

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF MARICOPA AND THE  
MARICOPA DOMESTIC WATER IMPROVEMENT DISTRICT  
FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FOR  
THE MARICOPA SOUTHSIDE WATER SYSTEM IMPROVEMENTS PROJECT**

**THIS INTERGOVERNMENTAL AGREEMENT** (“Agreement”) is made this 1<sup>st</sup> day of May, 2012, by and between the City of Maricopa, Arizona, an Arizona municipal corporation (“City”) and the Maricopa Domestic Water Improvement District, an Arizona Special District (“District”).

**RECITALS**

A. **WHEREAS**, the Parties are authorized to enter into this Agreement by A.R.S. §§ 9-240 and 11-951 et seq;

B. **WHEREAS**, the District provides domestic water services to homeowners and businesses within a portion of the City;

C. **WHEREAS**, City and District recognize the economic and public safety benefits of working cooperatively to improve domestic water services for the property owners in the District’s service territory;

D. **WHEREAS**, District desires to cause the construction of improvements to the pressure augmentation of the southside distribution system (“Project”);

E. **WHEREAS**, City and District desire to utilize federal funding available through the Community Development Block Grant (CDBG) program to complete the Project.

**NOW THEREFORE**, City and District agree to work cooperatively to enhance the domestic water services provided to property owners within the District’s service territory by constructing improvements to the pressure augmentation of the southside distribution system according to the terms and conditions and for the consideration hereinafter set forth:

**TERMS**

1. **PROJECT COORDINATOR**: The designated contact person within the Financial Services Department for this grant shall be Mary Witkofski, Grants Manager, Financial Services Department, whose phone number is 520/316.6844, and fax number is 520/316.6859.

2. **PURPOSE**: To provide funding for the Project.

3. **CONTRACT TERM**: The term of this Agreement shall run until the Project is completed or **March 15, 2014**, whichever is sooner, unless subsequently amended pursuant to Section 23 of the Terms of this Agreement.

4. **SCOPE OF PROJECT**: The District shall construct those improvements to the pressure augmentation of the southside distribution system as described in Exhibit A, attached hereto and by this reference made a part hereof.

5. ACTIVITIES FUNDED: The City shall provide funding for the improvements described in Exhibit A, if, when, and to the extent that adequate federal grant or other pass-through funds are available and continued activities under this Agreement are conditioned upon continued full and timely City receipt of grant funds.
6. BUDGET: The City shall provide an amount of Two Hundred Fifteen Thousand Five Hundred Twelve and 15/100 Dollars (\$215,512.15), in accordance with this Agreement unless subsequently amended pursuant to Section 23 of the Terms of this Agreement. Only eligible expenditures, as set out in the General Conditions of the CDBG grant (“General Conditions”), made under, as a part of, and on behalf of the Project can be reimbursed to the District by the City. No deviation from the approved project budget may be made by the District without prior written authorization from the City. If the City determines payments exceeded actual project costs, the District shall promptly refund the excess amount to the City.
7. BILLINGS: The District shall submit a billing to the Financial Services Department not more often than monthly. An expenditure detail is to be attached to each billing. At a minimum, this will include a copy of District’s general ledger to support all labor and personnel charges as well as all purchased goods or services. District is also required to provide time worked records and corresponding general or subsidiary ledger for verification purposes. The ledgers will be examined by City staff relative to the corresponding time worked record as well as for fringe benefits. Time worked records must meet with the City of Maricopa’s approval prior to the beginning of the City’s contract year, and are to be submitted for each employee included in District’s billings. City shall pay District within ten (10) business days of receiving the billing. All payment requests must be received by Financial Services Department by the end of the fiscal year. All contracted funds must be utilized as specified and requested by the CDBG grant.
8. RECORDS: District shall maintain and retain thorough records of all project business transactions and activities for at least five (5) years from the end of the contract year in which the transactions, activities and expenditures took place. District shall give the City and Department of Housing, through any authorized representatives, access to and the right to examine and copy all records, books, papers or documents relating to or arising from all District improvements funded in whole or in part under this Agreement, during the term of this Agreement and for a period of four (4) years following the termination of this Agreement. District shall also adhere to all record keeping and access requirements set out in the General Conditions, which are hereby incorporated into this Agreement by reference.
9. REPORTS: The City will require reports in writing on a quarterly basis; such reports shall be submitted by the District to the City in a form determined by the City within designated timeframes as established by the City. District shall also adhere to all reporting requirements set out in the General Conditions, which are hereby incorporated into this Agreement by reference.
10. MONITORING: The City shall have the authority to monitor District to ensure compliance with applicable federal requirements and achievement of Agreement and program performance goals, and the District shall take all reasonable measures and efforts to cooperate with the City in its efforts to monitor contract compliance and service delivery.
11. INFORMATION: Subject to such rules, regulations and restrictions of confidentiality that may apply by law to the parties and their personnel and clients, the City and Department of Housing shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any

