

Return to Contracts Branch
Flood Control District of Maricopa County
2801 W. Durango Street, Phoenix, AZ 85009

**INTERGOVERNMENTAL AGREEMENT
IGA FCD 2013A003**

Between

THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

and

MARICOPA COUNTY

and

**THE CITY OF AVONDALE, ARIZONA
THE TOWN OF BUCKEYE, ARIZONA
THE CITY OF GOODYEAR, ARIZONA**

for the

El Rio Watercourse Implementation and Management Plan

FCDMC Agenda # C-69-14-014-300

County Agenda # C-44-14-017-1100

**Approved by the
BOARD OF DIRECTORS
of the
Flood Control District of Maricopa County**

Date DEC 11 2013

NOT REMOVE

THIS COVER IS PART OF THE OFFICIAL DOCUMENT

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

INTERGOVERNMENTAL AGREEMENT

AMONG
THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
MARICOPA COUNTY
AND
THE CITY OF AVONDALE, ARIZONA
THE TOWN OF BUCKEYE, ARIZONA
THE CITY OF GOODYEAR, ARIZONA
for the
El Rio Watercourse Implementation and Management Plan

IGA FCD 2013A003

Agenda Item C-129-14-014-3-00 + C-44-14-017-M-00

THIS AGREEMENT is entered into as of December 11, 2013, 2013 (the "Effective Date"), as amended, among 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 (the "FCDMC"), MARICOPA COUNTY ("COUNTY"), acting by and through its Board of Supervisors, and THE CITY OF AVONDALE ("AVONDALE"), THE TOWN OF BUCKEYE ("BUCKEYE") and THE CITY OF GOODYEAR ("GOODYEAR"), each a municipal corporation of the State of Arizona, acting by and through its city or town council. The FCDMC, COUNTY, AVONDALE, BUCKEYE and GOODYEAR are collectively referred to as the "Parties" or individually as a "Party".

I. RECITALS

1. The FCDMC 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 FCDMC.

2. The COUNTY is empowered by A.R.S. Section 11-952, as revised, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the COUNTY.

3. AVONDALE is empowered by A.R.S. Section 11-952, as revised, and Article I, Section 3 of the Avondale City Charter to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of AVONDALE.

4. BUCKEYE is empowered by A.R.S. Section 11-952, as revised, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of BUCKEYE.

5. GOODYEAR is empowered by A.R.S. Section 11-952, as revised and Article I, Section 2 of the Goodyear City Charter, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of GOODYEAR.

6. The El Rio Watercourse Master Plan ("WCMP") was developed in 2006 to examine the benefits, opportunities, and impact of a range of flood control management plans that address the flood and erosion hazards and impending development pressures in consideration of public safety, social, economic, and environmental factors and to recommend a preferred watercourse master plan.

7. The El Rio WCMP was adopted by the Parties in 2006. In 2007, the Parties executed a Memorandum of Understanding ("MOU") to implement the El Rio WCMP. The MOU established the Administrative Committee, which consists of the city/town managers and/or directors of the Parties (the "ADMINISTRATIVE COMMITTEE"). The ADMINISTRATIVE COMMITTEE directs the implementation of the El Rio WCMP.

8. The ADMINISTRATIVE COMMITTEE has agreed to initiate a more detailed design process to implement the El Rio WCMP and desires to procure and retain a consultant to develop the El Rio Watercourse Implementation and Management Plan (the "PLAN") to implement the El Rio WCMP (the "Work").

9. The PLAN to be developed will include, but not be limited to, the following:

a. Consistent design guidelines and planning standards for local jurisdictions as well as public and private sector developers and property owners.

b. A prioritized list of potential projects (at least one each in Avondale, Buckeye and Goodyear) based on the conceptual framework outlined in the El Rio WCMP. Preliminary level design drawings, capital and maintenance costs, and funding sources shall be developed for each potential project.

c. If time and resources allow, the PLAN may include:

i. Developing strategies and supportive materials to promote stakeholder and public awareness of the El Rio WCMP.

ii. Designing interpretive trails and overlooks.

iii. Planning and designing signage and way-finding programs.

iv. Developing a list of specific existing and potential sources of funding to protect, manage and develop the Gila River as outlined in the vision for the El Rio WCMP.

v. Inventorying resources, respecting private property rights, contained within the El Rio WCMP area, including a list of any properties that are related to the vision of the El Rio WCMP and should be preserved, restored, managed, developed or maintained because of their natural, cultural, historic, recreational or scenic significance.

vi. Developing draft policies for resource management that detail the application of appropriate land and water management techniques, including the development of cooperative agreements to protect the historical, cultural, recreational and natural resources of the Gila River as outlined in the vision for the El Rio WCMP in a manner compatible with economic development.

vii. Completing an analysis of ways in which local, State and Federal programs may best be coordinated to promote the purposes of the El Rio WCMP.

viii. Completing any other related service as is determined by the Parties to best serve the implementation of the El Rio WCMP.

