenues and District funding shall be based on the availability of District Capital Improvement Program Budget funding.
2. The District's share of the funding for the project shall be paid as District Capital Improvement Project funding availability allows, and upon receipt of an invoice from Peoria with the goal of completing all District reimbursements to the City by August 31, 2011.
3. Participate in the final inspection of the constructed project with Peoria.
4. Provide to Peoria easement land rights as held by the District and necessary for the construction, operation and maintenance and public use of the project.
5. Perform certain ongoing maintenance activities for the project in New River Channel from Grand Avenue to Skunk Creek, to be reimbursed by Peoria, based on actual costs. The activities are intended to maintain the flood conveyance capacity and make repairs as follows: removal of sediment and vegetation growth that may compromise the capacity of the channel, reestablishing the low flow channel, maintenance of inlets and repair of the gabions and soil cement banks. The District will continue to perform these maintenance activities until such time as Peoria indicates, in writing, that Peoria will perform these maintenance activities.
6. The District shall invoice Peoria annually for the actual cost of the project maintenance.
7. The District will enter into future discussions with Peoria regarding implementation of structural maintenance and major repair of the facilities, including project reconstruction and replacement, if necessary, and associated costs, as a result of storm flows in excess of a 10-year flood event.

8. The District may participate with Peoria in an annual inspection of the project.
9. The District reserves the right to review and comment on the design and/or construction of the project and any future changes or modifications to the project that may affect the hydraulic function of the project.

CITY RESPONSIBILITY

1. Fund fifty percent (50%) of the project cost, estimated to be \$2,200,000, making Peoria's estimated share \$1,100,000.
2. As allowed by District Capital Improvement Project funding availability, invoice the District for 50% of funds expended for the project. Timing and amounts of invoices shall be coordinated with the District.
3. Be the lead for all public involvement activities for the project.
4. Be responsible for and fund all maintenance of the project, some of which may be performed by the District and reimbursed by Peoria, and perform certain ongoing maintenance activities for the project.
5. Reimburse the District annually, within thirty (30) calendar days of receipt of an invoice, for maintenance activities.
6. Peoria will enter future discussions with the District to implement structural maintenance and major repair of the facilities, including project reconstruction and replacement and associated costs, as a result of storm flows in excess of a 10-year flood event.
7. Peoria shall be responsible to schedule and invite the District to participate in an annual inspection of the project.

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

INTERGOVERNMENTAL AGREEMENT
for the
Construction, Construction Management, Operation and Maintenance
of the
New River Channel at Thunderbird Road
between the
Flood Control District of Maricopa County
and the
City of Peoria

FCD 2007A006

Agenda Item _____

This 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 called the DISTRICT and the City of Peoria, Arizona, a municipal corporation, acting by and through its City Council, hereinafter called PEORIA.

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

DATE FILED WITH MARICOPA COUNTY RECORDER _____

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. PEORIA 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 PEORIA.

