

CITY COUNCIL REPORT



Meeting Date: July 11, 2023
General Plan Element: *Public Services and Facilities*
General Plan Goal: *Provide a safe environment for all citizens, visitors, and private interests*

ACTION

Revised Amendment to Intergovernmental Agreement between the City of Phoenix, the City of Scottsdale and the Flood Control District of Maricopa County for construction, construction management, and operation and maintenance within the Rawhide Wash Flood Hazard Mitigation Project. Adopt Resolution No. 12890 authorizing intergovernmental agreement amendment No. 2020-011-COS-A2 between the City of Scottsdale, the City of Phoenix, and the Flood Control District of Maricopa County to provide for further funding and revise cost share for the additional funding of construction, construction management, and operation and maintenance of the Rawhide Wash Flood Hazard Mitigation project.

Background

The purpose of this action is to authorize the City to amend an intergovernmental agreement (IGA) with the City of Phoenix and the Flood Control District of Maricopa County (District) for construction, construction management, and operation and maintenance of the Rawhide Wash Flood Hazard Mitigation project.

The Parties entered into the original intergovernmental agreement in 2020. The original agreement provided an estimated project budget of \$15,000,000 with the District providing fifty percent of the budget estimated to be \$7,500,000. According to the same agreement City of Phoenix would contribute forty percent of the budget or equal to \$6,000,000 and the City of Scottsdale would contribute ten percent of the budget or equal to \$1,500,000.

Due to the uncertainty of the market and increasing materials prices, the construction cost of the PROJECT needs to be modified. The DISTRICT with PROJECT PARTNERS agreed to modify the project cost share of the delta between the original amount associated with the IGA (\$15,000,000) and the final construction cost at 65/35. The 50/50 cost share will still apply to the original amount approved by the IGA.

Action Taken Adopt Resolution No. 12890 - YES - 7/0

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The Rawhide Wash watershed extends from the highlands northwest of the McDowell Mountains to the northeast and southwest to the Central Arizona Project Reach 11 impoundment.

The Rawhide Wash alluvial fan floodplain was studied as part of the Pinnacle Peak West Area Drainage Master Study (PPW ADMS). Rawhide Wash is in the southeastern portion of the PPW ADMS area and comprises about a 30-square mile drainage area. The PPW ADMS identified that the flood risks associated with Rawhide Wash are high priority and of regional significance.

Alternative flood control measures to mitigate flood hazards within the Rawhide Wash alluvial fan floodplain were investigated and evaluated. The recommended alternative is the Conveyance Alternative. The PROJECT PARTNERS have determined to move forward with the implementation of the Conveyance Alternative, hereinafter called the PROJECT.

Under the terms of this amendment to the IGA, the District will contribute sixty five percent (65%) towards the additional cost of Construction, Construction Management and Operation and Maintenance of the PROJECT. The District's total contribution under this agreement is estimated to be approximately \$9.75 million. The City's cost share of the increased funding under this IGA amendment is twenty percent of 35% and estimated to be approximately \$1.05 million. The City's total funding between the original IGA and this amendment is estimated to be approximately \$2.55 million. The City of Phoenix's total funding contribution between the original IGA and this amendment is estimated to be \$10.2 million.

	Flood Control District	Phoenix	Scottsdale	Project Cost
Original IGA @ \$15 million (50/50)	\$7,500,000 (50%)	\$6,000,000 (40%)	\$1,500,000 (10%)	\$15,000,000
Amendment @ \$30 million (increase at 65/35)	\$9,750,000 (65%)	\$4,200,000 (28%)	\$1,050,000 (7%)	\$15,000,000
Total	\$17,250,000	\$10,200,000	\$2,550,000	\$30,000,000

On March 21, 2023, the City Council adopted the Resolution Number 12759 authorizing Intergovernmental Agreement Number 2020-011-COS-A1. In this agreement, the cost share agreement between the City of Scottsdale, City of Phoenix and the Flood Control District of Maricopa County was revised from 50/50 (original agreement for \$15M dollars) to 65/35 (Amendment - additional \$15M dollars).

