

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

INTERGOVERNMENTAL AGREEMENT

between the

City of Mesa

and the

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

for the

CONSTRUCTION, CONSTRUCTION MANAGEMENT, OPERATION & MAINTENANCE

of

STAPLEY DRIVE AND BROADWAY ROAD DRAINAGE IMPROVEMENTS

IGA FCD 2023A002

Agenda Item _____

This Intergovernmental Agreement (Agreement) is entered into by and between the City of Mesa, a municipal corporation, acting by and through its City Council, hereinafter called the CITY, and the Flood Control District of Maricopa County, a political subdivision of the State of Arizona, acting by and through its Board of Directors, hereinafter called the DISTRICT. The DISTRICT and the CITY may hereinafter individually be called a PROJECT PARTNER, or collectively called the PROJECT PARTNERS.

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.) Section 48-3603 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the DISTRICT.
2. The CITY is empowered by A.R.S. § 48-572 and Section 103 of the Mesa City Charter to enter into this Agreement and has by resolution authorized the undersigned to execute this Agreement on behalf of the CITY.

BACKGROUND

3. In 2008, the City of Mesa completed a Storm Drain Master Plan which identified several storm drain systems within the City that warranted improvement.
4. In December 2022, the CITY submitted the Stapley Drive and Broadway Road project (as hereinafter defined) to the District's Capital Improvement Program (CIP) Prioritization Procedure for fiscal year 2022-2023 and said project received a favorable rating and was recommended for inclusion in the future CIP

budgets.

5. On May 10, 2023, the Board of Directors of the DISTRICT adopted Resolution FCD 2023R002 (C-69-23-051-X-00), authorizing the DISTRICT to negotiate and prepare an Intergovernmental Agreement for the cost-sharing, construction, construction management, and future operation and maintenance of the Stapley Drive and Broadway Road Drainage Improvements (the PROJECT).
6. In January 2023, the CITY submitted 100% design documents to the DISTRICT for review.
7. This Agreement is for the construction, construction management, operation & maintenance of the PROJECT which will consist of storm drains and other conveyance improvements in the vicinity of the Stapley Drive and Broadway Road intersection in Mesa to mitigate flooding caused by the 10-year event. The proposed PROJECT elements are shown on Exhibit A, attached hereto and made a part hereof.

PURPOSE OF THE AGREEMENT

8. This Agreement identifies and defines the responsibilities of the DISTRICT and the CITY for PROJECT activities related to construction, construction management, operation & maintenance.

TERMS OF AGREEMENT

9. The PROJECT, as referenced herein, is described in section 7 of this Agreement.
10. The PROJECT COST, as referenced herein, solely encompasses the following costs directly associated with the PROJECT activities and incurred after the effective date of this Agreement, which are: costs of construction, construction management, material testing, post-design services and construction surveying support related to the PROJECT.
11. The following are specifically excluded from the calculation of PROJECT COST:
 - 11.1 Any costs associated with non-flood control features added to the construction at the CITY's request. Such costs shall be funded solely by the CITY.
 - 11.2 The personnel and internal administrative costs associated with this PROJECT incurred by each PROJECT PARTNER, including costs associated with the issuance of PROJECT permits, unless specifically identified otherwise in this Agreement.
12. The PROJECT COST is estimated to be \$3,500,000.
 - 12.1 The PROJECT COST is estimated based on the best information available at the time of this Agreement and is subject to change without amendment to this Agreement. In the event PROJECT COST exceed the estimated amount, each PROJECT PARTNER shall be notified of such increase and, unless objection is provided, the PROJECT COST shall be deemed established with such additional costs being shared according to the percentages set forth in this Agreement.
13. DISTRICT funding for this PROJECT shall be from secondary flood control tax levy revenue and is contingent upon funding availability within the DISTRICT's Capital Improvement Program.
14. CITY funding for this PROJECT is available as identified in the FY 2022 CITY's Capital Improvement Plan.
15. The CITY shall:

- 15.1 Fund 35% of the PROJECT COST, making the CITY's estimated share \$1,225,000.
 - 15.2 Serve as the lead agency for the PROJECT construction, construction management, material testing, surveying, and post-design services.
 - 15.2.1 If the construction management services are provided via CITY staff, then the construction management cost shall be assigned a value not to exceed eight percent (8%) of the actual construction cost.
 - 15.3 Invoice the DISTRICT for 50% of the District's share of the PROJECT COST at the time of award of the construction contract, and the remaining 50%, including any change orders, at the completion of the contract. If construction is phased, the City may periodically invoice the DISTRICT for its share, based on actual PROJECT COST incurred.
 - 15.4 Serve as the lead agency for any PROJECT public involvement activities.
 - 15.5 Obtain DISTRICT review and concurrence on construction change orders.
 - 15.6 Assure the safety and appropriateness of any non-flood control uses of the PROJECT prior to offering to make or making the PROJECT available for such uses.
 - 15.7 Obtain DISTRICT review and comments on the design and construction of any future modifications to the PROJECT and resolve and incorporate the DISTRICT's comments into these future PROJECT modifications.
 - 15.8 Invite the DISTRICT to all progress meetings and inspections.
 - 15.9 Be responsible for all operations and maintenance of the PROJECT.
 - 15.9.1 The maintenance activities to be performed include, but are not limited to, maintaining the flood control function of the PROJECT, including sediment and vegetation removal, removal of trash and debris, electricity and other operation costs for the facilities, vandalism repair and replacement, and structural repair and replacement of the flood control structures.
 - 15.9.2 Schedule, and invite the DISTRICT to participate in, an annual inspection of the PROJECT. Any deficiencies relating to flood control for which the CITY is responsible shall be corrected by the CITY within 30 calendar days. If the CITY has not taken corrective action within this time, the DISTRICT reserves the right to perform the corrective action and the CITY shall reimburse the DISTRICT for the total costs incurred by the DISTRICT within thirty 30 calendar days of receipt of an invoice from the DISTRICT.
 - 15.9.3 On an annual basis, commencing on the first anniversary date of the completion and acceptance of the PROJECT, provide written notification to the DISTRICT that the PROJECT has been properly maintained by the CITY over the past year in accordance with the PROJECT design and to ensure proper hydraulic function.
16. The DISTRICT shall:
- 16.1 Fund 65% of the PROJECT COST, making the DISTRICT's estimated share \$2,275,000.

- 16.2 Subject to the availability of funding, within 30 calendar days of receipt, pay invoices issued by the CITY in accordance with the terms of this Agreement.
 - 16.3 Participate in PROJECT public involvement activities.
 - 16.4 Participate in a final inspection of the PROJECT with the CITY.
 - 16.5 Participate, as desired by the DISTRICT, with the CITY in an annual inspection of the PROJECT.
 - 16.6 Provide review and comments on post-design or post-construction changes or modifications to the PROJECT that may affect the hydraulic function of the PROJECT.
17. Each PROJECT PARTNER, and the PROJECT PARTNERS collectively, shall:
- 17.1 Comply with A.R.S. Sections 41-4401 and 23-214(A).
 - 17.1.1 Each party to this Agreement retains the legal right to inspect the records of the CITY's and any contractors' or subcontractors' employees performing work under this Agreement to verify compliance with Title 34 of the Arizona Revised Statutes, as well as A.R.S. Sections 41-4401 (as applicable) and 23-214(A).
 - 17.1.2 Failure by either party to this Agreement to comply with Title 34 of the Arizona Revised statutes, A.R.S. Section 41-4401, or A.R.S. Section 23-214(A) shall be deemed a breach of this Agreement and is subject to penalties up to and including termination of the Agreement.
 - 17.2 Require that any contractor selected for the PROJECT:
 - 17.2.1 Warrant its compliance with all federal immigration laws and regulations that relate to its employees and their compliance with A.R.S. Section 23-214(A);
 - 17.2.2 Agree that a breach of the warranty under paragraph 17.2.1 shall be deemed a material breach of contract and is subject to penalties up to and including termination of the contract;
 - 17.2.3 Agree that the PROJECT PARTNERS retain 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 17.2.1.
 - 17.2.4 Who engages in for-profit activity and has 10 or more employees, certify it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. Section 4842, or a regulation issued pursuant to 50 U.S.C. Section 4842.
 - 17.2.5 Warrant and certify that it does not currently, and agrees for the duration of the contract that it will not, use:

The forced labor of ethnic Uyghurs in the People's Republic of China.

Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

Any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If the Contractor becomes aware during the term of the Agreement that the Contractor is not in compliance with this paragraph, the Contractor shall notify the County within five (5) business days after becoming aware of the noncompliance. Failure of the Contractor to provide a written certification that the Contractor has remedied the noncompliance within one hundred eighty (180) days after notifying the public entity of its noncompliance shall result in the termination of this Agreement unless the Term of this Agreement shall end prior to said one hundred eighty (180) day period.

- 17.3 Have the right, when approved by the other PROJECT PARTNER in writing 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 herein.
- 17.4 Use their best efforts and enter into good faith negotiations to resolve any disputed items of this Agreement. However, this shall not limit the rights of the PROJECT PARTNERS to seek any remedies provided by law.
- 17.5 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.
- 17.6 Equally share the cost of PROJECT compliance and cost audit to be initiated within 60 days of PROJECT completion, if requested by either PROJECT PARTNER. An independent auditing firm agreed to by the PROJECT PARTNERS will perform the audit. Any payments or reimbursements necessary to bring the PROJECT into compliance with the audit findings shall be made within 45 days of the audit findings by the PROJECT PARTNERS.
18. The PROJECT may be phased due to funding or other coordination issues. Responsibilities of the DISTRICT and the CITY shall be phased accordingly, including, but not limited to, invoicing, reimbursements, and transfer of land rights.
19. If mutually acceptable to the PROJECT PARTNERS, PROJECT invoicing may be conducted periodically based on actual PROJECT COSTS incurred, no more frequently than quarterly, and no less frequently than annually, in lieu of invoicing timelines otherwise established in this Agreement.
20. Each PROJECT PARTNER shall, as "Indemnitor," to the extent permissible by law, indemnify, defend and hold harmless the other PROJECT PARTNER ("Indemnitee") 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 IGA, including but not limited to, reasonable attorneys' fees, court costs, and other expenses relating to the defense against claims or litigation, incurred by the Indemnitee. Notwithstanding the above, Indemnitee 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 Indemnitee 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 Indemnitee has paid or would be obligated to pay in the absence of any agreement to indemnify. Should any PROJECT PARTNER offer to make or make the PROJECT available for any non-flood control uses, the offering PROJECT PARTNER shall, to the extent permissible by law, indemnify, defend, and save harmless the DISTRICT, including agents, officers, directors, governors, and employees thereof, from any and all loss or expense incurred as a result of any claim or suit arising in whole or in part from the sanctioned non-flood control use. 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:

Flood Control District of Maricopa County
Director
2801 West Durango Street
Phoenix, AZ 85009-6399

City of Mesa
City Manager
PO Box 1466
Mesa, AZ 85211-1466

22. This Agreement shall expire either (a) 10 years from the effective date, or (b) 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. However, by mutual written agreement of all parties, this Agreement may be amended or terminated. The operation, maintenance, and indemnification provisions, of this Agreement, shall survive the expiration of this Agreement.
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.