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BACKGROUND

3. The Board of Directors of the Flood Control District of Maricopa County (Board) adopted Resolution FCD 97-12, authorizing the DISTRICT to undertake the Middle New River Watercourse Master Plan (Study). The Study identified existing and future drainage problems along the reach of New River from Bell Road to Grand Avenue. The Study included recommendations for flood control improvements to this reach of New River.
4. The Arizona Canal Diversion Channel (ACDC) project's outlet is into Skunk Creek approximately one mile upstream of its confluence with New River. Improvements have been made to most, but not all, of New River downstream of its confluence with Skunk Creek allowing New River to convey the Standard Project Flood (SPF) flow generated by Skunk Creek and the ACDC project.
5. Channel and bank improvements to New River to convey the SPF flows between Grand Avenue and the Skunk Creek confluence with the New River have been constructed as agreed in IGA FCD2004A004. That IGA specified that improvements to New River Channel at the Thunderbird Road Bridge would be part of a future PEORIA project to improve the bridge, and that cost sharing for implementation of the New River channel improvements at the bridge would be included in a future IGA. Channel and bank improvements to New River, approximately 300 feet upstream and downstream of the Thunderbird Road Bridge, are hereinafter defined as the PROJECT (See Exhibit A). The PROJECT features include removals for, and construction of, vertical channel walls, channel excavation and fill, bank erosion protection, and maintenance/ pedestrian trails.
6. PEORIA is completing the PROJECT design at its own cost.
7. The PROJECT ranks as one of the highest priority flood control projects for PEORIA. PEORIA submitted the PROJECT to the DISTRICT for consideration in its FY 99/00 and FY 02/03 Capital Improvement Program Prioritization Procedure process. The PROJECT scored well and was recommended by the Flood Control Advisory Board for inclusion into the DISTRICT's current Five-year Capital Improvement Program.
8. The Board adopted Resolution FCD 2000R013 on February 7, 2001 (C-69-01-043-6-00), authorizing the DISTRICT to cost share, negotiate Intergovernmental Agreements (IGAs) for the PROJECT, and to undertake the design, rights-of-way acquisitions, construction and construction management of the PROJECT. IGA FCD 2002A010, approved on March 5, 2003 (C-69-03-053-2-00) between the DISTRICT and PEORIA defined the responsibilities for the design, rights-of-way acquisition and utility relocations for the previous New River Channel improvements project.

PURPOSE OF THE AGREEMENT

9. The purpose of this IGA is to identify and define the responsibilities of the DISTRICT and PEORIA, hereinafter called the PROJECT PARTNERS, for the construction, construction management, operation and maintenance of the PROJECT.

TERMS OF AGREEMENT

10. The PROJECT PARTNERS shall share equally (50/50), as described in this Agreement, in the PROJECT construction and construction management costs, hereinafter called the PROJECT COST, estimated to be \$2,200,000.

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- 10.1 Construction management shall be assigned a value of eight percent (8%) of the actual construction cost of the PROJECT. If construction management services are accomplished under contract, the construction management costs shall be the actual cost for the contracted construction management services.
 - 10.2 The PROJECT COST shall include landscaping and aesthetic features as allowed by the DISTRICT's "Policy for the Aesthetic Treatment and Landscaping of Flood Control Projects" (Policy). Additional landscape features and park amenities, if compatible with the PROJECT function, may be included in the PROJECT construction at the request of PEORIA, and solely at PEORIA's cost plus the associated construction management costs.
 - 10.3 Non-flood control features, if compatible with the PROJECT function, may be included in the PROJECT at the request of PEORIA, with the construction and construction management solely at PEORIA's expense.
11. The DISTRICT shall:
- 11.1 Fund fifty percent (50%) of the PROJECT COST, estimated to be \$2,200,000, making the DISTRICT'S estimated share \$1,100,000. DISTRICT funds will be from the DISTRICT'S secondary tax levy revenues and DISTRICT funding shall be based on the availability of DISTRICT Capital Improvement Program Budget funding.
 - 11.1.1 The DISTRICT's share of the funding for the PROJECT shall be paid as DISTRICT CIP funding availability allows, and upon receipt of an invoice(s) from PEORIA with the goal of completing all DISTRICT reimbursements to the CITY by August 31, 2011.
 - 11.2 Participate in the final inspection of the constructed PROJECT with PEORIA.
 - 11.3 Provide to PEORIA easement land rights as held by the DISTRICT and necessary for the construction, operation and maintenance and public use of the PROJECT.
 - 11.4 Perform certain ongoing maintenance activities for the PROJECT in New River Channel from Grand Avenue to Skunk Creek, to be reimbursed by PEORIA, based on actual costs. The activities are intended to maintain the flood conveyance capacity and make repairs as follows: removal of sediment and vegetation growth that may compromise the capacity of the channel, reestablishing the low flow channel, maintenance of inlets and repair of the gabions and soil cement banks. The DISTRICT will continue to perform these maintenance activities until such time as PEORIA indicates, in writing, that PEORIA will perform these maintenance activities.
 - 11.4.1 The DISTRICT shall invoice PEORIA annually for the actual cost of the PROJECT maintenance identified in Paragraph 11.4.
 - 11.4.2 The DISTRICT will enter into future discussions with PEORIA regarding implementation of structural maintenance and major repair of the facilities, including PROJECT reconstruction and replacement, if necessary, and associated costs, as a result of storm flows in excess of a 10-year flood event.
 - 11.4.3 The DISTRICT may participate with PEORIA in an annual inspection of the PROJECT. Any deficiencies relating to flood control, and for which PEORIA is responsible, shall be corrected by PEORIA within thirty (30) calendar days. If PEORIA has not taken corrective