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However, the IGA Amendment did not mention the cost-sharing percentage in the Terms of the Agreement. The cost-sharing percentage was only mentioned in Section 7, which is part of the Background. Recently, the Flood Control District has proposed to clarify the language in Section 9 (Terms of the Agreement) to clearly reflect that the intent is to revise the cost-sharing percentage to 65/35 for amounts above \$15 million dollars up to an additional \$15 million dollars. The City Council previously approved Intergovernmental Agreement Amendment No. 2020-011-COS-A1 through Resolution No. 12759 with the City of Phoenix and the Flood Control District of Maricopa County ("the District") for the Rawhide Wash Flood Hazard Mitigation Project ("the Project"). Although the City Council approved the Amendment, the Project Partners have requested additional changes to the Amendment for clarification purposes prior to their approval. Upon adoption by the Parties, this subsequent version of the First Amendment shall supersede and supplant any prior versions of the Amendment.

Significant Issues to be Addressed

The PROJECT will:

- Provide 100-year flood protection to approximately 850 existing structures within the Rawhide Wash floodplain that are currently believed to be at risk for flooding in a 100-year storm based on the PPW ADMS results.

- Mitigate a significant breakout of flows toward the west-southwest near Happy Valley Road, known as the west split, and facilitate the containment of Rawhide Wash flows west of Scottsdale Road, thus minimizing future drainage infrastructure costs.

- Reduce the floodplain by approximately 435 acres in SCOTTSDALE, 1,438 acres in PHOENIX, and eliminate the 100-year floodplain affecting approximately 850 structures.

ANALYSIS & ASSESSMENT

Recent Staff Action

Staff coordinated with the City of Phoenix and the Flood Control District of Maricopa County and negotiated the required IGAs and IGA amendments for the Construction, Construction Management and Operation and Maintenance of the PROJECT.

Community Involvement

A virtual Public Meeting/Open House was held between January 18 – January 29, 2021. During the meeting the project construction approach were presented and discussed with residents.

RESOURCE IMPACTS

Available funding

CIP Stormwater funds have been requested in the FY 2023/24 Capital Improvement Plan to ensure appropriate funding for the city's portion of the Rawhide Wash Flood Hazard Mitigation capital project is available in FY 2023/24.

Due to the uncertainty of the market and increasing materials prices, the construction cost of the PROJECT needs to be modified. The DISTRICT with PROJECT PARTNERS agreed to modify the project cost share of the delta between the original amount associated with this amendment to the IGA, the District will contribute sixty five percent (65%) towards the additional cost of Construction, Construction Management and Operation and Maintenance of the PROJECT. The District's total contribution is estimated to be approximately \$9.75 million, making the District's total estimated funding contribution between the original IGA and this amendment at \$17.25 million. The City's cost share of the increased funding under this IGA amendment is twenty percent (20%) of 35 percent and estimated to be approximately \$1.05 million, making the City's total estimated funding contribution, between the original IGA and this amendment, to be approximately \$2.55 million. The City of Phoenix's total funding contribution between the original IGA and this amendment is estimated to be \$10.2 million.

The total PROJECT cost (including Phoenix and District shares) associated with this AMENDMENT is now estimated to be **\$30,000,000**.

Staffing, Workload Impact

The contract administrator responsible for enforcing all contract provisions will be Hasan Mushtaq, Floodplain Administrator, Planning and Development Services Department. No additional staffing needs have been identified because of this action.

Future Budget Implications

Annual maintenance costs for the retaining walls, constructed levees, special structures and catch basins cleaning associated with the Rawhide Wash Flood Hazard Mitigation Project are estimated at approximately \$20,000, which staff will include in future operating budgets.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution No. 12890 authorizing intergovernmental agreement No. 2020-011-COS-A2 between the City and City of Phoenix, and the Flood Control District of Maricopa County for

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construction, construction management and operation and maintenance for the Rawhide Wash Flood Hazard Mitigation Project.

