

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

cc: 3C
Amend No. _____

Date prepared: April 17, 2009

Council Meeting Date: June 2, 2009

TO: Carl Swenson, City Manager
THROUGH: Susan J. Daluddung, Deputy City Manager *SJD*
FROM: Andrew Granger, P. E., Engineering Director *AG*
THROUGH: Dan Nissen, P. E., Assistant City Engineer
PREPARED BY: Burton Charron, P. E., CFM, Senior Civil Engineer *BC*

SUBJECT: Approval of an Amendment to the Intergovernmental Agreement between the Flood Control District of Maricopa County and the City of Peoria for the Design, Rights-of-Way Acquisition, and Utility Relocations for the Rose Garden Lane Channel from Lake Pleasant Parkway to the Agua Fria River (Project No. SS-0203)

RECOMMENDATION:

Discussion and possible action to approve an Amendment to the Intergovernmental Agreement (IGA) for the design, rights-of-way acquisition, and utility relocations for the Rose Garden Lane Channel Improvements, and authorize the appropriate City staff to execute the agreement.

SUMMARY:

The Flood Control District of Maricopa County completed the Glendale/Peoria Area Drainage Master Plan Update Study (G/P ADMP) in May 2001. The Study made several recommendations for regional drainage infrastructure to provide 100-year protection for the G/P ADMP watershed. The Rose Garden Lane Channel is a high priority recommendation of the G/P ADMP and ranks as a high priority flood control project for Peoria. The City Council of Peoria adopted the recommendations of the G/P ADMP in May 2001, and the Board of Directors for the District adopted the G/P ADMP recommendations in December 2001.

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# 01001A LIC. # _____
Action Date: _____

Council Communication
Rose Garden Lane Channel Improvements
Amendment to FCDMC IGA
June 2, 2009
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In January, 2004, Council approved the original IGA between the Flood Control District of Maricopa County (District) and the City of Peoria (City) specifically for the funding responsibilities for the design, rights-of-way acquisition and utility relocations for the Rose Garden Lane Channel. This IGA has since expired in March 2009, however the State Lands acquisition activity for the basin remains and is anticipated to be resolved later this Summer 2009.

This amendment extends the agreement for an additional ten years and restates the provisions from the original IGA to remain in full force and effect. One additional responsibility of the City and the District is described as follows:

Amended City and District Responsibility

- 1) The District and City shall share equally (50/50) in the estimated remaining Project design, rights-of-way and utility relocation costs of \$240,000, making each agencies estimated remaining costs \$120,000.

FISCAL NOTE:

Funding for the remaining land acquisition in this IGA obligation is available in the Proposed GO Bond Fund, Storm Drain System, Land Account 4220-4220-540000-CIPDR-PW00184LA (\$120,000) and the Outside Sources Fund, Storm Drain System, Land Account 4810-4810-540000-CIPDR-PW00184LA (\$120,000).

ATTACHMENT:

1. Amendment No.1, IGA FCD 2003A012A

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

AMENDMENT NO. 1
IGA FCD 2003A012A
to
INTERGOVERNMENTAL AGREEMENT
IGA FCD 2003A012
for the
Design, Rights-of-Way Acquisition, and Utility Relocations
of the
Rose Garden Lane Channel
between the
City of Peoria
and the
Flood Control District of Maricopa County

Amendment No. 1
IGA FCD 2003A012A

Agenda Item C-69-04-054-2-01

This Amendment No. 1, also known as Intergovernmental Agreement (IGA) FCD 2003A012A, to IGA FCD 2003A012, is entered into by and between the City of Peoria, Arizona, a municipal corporation, acting by and through its City Council, hereinafter called PEORIA and 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.

This Amendment No. 1 IGA FCD 2003A012A to IGA FCD 2003A012 (Agreement) shall become effective as of the date it has been executed by all parties and recorded with the 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. 11-952, as amended, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the PEORIA.

BACKGROUND

3. The DISTRICT completed the Glendale/Peoria Area Drainage Master Plan Update Study (ADMP) in May 2001. The ADMP made several recommendations for regional drainage infrastructure to provide 100-year protection for the ADMP watershed. PEORIA and the DISTRICT have adopted the recommendations of the ADMP. The Rose Garden Lane Channel, hereinafter called the PROJECT, is a high priority recommendation of the ADMP and ranks as a high priority flood control project for PEORIA.
4. PEORIA submitted the PROJECT to the DISTRICT for consideration in its FY 02/03 Capital Improvements Program Prioritization Procedure process. The PROJECT was recommended by the DISTRICT's Flood Control Advisory Board for inclusion into the DISTRICT's Five-Year Capital Improvements Program.
5. The PROJECT will provide a 100-year level of protection, unless the DISTRICT and PEORIA agree to a lesser level of protection. The PROJECT consists of an open channel on the north side of Rose Garden Lane from approximately Lake Pleasant Parkway to the Agua Fria River, with underground culverts at the road crossings. The PROJECT also includes a detention basin near the Agua Fria River.
6. The DISTRICT Board of Directors adopted Resolution FCD 2001R012 on December 5, 2001 (C-69-02-058-6-00), authorizing the DISTRICT to cost share in the PROJECT and to undertake the design, rights-of-way acquisitions, construction, construction management, and operation and maintenance of the PROJECT. The Board approved IGA FCD 2003A012 on March 3, 2004 (C-69-04-054-2-00) for cost sharing the design, rights-of-way acquisition, and utility relocations for the PROJECT.
 - 6.1 The funding obligations and reimbursements for IGA FCD 2003A012 have not been satisfied. PEORIA is in the process of acquisition of the detention basin near the Agua Fria River. IGA FCD 2003A012 has an expiration date of March 15, 2009. Completion of the PROJECT responsibilities identified in IGA FCD 2003A012 requires an extension of the IGA.