reports, data, materials or other information prepared under or in conjunction with this Agreement. When appropriate, the District will acknowledge both the City of Maricopa and the source of funding, CDBG, in any program materials, marketing, and outreach activities.

12. AUDIT: District shall provide the Financial Services Department of the City of Maricopa, P.O. Box 610, Maricopa, AZ 85138, with a copy of any financial audit of the subject improvements, or portion thereof. Any such audit shall be performed and reported as set out in the General Conditions, which are hereby incorporated in this Agreement by reference.

13. CONFLICT OF INTEREST: District shall establish safeguards to prohibit its employees, board members, advisors and agents from using their positions for any purposes that are or give the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Said safeguards should be substantially designed and executed to prevent actual violations of applicable conflicts of interest laws. District shall disclose in writing to the City any conflict of interest or potential conflict of interest described above, immediately upon discovery of such. The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this contract.

14. INDEPENDENT CONTRACTOR: For the purpose of this Agreement, District shall at all times during this Agreement retain the status of an independent contractor. District's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or District.

15. NO THIRD PARTY BENEFICIARIES: Nothing contained herein, or any of the obligations of the parties hereunder, shall in any manner inure to the benefit of third parties, unless otherwise agreed to in writing by authorized officers of the parties.

16. INDEMNIFICATION: District shall defend, indemnify, and hold City, its officers and employees harmless from any and all loss, damage, claim for damage, liability, expense, or cost, including attorneys' fees, which arise out of, or is in any way connected with the performance under this Agreement by District, or any of District's principals, employees, agents or subconsultants, and from all claims by District's employees, subconsultants and agents for compensation for services rendered to District in the performance of this Agreement, notwithstanding that City may have benefited from their services. This indemnification provision shall apply to any and all acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of District or District's employees, subconsultants or agents. This section shall survive the expiration or early termination of the Agreement. District agrees that said indemnification shall extend to any claim asserted against the City by the Department of Housing as a result of this Agreement or the grant made pursuant hereto, regardless of the fault or non-fault of District in connection with such claim.

17. INSURANCE: As required by the City's Risk Manager, District shall maintain loss insurance for fire, hazard, comprehensive bodily injury and property damage in addition to indemnity insurance in the form of general and automobile liability, fidelity bonding and workers compensation as required in the General Conditions, which are hereby incorporated into this Agreement by reference. Each policy and each required certificate of policy existence, termination dates and conditions, terms and coverages shall provide that the insurer shall notify the City's Risk Management Division in writing no less than ten (10) days prior to the effective date of any cancellation, termination, expiration, or change. Such insurance shall be in forms and amounts and coverages as required by the City's Risk

Manager and each policy shall name the City as an additional insured. In addition, such insurance shall be expressly primary and any insurance carried by the City shall be excess and not contributing. This Agreement shall be of no force or effect until a copy of an appropriate and sufficient subject insurance policy or certificate thereof is delivered to the City's assigned Project Coordinator.