Proposed Next Steps:

Upon approval by Council, Floodplain Administrator will continue to work with the City of Phoenix and the Flood Control District of Maricopa County to monitor all project costs during the construction, construction management, operation and maintenance of the Rawhide Wash Flood Hazard Mitigation Project.

RESPONSIBLE DEPARTMENT(S)

Planning and Development Services Department.

STAFF CONTACTS (S)

Hasan Mushtaq, Floodplain Administrator, hmushtaq@scottsdaleaz.gov

APPROVED BY

Judy Doyle

Judy Doyle, Budget Director
(For Financial Policies Compliance and Budget Appropriation)
(480) 312-2603, jdoyle@scottsdaleaz.gov

6/23/23 10:27 MST
Date

Michael L. Clack

Michael Clack, Chief Development Officer
(480) 312-7629, mclack@scottsdaleaz.gov

6/23/23 10:32 MST
Date

Erin Perreault

Erin Perreault, AICP, Planning, Econ. Dev. and Tourism Executive Director
(480) 3127093, eperrault@scottsdaleaz.gov

6/23/23 10:54 MST
Date

Brent Stockwell

Brent Stockwell, Assistant City Manager
(480) 312-7288, bstockwell@scottsdaleaz.gov

6/23/23 12:19 MST
Date

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ATTACHMENTS

1. Resolution No. 12890
2. Location Map
3. Contract No. 2020-011-COS-A2

RESOLUTION NO. 12890

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA AUTHORIZING THE MAYOR TO EXECUTE REVISED INTERGOVERNMENTAL AGREEMENT AMENDMENT NO. 2020-011-COS-A2 BETWEEN THE CITY OF SCOTTSDALE AND THE CITY OF PHOENIX AND THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY FOR THE RAWHIDE WASH FLOOD HAZARD MITIGATION PROJECT AND SUPERSEDING AND SUPPLANTING RESOLUTION NO. 12759 AND CONTRACT AMENDMENT NO. 2020-011-COS-A1

WHEREAS, the City Council previously approved Intergovernmental Agreement No. 2020-011-COS with the Flood Control District of Maricopa County ("the District") and the City of Phoenix for the Rawhide Wash Flood Hazard Mitigation Project ("the Project"); and

WHEREAS, the City Council previously approved Intergovernmental Agreement Amendment No. 2020-011-COS-A1 through Resolution No. 12759 with the Flood Control District of Maricopa County ("the District") and the City of Phoenix for the Rawhide Wash Flood Hazard Mitigation Project ("the Project"); and

WHEREAS, The Project Partners have agreed to split the Project into two phases. Phase 1 will include improvements downstream of Miller Road, and Phase 2 will consist of improvements upstream of Miller Road; and

WHEREAS, due to increasing costs and expenses, it is necessary to increase the estimated budget for the Project.

WHEREAS, the Flood Control District of Maricopa County has agreed to provide additional funds for design, rights-of-way acquisitions, construction, utility relocations, construction management, and operation and maintenance of the Project and to increase its percentage share of the additional estimated budget for the Project; and

WHEREAS, although the City Council approved the Amendment, the Project Partners have requested additional changes to the Amendment for clarification purposes prior to their approval;

BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. The Mayor of the City of Scottsdale is authorized and directed to execute the revised Intergovernmental Agreement Amendment No. 2020-011-COS-A2 between the City of Scottsdale and the City of Phoenix and the Flood Control District of Maricopa County to increase the estimated total project amount by an additional \$15,000,000 of which the City's share is estimated to be \$1,050,000 for the Rawhide Wash Flood Hazard Mitigation Project.