action within this time, the DISTRICT reserves the right to perform the corrective action, and will invoice PEORIA for all actual costs incurred by the DISTRICT.

11.5 The DISTRICT reserves the right to review and comment on the design and/or construction of the PROJECT and any future changes or modifications to the PROJECT that may affect the hydraulic function of the PROJECT.

12. PEORIA shall:

12.1 Fund fifty percent (50%) of the PROJECT COST, estimated to be \$2,200,000, making PEORIA'S estimated share \$1,100,000.

12.1.1 PEORIA'S funding is anticipated to be provided from bonds.

12.1.2 As allowed by DISTRICT CIP funding availability, invoice the DISTRICT for 50% of funds expended for the PROJECT. Timing and amounts of invoices shall be coordinated with the DISTRICT.

12.2 Be the lead for all public involvement activities for the PROJECT.

12.3 Indemnify, defend, and hold harmless the DISTRICT, its agents, officers, employees, successors or assigns against any and all claims, actions, costs, expenses or reasonable attorneys' fees for property damages or personal injuries or illness, including death of any persons, caused by and/or related to the rights herein granted, including all public recreational and other uses; provided, however that PEORIA shall not indemnify, defend and hold harmless the DISTRICT, its agents, officers, employees, successors or assigns against any and all claims, actions, costs, expenses, or reasonable attorneys' fees for property damages or personal injuries, including death of any persons, caused by and/or related to rights herein granted, including all public recreational and other uses if such damages or injuries are caused by the sole negligence of the DISTRICT.

12.3.1 Maintain, at its expense and in full force during the term of this Agreement, public liability and property damage insurance covering the PROJECT area and PEORIA's occupancy and use thereof against claims for personal injury and death in the following amounts:

No less than (1)	\$500,000	Bodily Injury – Each Person
No less than (2)	\$5,000,000	Bodily Injury – Each Occurrence
No less than (3)	\$5,000,000	Property Damage

12.3.2 Obtain any additional insurance, adjusting for inflation, or other factors that may be required by the DISTRICT after a review by the DISTRICT and PEORIA, especially if additional uses are added. The DISTRICT understands that PEORIA is self-insured and will provide a Certificate of Self-Insurance to the DISTRICT. The insurance requirements in this Agreement are not a limitation on PEORIA's liability under this Agreement.

12.3.3 Furnish to the DISTRICT a certificate evidencing the fact that such insurance has been obtained and is in full force and effect during the entire term of this Agreement, and the DISTRICT is an additional insured thereunder, and that such insurance cannot be cancelled without thirty (30) days prior written notice to the DISTRICT. It is agreed that any insurance maintained the DISTRICT shall apply in excess and not contribute with the

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insurance provided by said policy. PEORIA's failure to maintain insurance as required by the DISTRICT constitutes a material default of this Agreement.