18. INCORPORATED BY REFERENCE: District shall administer this Agreement in compliance with all applicable federal, State of Arizona, and City of Maricopa laws, ordinances, and regulations, including but not limited to the General Conditions and federal regulations incorporated in this Agreement: Exhibit A, Scope of Improvements which is hereby incorporated by this reference.

19. REDUCTION IN ADMINISTRATIVE COMPENSATION: In the event that Department of Housing should, for any reason, reduce or eliminate the City's funding under this Agreement, the City reserves the right to renegotiate the amount of compensation due the District for the Activities Funded and Scope of Improvements due from the District as provided herein, or to terminate this Agreement for cause pursuant to the paragraph entitled "Termination for Cause" herein below, in the event no amended Agreement can be reached between the parties within sixty (60) days after notice of such change in anticipated funding.

20. TERMINATION FOR CAUSE: The City shall have the right to terminate this Agreement for cause in the event: District fails to fulfill in timely or satisfactory manner any of the significant and substantial obligations set forth in its Scope of Improvements as set forth in Exhibit A (attached); District breaches or violates any covenant, agreement or assurance herein; District fails to cure any such default, breach or violation no later than seven (7) days after receipt of the written notice from the City of such default or breach; and in the event any source of funding of this Agreement set forth in the paragraph above entitled "Reduction in Administrative Compensation" becomes impounded or otherwise unavailable, reduced or eliminated. In order to so terminate for cause, the City shall give District written notice by certified mail specifying the cause and the effective date of termination which may be effective upon District's receipt of notice, except as specifically provided above. In the event the City terminates this Agreement due to District's failure to cure any default, breach or violation as provided herein above or due to District's breach or violation of any covenant, agreement or assurance herein, the City may, at its option, make written demand for repayment of, and District shall immediately upon receipt of such written demand of the City repay all sums received by District from the City under this Agreement as of the date of said demand for any services that were not performed fully, appropriately, legally, competently, adequately, timely or properly, plus interest thereon at the highest legal rate, plus all expenses incurred by the City, including reasonable attorney's fees incurred in recovering said sums.

21. TERMINATION WITHOUT CAUSE: The City, without cause, may terminate this Agreement by giving District thirty (30) days written notice by certified mail. District may appeal such termination without cause by requesting reconsideration by the Mayor and Council, in writing, within thirty (30) days after written notice is delivered to District. Said appeal to be filed in writing with the City Clerk and with the Financial Services Director. The appeal to the Mayor and Council shall be scheduled as soon as is reasonably possible. District shall receive notice of the appeal hearing and opportunity to supplement its written appeal. Termination shall be suspended until the effective date of the Mayor and Council ruling on the District's appeal. If and when this Agreement is terminated under this Section, District shall be paid in full for all actual services and activities performed in a satisfactory manner, together with eligible out-of-pocket expenses incurred but unbilled at the time of termination, providing there are no grounds for termination or disallowance for cause as set forth herein above.

22. OFFSETTING CLAIM: Notwithstanding any provision appearing to the contrary, District shall not be relieved of liability to the City of damages sustained by the City by virtue of any breach of this Agreement by District, its officers, agents, managers or employees. The City may withhold payment of compensation to District for the purpose of an offsetting claim, until such time as the full amount of damage incurred by the City which is then due from District is determined and paid. Such damages may include Department of Housing's disqualification of activities funded because of District's failure to properly administer audit or report activities, services and/or expenditures.

23. INTEGRATED DOCUMENT: This Agreement and the following referenced and/or attached Exhibits embody the entire agreement between the City and District for the scope of services and their terms and General Conditions: Exhibit A, Scope of Improvements; which is hereby incorporated by this reference. This Agreement and any attachments represent the entire agreement between City and District and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

24. SEVERABILITY OF PROVISIONS: If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected, thereby if such remainder would then continue to conform to the terms and requirements of applicable law and if, in the judgment of the City and Department of Housing, such remainder will suffice to adequately and timely achieve the purpose and goals of the Project and of this contract.