Section 2. Resolution No. 12759 and Contract Amendment No. 2020-011-COS-A1 adopted by this Council on March 21, 2023 are hereby superseded and supplanted by this Resolution and Contract Amendment No. 2020-011-COS-A2.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ____ day of July, 2023.

ATTEST:

CITY OF SCOTTSDALE, an
Arizona municipal corporation

By: _____
Ben Lane, City Clerk

By: _____
David D. Ortega, Mayor

APPROVED AS TO FORM:

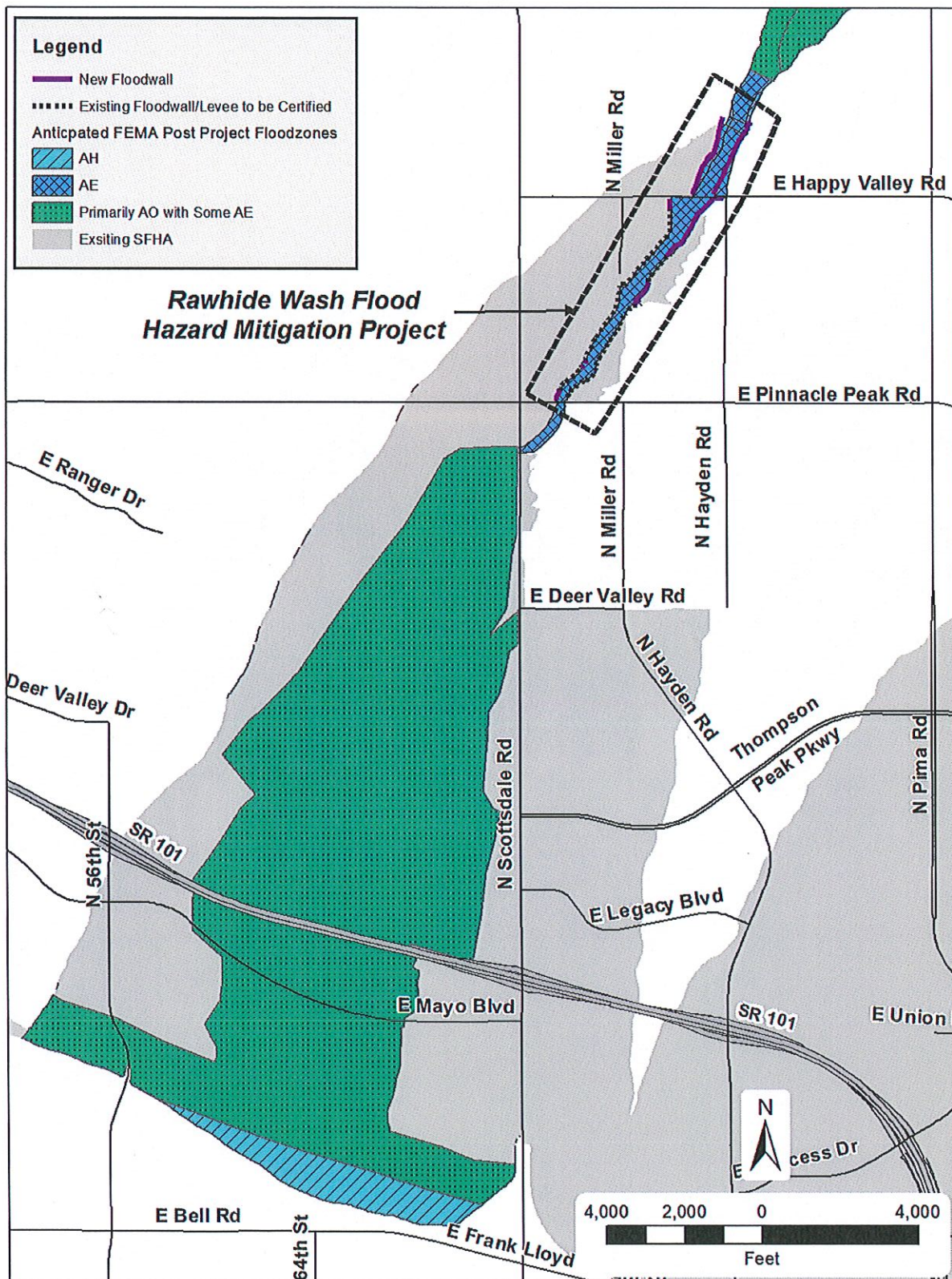
OFFICE OF THE CITY ATTORNEY



Sherry R. Scott, City Attorney
By: Eric C. Anderson, Senior Assistant City Attorney

IGA FCD 2019A009A

RAWHIDE WASH FLOOD HAZARD MITIGATION EXHIBIT "A"



AMENDMENT No. 1

to

INTERGOVERNMENTAL AGREEMENT IGA 2019A009

Among

CITY OF PHOENIX

and the

CITY OF SCOTTSDALE

and the

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

for the

CONSTRUCTION, CONSTRUCTION MANAGEMENT, AND OPERATION AND MAINTENANCE

of the

RAWHIDE WASH FLOOD HAZARD MITIGATION PROJECT

IGA FCD 2019A009A

City of Scottsdale Contract Number 2020-011-COS-A2

Agenda Item _____

This Amendment Number 1 (AMENDMENT), also known as Intergovernmental Agreement (IGA) 2019A009A to IGA 2019A009, is entered into by and among the City of Phoenix, a municipal corporation, acting by and through its City Manager, hereinafter called PHOENIX, the City of Scottsdale, a municipal corporation, hereinafter called SCOTTSDALE, 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, PHOENIX, and SCOTTSDALE are hereinafter collectively called the PROJECT PARTNERS.

This AMENDMENT shall become effective as of the date it has been executed by all parties.

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. PHOENIX is empowered by A.R.S. Section 9-461.12 as amended, and the Phoenix City Charter, Section 2(i), to enter into this Agreement, and the City Council has authorized the undersigned to execute this Agreement on behalf of PHOENIX.
