

INTERGOVERNMENTAL AGREEMENT

BETWEEN
GILA COUNTY
AND
PINE-STRAWBERRY WATER IMPROVEMENT DISTRICT (PSWID)
FOR
CONSTRUCTION IMPROVEMENTS ON AND NEAR PINE CREEK CANYON ROAD

THIS AGREEMENT is entered into this date _____, pursuant to the Arizona Revised Statutes § 11-951 through § 11-954, as amended, between GILA COUNTY, (the County) and PINE-STRAWBERRY WATER IMPROVEMENT DISTRICT, (PSWID). The County and the PSWID collectively are referred to as "Parties".

I. RECITALS

1. The County is empowered by Arizona Revised Statutes §§ 11-251 et. seq. to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the County.

2. The PSWID is empowered by the provisions of Title 48, Chapter 6, Articles 1 and 4, of the Arizona Revised Statutes to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement on behalf of the PSWID.

3. *Purpose.* The County will design and construct a road improvement project that includes widening and paving of approximately 5,000 feet of Pine Creek Canyon Road starting from the intersection with Highway 87. The PSWID has decided that it would like to take advantage of the reconstruction and replace and upgrade its aging distribution system in the area. Possible upgrades may include larger supply lines as well as fire hydrants. Coordinating these upgrades with the road project should result in cost savings to Gila County residents. It is estimated that the cost of upgrading PSWID aging distribution system (hereinafter PSWID Upgrade) in the area would add **\$245,674.00 to the total project.**

The Parties hereto agree to and acknowledge the following conditions:

- a) The estimated monetary amounts referenced in this Agreement are subject to change and could change substantially before completion of the PSWID Upgrade;
- b) The PSWID has agreed to pay the County the amount of the PSWID Upgrade bid plus a twenty percent contingency the total of which may not exceed \$294,809.00 for the PSWID Upgrade prior to the PSWID Upgrade award.
- c) The County shall provide the PSWID with a recapitulation of the PSWID Upgrade's final costs;
- d) If the PSWID final costs are less than \$294,809.00, the County shall return to PSWID the difference.

E) If the total PSWID upgrade bid plus twenty percent contingency exceeds \$294,809.00, the County shall not award a contract for the PSWID Upgrade unless the PSWID first approves and pays to the County an amount equal to the PSWID Upgrade plus a twenty percent contingency.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The County will:

a. Prepare and provide design plans, specifications and other such documents and services required for construction bidding and construction of the Roadway Improvement Project and PSWID Upgrade.

b. Advertise for bids and award one or more construction contract(s) for the Project including the PSWID Upgrade. Administer contracts and provide overall Project Management for the Project and PSWID Upgrade and make all payments to the contractor(s).

c. Upon execution of this Agreement and within (15) fifteen days, after bid opening and prior to award invoice the PSWID for its contribution of construction costs including a 20% contingency related to the PSWID Upgrade.

d. Upon completion, provide the PSWID with a recapitulation of the PSWID Upgrade's costs and reimburse the PSWID any unused PSWID Upgrade construction funds.

e. Upon completion of the Project, the County shall be responsible for all routine and emergency maintenance work for the Road Improvement Project.

2. The PSWID will:

a. Provide the design documents, bid documents, and engineer's cost estimate required for construction of the PSWID Upgrade.

b. Assist the County, at no cost to the County, as requested by the County in providing timely PSWID Upgrade related inspections and clarifications or interpretations of the PSWID Upgrade design plans and specifications including review and approval of construction related shop drawings.

c. Grant an individual with the authority to approve change orders to the PSWID Upgrade up to the amount of the twenty percent PSWID Upgrade bid contingency.

d. Upon execution of this Agreement within thirty (30) days after bid opening and

prior to award and upon receipt of an invoice from the County, remit to the County for the invoiced amount of the PSWID Upgrade bid plus a twenty percent contingency the total of which may not exceed \$294,809.00 for construction costs for the PSWID Upgrade.

e. Upon completion of the PSWID Upgrade, the PSWID shall be responsible for all routine and emergency maintenance work for the PSWID Upgrade in compliance with County Right of Way Use Permit requirements.

III. MISCELLANEOUS PROVISIONS

1. *Duration.* This agreement shall remain in force and effect until completion of the work and related deposits and reimbursements.

2. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or other expenses (including, but not limited to, reasonable attorneys' fees) (Hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death), property damage and any other claims (including, but not limited to, claims of derivative or vicarious liability), which are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

3. This Agreement shall become effective upon signing and dating of the Gila County Board of Supervisors.

4. The Parties are notified that this Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

6. In the event of any controversy which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. Compliance requirements for Arizona Revised Statutes § 41-4401 – immigration laws and E-Verify requirement.

a. The Parties warrants compliance with all Federal Immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes § 23-214(A).

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the subcontractor may be subject to penalties up to and including termination of the Agreement.

c. The County retains the legal right to inspect the papers of any employee who works on the Project to ensure that the contractor or subcontractor is complying with the warranty under paragraph (a).

8. Pursuant to Arizona Revised Statutes § 35-391.06 and § 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section, the term "scrutinized business operations" shall have the meanings set forth in Arizona Revised Statutes § 35-391 and/or § 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

9. In accordance with Arizona Revised Statutes § 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.

10. This Intergovernmental Agreement is solely for the benefit of the Parties and does not create, nor shall be interpreted to create, rights in any third party. No third party may enforce the terms and conditions expressed in this Intergovernmental Agreement.

11. The waiver by the Parties, mutually or independently, of any term, covenant, or condition of this Intergovernmental Agreement shall not be deemed a waiver of any other term, covenant, or condition.

12. This Intergovernmental Agreement constitutes the entire agreement between the Parties and no understandings of obligations exist outside of this agreement. This Intergovernmental Agreement may only be modified in writing.

13. If within thirty (30) days after bid opening and prior to award, PSWID fails remit to the County for the invoiced amount of the PSWID Upgrade bid plus a twenty percent contingency the total of which may not exceed \$294,809.00, then the County shall not award a bid for the PSWID Upgrade and the PSWID Upgrade will not be part of the Pine Creek Canyon Road Project.

PASSED AND ADOPTED this ____ of _____, 2012, at Globe, Gila County, Arizona.

Attest:

GILA COUNTY BOARD OF SUPERVISORS

Marian Sheppard
Chief Deputy Clerk of the Board

Tommie C. Martin, Chairman

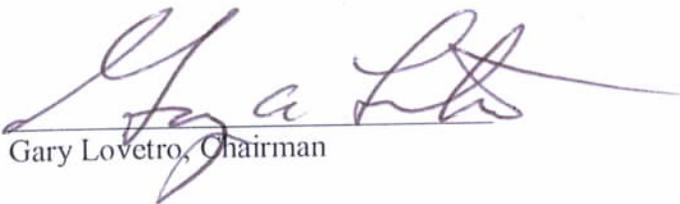
Approved as to form:

Bryan Chambers
Chief Deputy County Attorney

PASSED AND ADOPTED this 19 of January, 2012, at Pine, Gila County,
Arizona.

Attest:

PINE-STRAWBERRY WATER IMPROVEMENT DISTRICT



Gary Lovetro, Chairman

Approved as to form:

N/A _____
Daniel Torrens
PSWID Attorney