

**Metropolitan Domestic Water Improvement District
Board of Directors Meeting**

May 9, 2011

**Approval of Intergovernmental Agreement with
Northwest Fire District for the
Northwest Fire District Station #30 Public Water Main**

Synopsis

The Board of Directors is requested to approve the Intergovernmental Agreement (IGA) between the Metropolitan Domestic Water Improvement District (MDWID) and the Northwest Fire District (NWFD).

Background

The Northwest Fire District is expanding its fire station at 1520 W. Orange Grove Road, to include the lot at the NE corner of Orange Grove Road and Pomona Road (just west of the La Canada Drive/Orange Grove Road intersection). Part of this expansion includes a small public water line extension in Pomona Road and water service, then continuing into the site as a private water line to supply a private fire hydrant and private fire service. Instead of our customary “boiler plate” Water Service Agreement (WSA), the NWFD requested an IGA to address the WSA provisions.

Issues

Several areas of the standard MDWID WSA were modified and are summarized as follows:

- Titles: Changed from “Water Service Agreement” to “Intergovernmental Agreement”.
- Recitals, Item added by NWFD:
 - D. District and Applicant are authorized to jointly exercise their powers pursuant to A.R.S. sections 11-952, *et seq.*, and 48-805 (B)(17)(a).”

- Article 9 Miscellaneous,

Item added by MDWID:

9.8 Other than in an event of an emergency, the applicant shall give advanced notification to the District regarding any necessary flow testing, maintenance, demonstrations, training, or any other activity whereby there is a release of water from the on-site private fire hydrant. Every effort should also be made to train fire station personnel to avoid water hammer by a rapid closure of the fire hydrant valve.

Items added by NWFD:

9.9 **Compliance with Immigration Laws:** As mandated by Arizona Revised Statutes [“A.R.S.”] section 41-4401, the parties are prohibited from awarding a contract to any contractor or subcontractor that fails to comply with A.R.S. section 23-214(A). The parties must also ensure that every contractor and subcontractor complies with federal immigration laws and regulations that relate to their employees and A.R.S. section 23-214(A). Therefore, in signing or performing any contract (including this Agreement) each party fully understand that:

- A. It warrants that both it and any subcontractors it may use comply with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. section 23-214(A);
- B. A breach of the warranty described in subsection A, shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract; and
- C. Each party or its designee retains the legal right to inspect the papers of any contractor or subcontractor employee who works on the Contract to ensure that the contractor or subcontractor is complying with the warranty under subsection A.

9.10 **Scrutinized Business Operations:** Pursuant to A.R.S. sections 35-391.06 and 35-393.06, each party certifies that it does not have a scrutinized business operation, as defined in A.R.S. sections 35-391 and 35-393, in either Sudan or Iran.

9.11 **Safety:** The safety requirements of the Occupational Safety and Health Act (29 U.S.C. Sections 651-678) as promulgated by the Federal government, and as implemented by the State of Arizona, apply to all work performed under this Contract. The Applicant will be solely responsible for implementing and enforcing the safety requirements of this Act at all times.

9.12 **Non-Discrimination.** Neither party shall discriminate against any employee or client of either party or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out the duties pursuant to this Agreement. Both parties shall comply with applicable provisions of Executive Order 75-5, as amended by Executive Order 2009-09 of the Governor of Arizona, which are incorporated into this Agreement by reference as if set forth in full herein, and of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

9.13 **Workers' Compensation.** Each party shall comply with the notice provisions of A.R.S. § 23-1022(E). For purposes of A.R.S. § 23-1022, each party shall be considered the primary employer of all personnel currently or hereafter employed by that party, irrespective of the operations of protocol in place, and said party shall have the sole responsibility for the payment of Workers' Compensation benefits or other fringe benefits of said employees.

- Article 10 Cancellations, Section 10.1, the term "District" changed to "parties".
- Article 10 Cancellations, Section 10.1.1, the two instances of "by the District" were removed from the second sentence. Two instances of the term "District" was changed to "parties" in the third sentence.
- The signature block for NWFD was modified to include the name, "Northwest Fire District", the name of "George Carter" with the title of "Board Chair", and the current mailing address of NWFD of "5225 W. Massingale Rd., Tucson, AZ 85743."
- Signature block for only the MDWID legal counsel removed, and the following added:

Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between Metropolitan Domestic Water Improvement District and Northwest Fire District has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Intergovernmental Agreement represented by the undersigned.

By: _____
Attorney for NWFD

By: _____
Attorney for MDWID

The modified WSA that now forms the IGA between the MDWID and NWFD is attached to this report for your consideration. Legal Counsel has reviewed and approved the changes indicated above.

Recommendation

Staff recommends the Board of Directors approve the Intergovernmental Agreement with the Northwest Fire District for the Northwest Fire District Station #30.

Suggested Motion

I move to approve the Intergovernmental Agreement with the Northwest Fire District for the Northwest Fire District Station #30 development.

Respectfully submitted,

Charlie A. Maish, P.E., R.L.S.
District Engineer

I concur with the above-noted recommendation.

Respectfully submitted,

Mark R. Stratton, P.E.
General Manager