10. The purpose of this Agreement is to identify and define the responsibilities of the FCDMC, COUNTY, AVONDALE, BUCKEYE and GOODYEAR for the cost sharing, planning, analysis, preparation and implementation of the PLAN.

11. Each Party will designate staff to fully and actively participate in consultant selection, meetings, coordinate activities and data requests with its respective Party, and review and provide comments on interim and final plans.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

II. COST SHARING

1. Cost-Sharing. The FCDMC, AVONDALE, BUCKEYE and GOODYEAR will share, by one-quarter shares (25%/25%/25%/25%), the cost of the Work, which is estimated not to exceed \$200,000.00 or \$50,000.00 per Party.

2. Initial Payment. Upon award of the contract for consultant services to create the PLAN and upon receipt of an invoice from the lead agency, each Party shall pay \$25,000.00 to the lead agency as more particularly set forth in Section III below (the "Initial Payment").

3. Final Payment. Upon acceptance of the PLAN by the ADMINISTRATIVE COMMITTEE, each Party shall be responsible for one-quarter of the remaining cost of the Work, in an amount not to exceed \$25,000.00 per Party (the "Final Payment" and together with

the Initial Payment, the "Payments"). The total or aggregate amount of Payments under this Agreement for each Party shall not exceed \$50,000.00.

4. Budget. Each Party shall establish and maintain its own budget under this Agreement.

III. SCOPE OF WORK

1. Lead Contracting Agency's Obligations. AVONDALE shall:

a. Serve as the lead agency for the procurement and contracting for consultant services. All contracting and public information activities shall be performed as required by the A.R.S.

b. Be responsible for contract administration and payment to the PLAN consultant for work performed in accordance with the contract documents. Provide all Parties with the opportunity to review and approve the contract prior to execution of the contract.

c. Invoice the FCDMC, BUCKEYE and GOODYEAR for \$25,000.00 each upon award of the contract for consultant services. Upon acceptance of the PLAN by the ADMINISTRATIVE COMMITTEE, invoice the FCDMC, BUCKEYE and GOODYEAR for its proportionate share of the PLAN costs incurred, in an amount not to exceed \$25,000.00 per Party.

d. Include the FCDMC, COUNTY, BUCKEYE and GOODYEAR in the consultant selection, scoping process, and other meetings for the PLAN.

2. Parties' Obligations for Contracting. The FCDMC, BUCKEYE and GOODYEAR shall:

a. Provide the Initial Payment to AVONDALE within 30 calendar days of the award of the contract and receipt of an invoice from AVONDALE for the PLAN consultant as set forth in Section II(2) above.

b. Reimburse AVONDALE, within 30 calendar days of receipt of approved invoices, for its Final Payment as set forth in Section II(3) above.

3. Lead Oversight and Coordinating Agency's Obligations. BUCKEYE shall:

a. Serve as the lead agency for oversight and coordination of consultant services. This includes, but is not limited to, all day-to-day tasks relating to the implementation of the consultant's scope of work, ensuring the consultant is meeting established schedules for project delivery, coordinating responses to data requests, scheduling meetings and interagency coordination. All contracting and public information activities shall be performed as required by the A.R.S.

b. Coordinate public involvement activities regarding the PLAN, if needed, as determined by the Parties.

c. Send consultant's monthly progress reports to FCDMC, COUNTY, AVONDALE and GOODYEAR.

d. Provide the selected consultant's interim and final PLAN submittals to the FCDMC, COUNTY, AVONDALE and GOODYEAR for review and comment.

e. Resolve and/or incorporate any written comments on consultant's submittals from the FCDMC, COUNTY, AVONDALE and GOODYEAR as agreed to by the Parties.

4. Parties' Obligations for Coordination and Participation. The FCDMC, AVONDALE, GOODYEAR and the COUNTY shall:

a. Review and provide written comments to BUCKEYE on consultant's interim and final PLAN submittals within 21 calendar days of receipt of the submittals. If BUCKEYE does not receive comments within 21 calendar days for each submittal, it will be deemed that the FCDMC, AVONDALE, GOODYEAR and the COUNTY do not have any comments on that submittal.

b. Fully and actively participate in the PLAN including sharing data and attending scoping, consultant selection, progress, stakeholder and public meetings.