3. SCOTTSDALE is empowered by A.R.S. Section 11-952 as amended and the Scottsdale City Charter Section 3-1 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of SCOTTSDALE.

ATTACHMENT 3

BACKGROUND

4. On April 11, 2018, the Board of Directors of the DISTRICT adopted Resolution FCD 2018R005 (C-69-18-028-6-00), authorizing the DISTRICT to cost-share in the Rawhide Wash Flood Mitigation Project, hereinafter referred to as the PROJECT, and to negotiate Intergovernmental Agreements for the design, rights-of-way acquisitions, construction, utility relocations, construction management, and operation and maintenance of the PROJECT.
5. On March 25, 2020, the Board approved IGA FCD 2019A009 (C-69-20-023-3-00) among PROJECT PARTNERS for construction, construction management, and operation and maintenance of the project.
6. The PROJECT PARTNERS have agreed to split the PROJECT into two phases. Phase 1 will include improvements downstream of Miller Road, and Phase 2 will consist of improvements upstream of Miller Road.
7. Due to the uncertainty of the market and increasing material prices, the construction cost of the PROJECT needs to be modified. The DISTRICT with the PROJECT PARTNERS also agreed to modify the project cost share of the delta between the original amount associated with IGA (\$15,000,000) and the final construction cost at 65%/35%. The 50/50 cost share will still apply to the original amount approved by the IGA.
8. A draft version of this amendment was approved by the Scottsdale City Council that was not yet approved by the District. Upon adoption by the PROJECT PARTNERS, the executed version of the Amendment shall supersede and supplant the draft version of the Amendment which was signed by the Scottsdale City Council on March 24, 2023.

PURPOSE OF THE AGREEMENT

9. This AMENDMENT only modifies the PROJECT's estimated cost for both phases and cost-sharing for the amount above \$15,000,000 for the PROJECT activities related to construction, construction management, and operation and maintenance.