25. NON-ASSIGNABILITY: District shall not assign any rights, obligations or other interests in this Agreement, and shall not transfer any interest in this Agreement without prior written consent of the City thereto.

26. SUCCESSORS: District covenants that the provisions of this Agreement shall be binding upon heirs, successors, subcontractors, representatives and agents.

27. NONDISCRIMINATION: District, in its employment policies and practices, in its public accommodations and in its provision of services shall obey all relevant and applicable, federal, state, and local laws, regulations and standards relating to discriminations, biases, and/or limitations, such as, but not limited to, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Arizona Civil Rights Act.

28. FEDERAL COMPLIANCE REQUIREMENTS: District shall comply with all applicable federal requirements including, but not limited to, any requirements in the attached Exhibits.

29. ARBITRATION. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by District and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and District shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator.

The cost of any such arbitration shall be divided equally between the City and District. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

30. **GOVERNING LAW AND VENUE:** The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

31. **HIGHLIGHTS OF SUBRECIPIENT (SUBGRANTEE) AGREEMENT:** The following is a brief highlight of some of the basic administrative requirements that District shall adhere to during the development and implementation of this Agreement. It is not to be construed nor interpreted by a Subgrantee, in this case the District, as a substitute for adhering to the applicable provisions of the entire Agreement:

#### **AGREEMENTS WITH SUBRECIPIENTS (SUBGRANTEES)**

Before disbursing any CDBG funds to a subrecipient (Subgrantee), the City shall sign this Agreement with the subrecipient (Subgrantee). The Agreement shall remain in effect during any period that the subrecipient (Subgrantee) has control over CDBG funds, including program income.

At a minimum, the written Agreement with the subrecipient (Subgrantee) shall include provisions concerning the following items:

- (1) *Statement of work (Exhibit A).* The Agreement shall include a description of work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the recipient effectively to monitor performance under the Agreement.
- (2) *Records and reports.* The recipient shall specify in the Agreement the particular records the subrecipient (Subgrantee) must maintain and the particular reports the subrecipient (Subgrantee) must submit in order to assist the recipient in meeting its recordkeeping and reporting requirements.
- (3) *Program income.* The Agreement shall include the program income requirements set forth in 24 CFR § 570.504(c). The Agreement shall also specify that, at the end of the program year, the City may require remittance of all or part of any program income balances (including investments thereof) held by the subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for Section 108 loan guarantee security needs). Grant advances (i.e. investment interest earned in interest bearing accounts) shall be remitted to the City at end of program year. The City shall provide Subgrantees with compliance instructions.

- (4) *Uniform administrative requirements.* The Agreement shall require the subrecipient (Subgrantee) to comply with applicable uniform administrative requirements, as described in 24 CFR.§ 570.502.
- (5) *Other program requirements.* The Agreement shall require the subrecipient (Subgrantee) carry out each activity in compliance with all federal laws and regulations described in subpart K of the CDBG regulations, except that:
- (i) The subrecipient (Subgrantee) does not assume the City of Maricopa’s environmental responsibilities described at 24 CFR § 570.604; and
  - (ii) The subrecipient (Subgrantee) does not assume the City of Maricopa’s responsibility for initiating the review process under the provisions of 24 CFR part 52.
- (6) *Conditions for religious organizations.* Where applicable, the conditions prescribed by DHUD for the use of CDBG funds by religious organizations shall be included in the Agreement.
- (7) *Suspension and termination.* The Agreement shall specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient (Subgrantee) materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.
- (8) *Reversion of assets.* The Agreement shall specify that upon its expiration the subrecipient (Subgrantee) shall transfer to the City of Maricopa any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient’s (Subgrantee’s) control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the subrecipient in the form of a loan) in excess of \$25,000 is either:
- (i) Used to meet one of the national objectives in 24 CFR § 570.208 (formerly § 570.901) until five (5) years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or
  - (ii) Not used in accordance with paragraph (b)(8)(i) of this section, in which event the subrecipient shall pay to the recipient an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (b)(8)(i) of this section.)