PURPOSE OF THE AGREEMENT

7. The purpose of this IGA FCD 2003A012A is to extend the expiration date of the original IGA FCD 2003A012, to allow completion of the PROJECT responsibilities defined therein.

TERMS OF AGREEMENT

8. The DISTRICT and the CITY shall share equally (50/50) in the PROJECT design, rights-of-way acquisition, and utility relocation cost, hereinafter PROJECT COST, as identified in IGA FCD2003A012.

8.1 The estimated remaining PROJECT COST is \$240,000, making the DISTRICT's estimated remaining cost \$120,000 and PEORIA's remaining cost \$120,000.

9. All terms of IGA FCD 2003A012 shall be in effect. This IGA FCD 2003A012A, Amendment No. 1 to IGA FCD 2003A012, governs where terms conflict with the original IGA FCD 2003A012. However, the original IGA FCD 2003A012 is applicable unless specifically changed by this Amendment No. 1. The paragraph numbering in this Amendment No. 1 is coincidental and is not intended to indicate that these same numbered paragraphs in the original IGA FCD 2003A012 are being replaced in their entirety.
10. Any land and/or property purchased pursuant to this Agreement, whether owned by PEORIA or the DISTRICT shall be for specific flood control purposes and held for the benefit of both parties. Neither party shall transfer any interest in any property acquired pursuant to this Agreement without the written consent of the other party, except as provided for in IGA FCD 2003A012 or this IGA FCD2003A012A. If the parties mutually agree that property acquired pursuant to this Agreement is no longer needed for flood control purposes and therefore will be available for sale, the property may be sold under the stipulation that each party shall be paid a pro-rata share of the proceeds on disposition based on its cost share percentage of the original acquisition cost.
11. Any revenue generated by the sale of sand & gravel, or dirt material, from property purchased pursuant to this Agreement, shall be shared by the parties to this Agreement based on the cost share percentage of the property acquisition cost. Upon mutual consent of PEORIA and the DISTRICT, either party may take the lead in facilitating said sale, by whatever legal means that is appropriate. As the property for the basin is being acquired by PEORIA, if the DISTRICT is the facilitator of any such sale, PEORIA grants to the DISTRICT's Chief Engineer and General Manager, the authority to sign any Bills of Sale granting sand & gravel or dirt material rights, to a successful buyer, and authorizes the DISTRICT to act on the PROJECT partners behalf regarding holding any performance bonds associated with said sale.
12. This IGA shall expire in ten (10) years from the date of recording with the Maricopa County Recorder or upon completion of all the elements of the PROJECT and after all funding obligations and reimbursements have been satisfied in accordance with this IGA, whichever is the first to occur. The operation and maintenance responsibilities of this IGA shall survive expiration of this IGA. However, by mutual written agreement of all parties, this IGA may be amended or terminated.
13. Nothing in this IGA FCD 2003A012A (whether express or implied) is intended to confer upon either party other than the parties hereto and their respective representatives, successors, and permitted assigns, any rights or remedies under or by reason of this IGA FCD 2003A012A, nor is anything in this IGA FCD 2003A012A intended to relieve or discharge the liability of either party hereto.
14. Attached to this IGA or contained herein are the written determinations by the appropriate attorneys for the parties to this IGA, that these agencies are authorized under the laws of the State of Arizona to enter into this IGA and that it is in proper form.
15. Each party to this Agreement shall comply with A.R.S. Sections 41-4401 and 23-214, subsection A.
16. 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. Sections 41-4401 and 23-214, subsection A.

17. 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.
18. Pursuant to A.R.S. Sections 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. Section 35-391 and 35-393, in either Sudan or Iran.

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 Amendment IGA FCD 2003A012A 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

**CITY OF PEORIA
A Municipal Corporation**

Approved and Accepted:

By: _____
Andrew Granger, P.E., City Engineer Date

Approved and Accepted:

By: _____
Carl Swenson, City Manager Date

Attest:

By: _____
Mary Jo Kief, City Clerk Date

The foregoing Amendment IGA FCD2003A012A 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: Stephen Kemp for 5-15-09
Stephen M. Kemp, City Attorney Date