TERMS OF AGREEMENT

10. With this AMENDMENT the estimated PROJECT cost is revised from \$15,000,000 to **\$30,000,000**. The cost share for the PROJECT's costs above \$15,000,000 will be 65% DISTRICT, 28% PHOENIX, and 7% SCOTTSDALE.
11. This AMENDMENT governs where terms conflict with the original IGA FCD 2019A009. The paragraph numbering in this AMENDMENT is coincidental and is not intended to indicate that these same numbered paragraphs in the original IGA FCD 2019A009 are being replaced entirely.
12. Any contractor selected for the PROJECT pursuant to IGA 2019A009 or this AMENDMENT shall be required to:
 - 12.1 Warrant its compliance with all federal immigration laws and regulations that relate to its employees and their compliance with A.R.S. § 23-214(A).
 - 12.2 Warrants and certifies that it does not currently, and agrees for the duration of the contract that it will not, use:

- 12.2.1 The forced labor of ethnic Uyghurs in the People's Republic of China.
 - 12.2.2 Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
 - 12.2.3 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.
- 13. Agree that a breach of the warranty under the original IGA FCD 2019A009 paragraph 18.3.1 shall be deemed a material breach of contract and is subject to penalties up to and including termination of the contract.
 - 14. Nothing in this AMENDMENT (either express or implied) is intended to confer upon anyone other than the parties herein and their respective representatives, successors, and permitted assigns any rights or remedies under or because of this AMENDMENT, nor is anything in this AMENDMENT intended to relieve or discharge the liability of either party hereto.
 - 15. Attached to this AMENDMENT or contained herein, are the written determinations by the appropriate attorneys for the PROJECT PARTNERS that these agencies are authorized under the laws of the State of Arizona to enter into this AMENDMENT and that it is in proper form.
 - 16. If legislation is enacted after the effective date of this AMENDMENT that changes the relationship or structure of one or more PROJECT PARTNERS, the PROJECT PARTNERS agree that this AMENDMENT shall be renegotiated at the written request of either PROJECT PARTNER.
 - 17. This AMENDMENT is subject to cancellation pursuant to A.R.S. § 38-511.

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

Recommended by:

Michael A. Fulton Date
Director

Approved and Accepted:

By: _____
Chairman, Board of Directors Date

Attest:

By: _____
Clerk of the Board Date

The foregoing Intergovernmental Agreement Amendment FCD 2019A009A has been reviewed pursuant to Arizona Revised Statutes 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

CITY OF PHOENIX
A Municipal Corporation,

Approved and Accepted By:

Kini Knudson, P.E.
Street Transportation Director

Date

Attest:

By:

City Clerk

Date

The foregoing Intergovernmental Agreement Amendment FCD 2019A009A has been reviewed pursuant to Arizona Revised Statutes 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 Phoenix under the laws of the State of Arizona.

By:

City Attorney

Date

CITY OF SCOTTSDALE
A Municipal Corporation,

Approved and Accepted By:

David D. Ortega, Mayor

Date

Attest:

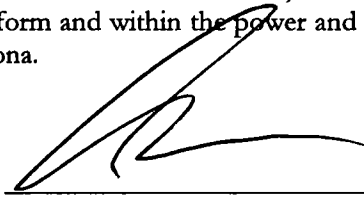
By:

Ben Lane, City Clerk

Date

The foregoing Intergovernmental Agreement Amendment FCD 2019A009A has been reviewed pursuant to Arizona Revised Statutes 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 Scottsdale under the laws of the State of Arizona.

By:



8/27/23

Sherry R. Scott, City Attorney

Date

By: Eric C. Anderson, Sr. Asst. City Attorney

IGA FCD 2019A009A

RAWHIDE WASH FLOOD HAZARD MITIGATION EXHIBIT "A"