IV. MISCELLANEOUS PROVISIONS

1. Term. This Agreement shall be effective as of the Effective Date and shall remain in full force and effect until the earlier of: (a) June 30, 2015, or (b) acceptance of the PLAN by the ADMINISTRATIVE COMMITTEE and payment by the Parties (the "Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement.

2. Termination; Amendment. By mutual written agreement of the Parties, this Agreement may be amended or terminated at any time. If this Agreement is terminated, the Parties will forfeit any of their Payments paid to the date of termination to the extent that the Payments are required as payment for the Work that has been performed to the date of termination. If payment for the Work is owed at the time of termination, subject to the provisions of Section IV(9) of this Agreement (Non-Availability of Funds), the Parties shall be responsible for their proportionate shares of the Payments as obligated under this Agreement. If at the time of termination the Parties' Payments exceed the amount owed for the Work that has been performed to the date of termination, AVONDALE shall reimburse itself, FCDMC, BUCKEYE and GOODYEAR for each of their proportionate shares of the excess Payments. The Parties do not anticipate having to dispose of any property upon partial or complete termination of this

Agreement. However, to the extent that a disposition of property is necessary upon termination, property shall be returned to its original owner, if applicable, and all other property shall be retained by AVONDALE.

3. Miscellaneous. Each Party, and the Parties collectively, shall:

a. E-verify, Records and Audits. Comply with A.R.S. Sections 41-4401 and 23-214(A).

i. Each Party retains the legal right to inspect the records, during normal business, of the other Party's and any consultants', contractors' or subcontractors' employees performing work under this Agreement to verify compliance with A.R.S. Sections 41-4401 and 23-214(A). The Parties and their respective subcontractors shall cooperate with the other Parties' random inspections including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential

ii. Failure by any Party to comply with A.R.S. Sections 41-4401 and 23-214(A) shall be deemed a breach of this Agreement and is subject to penalties up to and including termination of the Agreement.

b. PLAN Consultant's Warranties, Records and Audit. Require that any consultant selected to develop the PLAN:

i. 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).

ii. Agree that a breach of the warranty under Section IV(3)(b)(i) above (PLAN Consultant's Warranties, Records and Audit) shall be deemed a material breach of the contract and is subject to penalties up to and including termination of the contract.

iii. Agree that any Party retains the legal right to inspect the papers of the consultant, contractor or subcontractor employee(s) who work(s) on this Agreement to ensure that consultant, contractor or subcontractor is complying with the warranty under Section IV(3)(b)(i) above (PLAN Consultant's Warranties, Records and Audit).

c. Delegation. Have the right, following mutual written agreement of all Parties, to delegate its responsibilities under this Agreement to another Party. Any delegation, however, shall not relieve the delegating Party of its original responsibilities as defined herein.

d. Disputes. In the case of any dispute over any items in this Agreement, 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.

4. Indemnification.

a. Except as to the claims described in Section IV(4)(b) below (Indemnification), 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, for, 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.

b. The Parties agree and acknowledge that in no event shall the indemnitor owe or be obligated to pay any amounts which the indemnitee has no obligation to pay or has not actually paid, whether due to inability to pay or due to having entered into an agreement or arrangement that provides the indemnitee has no obligation to pay regardless of the indemnitee's ability to pay or due to any other reason, including but not limited to liabilities for which a covenant not to execute has been provided to the indemnitee or any other agreement where liabilities are created with no obligation on the part of the indemnitee to pay.

5. Records. The Parties agree to retain all books, accounts, reports, files and other records relating to this Agreement and to make such available at all reasonable times for inspection and audit by the Parties to this Agreement, or their agents, during the term of and for a period in accordance with the State approved Retention Schedule or five years, whichever is longer, after completion of this Agreement.

6. Conflict of Interest. This Agreement is subject to cancellation by any Party pursuant to the provisions of A.R.S. Section 38-511.

7. Administrative Costs. Except as provided in Section II above, each Party to this Agreement will pay for and not seek reimbursement for its own personnel and administrative costs associated with this Agreement, including but not limited to management and administration of the PLAN, unless specifically identified otherwise in this Agreement.

8. Legislation. If legislation is enacted after the Effective Date 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.