- 12.4 Obtain land rights not held by the DISTRICT or PEORIA, for public use of the PROJECT, as necessary.
- 12.5 Be responsible for and fund all maintenance of the PROJECT, some of which may be performed by the DISTRICT and reimbursed by PEORIA, and perform certain ongoing maintenance activities for the PROJECT.
 - 12.5.1 The maintenance activities to be performed by PEORIA involve maintaining the aesthetic, park, and public use features of the PROJECT as follows: maintenance of landscaping, irrigation, multi-use trails and berms, removal of trash and debris, electricity and other operation costs for the facilities, aesthetics maintenance and vandalism repair.
 - 12.5.2 Reimburse the DISTRICT annually, within thirty (30) calendar days of receipt of an invoice, for maintenance activities identified in Paragraph 11.4.
 - 12.5.3 At such time as PEORIA intends to perform the maintenance activities identified in Paragraph 11.4, indicate, in writing, this intention to the DISTRICT.
 - 12.5.4 PEORIA will enter future discussions with the DISTRICT to implement structural maintenance and major repair of the facilities, including project reconstruction and replacement and associated costs, as a result of storm flows in excess of a 10-year flood event.
 - 12.5.5 PEORIA shall be responsible to schedule and invite the DISTRICT to participate in an annual inspection of the PROJECT. Any deficiencies relating to flood control for which PEORIA is responsible shall be corrected by PEORIA within thirty (30) calendar days. If PEORIA has not taken corrective action within this time the DISTRICT reserves the right to perform the corrective action and PEORIA shall reimburse the DISTRICT for all actual costs incurred by the DISTRICT within thirty (30) calendar days of receipt of an invoice from the DISTRICT.
- 12.6 Obtain DISTRICT review and comment on the design and/or construction of the PROJECT and any future changes or modifications to the PROJECT that may affect the hydraulic function of the PROJECT and resolve and/or incorporate the DISTRICT's comments into the future PROJECT modification.
13. Any permits required for the PROJECT shall be issued by the appropriate party to this Agreement at no cost to the PROJECT.
14. 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.
15. 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.

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16. Each party to this Agreement shall take reasonable and necessary actions within their authority to ensure that only storm water or irrigation 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 Clean Water Act, Arizona Pollutant Discharge Elimination System (AZPDES) or any other applicable discharge requirements, including any permit requirements.
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. Such indemnification obligation 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's fees, court costs, and other expenses relating to the defense against claims or litigation, incurred by the indemnitee. Indemnitee shall be liable for their own negligence or wrongful acts as provided by law.
18. 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
Chief Engineer and General Manager
2801 West Durango Street
Phoenix, AZ 85009-6399 | City of Peoria
City Engineer
8401 West Monroe Street
Peoria, AZ 85345 |
|---|--|
19. Each party to this Agreement will pay for and not seek reimbursement for its own personnel and administrative costs associated with this PROJECT, including but not limited to the following unless specifically identified otherwise in this Agreement: construction, construction management, operation, maintenance, permitting, management and administration.
20. This Agreement shall expire in ten (10) years from the date of recording with the Maricopa County Recorder, or 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. The operation and maintenance responsibilities of this Agreement shall survive expiration of the Agreement. The indemnification provisions of this Agreement shall survive expiration of the Agreement and shall continue as long as the public use by PEORIA continues. However, by mutual written agreement of both parties, this Agreement may be amended or terminated.
21. This Agreement is subject to cancellation by either party pursuant to the provisions of A.R.S. §38-511.
22. 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.
23. If legislation is enacted after the effective date of this Agreement which 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.

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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: _____
Chairman, Board of Directors Date

Attest:

By: _____
Clerk of the Board Date

The foregoing Intergovernmental Agreement FCD 2007A006 has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Deputy County Attorney, 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.

Deputy County Attorney Date

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CITY OF PEORIA
A Municipal Corporation

Recommended by:

David A. Moody, P.E. Date
City Engineer

Approved and Accepted:

By: _____
Terrence L. Ellis, City Manager Date

Attest:

By: _____
Mary Jo Kief, City Clerk Date

The foregoing Intergovernmental Agreement FCD 2007A006 has been reviewed pursuant to A.R.S. §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 Peoria under the laws of the State of Arizona.

By: _____
City Attorney Date

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IGA FCD 2007A006
Exhibit "A"



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