SIGNATURE PAGES FOLLOW

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

Recommended by:

Michel A. Fulton, Director

Date

Approved and Accepted:

By: _____
Chairman, Board of Directors Date

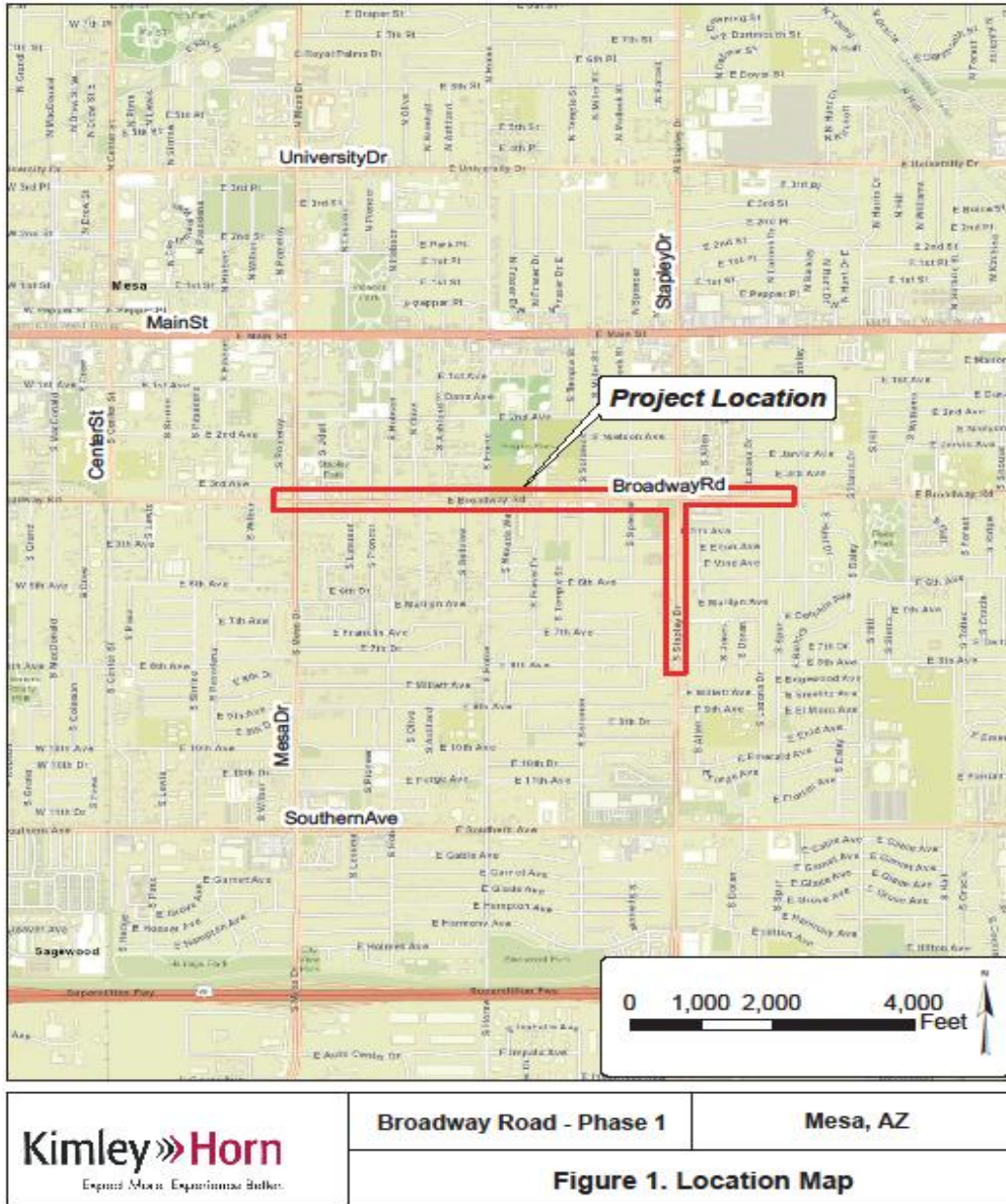
Attest:

By: _____
Clerk of the Board Date

The foregoing Intergovernmental Agreement IGA FCD 2023A002 has been reviewed pursuant to A.R.S. Section 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

IGA FCD 2023A002
EXHIBIT A
Stapley Drive and Broadway Road Drainage Improvements*



**Approximate Locations*