9. Non-Availability of Funds. Every payment obligation of AVONDALE, BUCKEYE, GOODYEAR and the FCDMC under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by AVONDALE, BUCKEYE, GOODYEAR or the FCDMC at the end of the period for which the funds are available. No liability shall accrue to AVONDALE, BUCKEYE, GOODYEAR or the FCDMC in the event this provision is exercised, and AVONDALE, BUCKEYE, GOODYEAR and the FCDMC shall not be obligated or liable for any future payments as a result of termination under this Paragraph.

10. Notices. All notices or demands upon any Party to this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the Party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

FCDMC: Flood Control District of
Maricopa County
2801 West Durango Street
Phoenix, Arizona 85009
Attn: Timothy S. Phillips, P.E.,
Chief Engineer &
General Manager

COUNTY: Maricopa County Planning &
Development
501 N 44th Street, Ste. 200
Phoenix, AZ 85008
Attn: Debra Stark

AVONDALE: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Charles P. McClendon,
City Manager

With copy to: GUST ROSENFELD, P.L.C.
One E. Washington St. #1600
Phoenix, Arizona 85004-2553
Attn: Andrew J. McGuire, Esq.

BUCKEYE: Town of Buckeye
530 East Monroe Avenue
Buckeye, Arizona 85326
Attn: Stephen S. Cleveland,
Town Manager

With copy to: GUST ROSENFELD, P.L.C.
One E. Washington St. #1600
Phoenix, Arizona 85004-2553
Attn: Scott W. Ruby, Esq.

GOODYEAR: City of Goodyear
195 North 145th Ave., Bldg D
Goodyear, Arizona 85338
Attn: Brian Dalke, City Manager

With copy to: City of Goodyear
190 North Litchfield Road
Goodyear, Arizona 85338
Attn: Roric Massey, City
Attorney

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this Paragraph. Notices shall be deemed received (a) when delivered to the Party, (b) three business days after being placed in the U.S.

Mail, properly addressed, with sufficient postage or (c) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

11. Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed original hereof.

12. Legal Determination. In accordance with A.R.S. Section 11-952(D), attached hereto and incorporated herein is the written determination of each Party's legal counsel that the Parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**FLOOD CONTROL DISTRICT OF MARICOPA COUNTY,
A Municipal Corporation**

Recommended by:

 10/11/13
TIMOTHY S. PHILLIPS, P.E. Date
Chief Engineer and General Manager

Approved and Accepted:

 DEC 11 2013
By: _____ Date
Chairman, Board of Directors

Attest:

 DEC 11 2013
By: _____ Date
Clerk of the Board


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

 9/18/13
Flood Control District General Counsel Date


[SIGNATURES CONTINUE ON FOLLOWING PAGES]

MARICOPA COUNTY,
Acting By and Through its Board of Supervisors

Recommended by:


Name Debra W. Stark, ASCP Date 9-17-13
Its: Director Maricopa County Planning & Development

Approved and Accepted:

By:  Date DEC 11 2013
CHAIRMAN BOARD OF SUPERVISORS
Its: _____

Attest:

By:  Date DEC 11 2013
Its: CLERK BOARD OF SUPERVISORS

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


General Counsel Date 9/13/13

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

**CITY OF AVONDALE, an Arizona
municipal corporation**

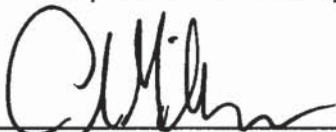

Marie Lopez Rogers, Mayor

Date: 8/6/2013

ATTEST:


Carmen Martinez, City Clerk

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


Andrew J. McGuire, City Attorney

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

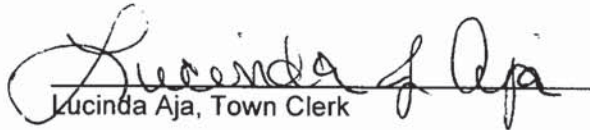
TOWN OF BUCKEYE, an Arizona
municipal corporation



Jackie A. Meek, Mayor

Date: September 23, 2013

ATTEST:



Lucinda Aja, Town Clerk

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



Scott W. Ruby, Town Attorney

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

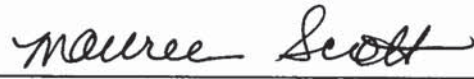
CITY OF GOODYEAR, an Arizona
municipal corporation



Brian Dalke, City Manager

Date: 9/12/13

ATTEST:



Maureen Scott, City Clerk

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



Roric Massey, City Attorney