**APPLICABILITY OF UNIFORM ADMINISTRATIVE REQUIREMENTS FOR SUBRECIPIENTS (SUBGRANTEES) THAT ARE NOT GOVERNMENTAL ENTITIES**

Subgrantee shall comply with the requirements and standards of OMB Circular No. A-122, “Cost Principles for Non-profit Organizations,” or OMB Circular No. A-21, “Cost Principles for Educational Institutions,” as applicable, and OMB Circular A-133, “Audits of Institutions of Higher Education and Other Nonprofit Institutions” (as set forth in 24 CFR part 45).

Subrecipients will conduct required audits annually and provide copies to the Financial Services Department of the City. In addition, subrecipients are required to provide written certifications of compliance with OMB Circulars A-122 and A-133 at time of contract negotiation with the City. Such subrecipients (Subgrantees) shall also comply with the following provisions of the Uniform Administrative requirements of OMB Circular A-110 (implemented at 24 CFR part 84, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations") or the related CDBG provision, as specified in this paragraph:

- (1) Subpart A--"General";
- (2) Subpart B--"Pre-Award Requirements," except for § 84.12, "Forms for Applying for Federal Assistance";
- (3) Subpart C--"Post-Award Requirements," except for:
  - (i) Section 84.22, "Payment Requirements." The City of Maricopa shall follow the standards of §§ 85.20(b)(7) and 85.21 in making payments to subrecipients (Subgrantees);
  - (ii) Section 84.23, "Cost-Sharing and Matching";
  - (iii) Section 84.24, "Program Income." In lieu of § 84.24, CDBG subrecipients (Subgrantees) shall follow § 570.504;
  - (iv) Section 84.25, "Revision of Budget and Program Plans";
  - (v) Section 84.32, "Real Property." In lieu of § 84.32, CDBG subrecipients (Subgrantees) shall follow § 570.505;
  - (vi) Section 84.34(g), "Equipment." In lieu of the disposition provisions of § 84.34(g), the following applies:
    - (A) In all cases in which equipment is sold, the proceeds shall be program income (prorated to reflect the extent to which CDBG funds were used to acquire the equipment); and
    - (B) Equipment not needed by the subrecipient (Subgrantee) for CDBG activities shall be transferred to the City of Maricopa for the CDBG program or shall be retained after compensating the City of Maricopa;
  - (vii) Section 84.51(b), (c), (d), (e), (f), (g), and (h), "Monitoring and Reporting Program Performance";
  - (viii) Section 84.52, "Financial Reporting";
  - (ix) Section 84.53(b), "Retention and access requirements for records." Section 84.53(b) applies with the following exceptions:

- (A) The retention period referenced in § 84.53(b) pertaining to individual CDBG activities shall be four years; and
  - (B) the retention period starts from the date of submission of the annual performance and evaluation report, as prescribed in 24 CFR 91.520, in which the specific activity is reported on for the final time rather than from the date of submission of the final expenditure report for the award;
  - (x) Section 84.61, "Termination." In lieu of the provisions of § 84.61, CDBG subrecipients (Subgrantees) shall comply with § 570.503(b)(7); and
- (4) Subpart D--"After-the-Award Requirements, "except for § 84.71, "Closeout Procedures."

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be signed by their duly authorized representatives as of the day and year first above written.

CITY OF MARICOPA

MARICOPA DOMESTIC WATER  
IMPROVEMENT DISTRICT

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Board Chairman

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Board Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Denis M. Fitzgibbons, City Attorney

\_\_\_\_\_  
Stephen R. Cooper, Attorney for the District

**EXHIBIT A**  
**SCOPE OF IMPROVEMENTS**