

When Recorded Return to:
Scott Bender, P.E., CFM
Pinal County Flood Control District
P.O. Box 727
Florence, Arizona 85132

INTERGOVERNMENTAL AGREEMENT

For the

CONSTRUCTION

Of the

TORTOSA, NORTHEAST CORNER

HONEYCUTT & HARTMAN ROAD

CONCRETE BOX CULVERT

DRAINAGE IMPROVEMENTS

Between the

CITY OF MARICOPA

And the

PINAL COUNTY FLOOD CONTROL DISTRICT

IGA _____

CITY OF MARICOPA NO. _____

Agenda Item _____

This Intergovernmental Agreement, hereinafter the Agreement, is entered into by and between the City of Maricopa, an Arizona municipal corporation, acting by and through its City Council, hereinafter the "CITY" and the Pinal County Flood Control District, a municipal corporation and political subdivision of the State of Arizona, acting by and through its Board of Directors, hereinafter the "DISTRICT". The CITY and the DISTRICT are hereinafter the PROJECT PARTNERS and are individually each a PROJECT PARTNER.

This Agreement shall become effective as of the date it has been executed by all parties and recorded by the Pinal County Recorder.

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

BACKGROUND

3. The DISTRICT solicited proposals for local community flood control projects. The CITY proposed a project intended to reduce flooding hazards impacting residents and businesses in the vicinity of Hartman and Honeycutt Roads intersection, hereinafter the "PROJECT" (See Exhibit A). The CITY anticipates design of the PROJECT will be provided to CITY by a third party and therefore design costs are not included in this Agreement.
4. The constructed PROJECT will provide the following benefits:
 - 4.1 Reduce the flood hazard to existing homeowners and property in the vicinity of the intersection of Honeycutt and Hartman Road.
 - 4.2 Reduce the flood hazard to roadways in the vicinity of the PROJECT that have experienced historic flooding.
 - 4.3 Any other benefits or objectives beyond those stated in this section are beyond the scope of the PROJECT as the term is used herein, and costs associated with the achievement of those objectives are beyond the scope of this Agreement.
 - 4.4 This proposed PROJECT does not protect property that currently floods until the channel improvements upstream and downstream are completed. This is the first phase of flood control channel improvements that are not funded at this time. It is anticipated that proposed development in this area will complete part of the channel improvements that the PROJECT will connect into. There are no adverse flooding impacts if the rest of the project is delayed or not funded.

PURPOSE OF THE AGREEMENT

5. The purpose of this Agreement is to identify and define the responsibilities of the DISTRICT and the CITY for the PROJECT.

TERMS OF AGREEMENT

6. Construction costs associated with the PROJECT are estimated to be \$250,000.
7. The CITY shall construct the PROJECT using CITY funds, and upon completion shall submit an invoice to the DISTRICT for reimbursement of construction costs according to the terms in this Agreement.
 - 7.1 Costs associated with rights-of-way acquisition, permitting, construction management, operations and maintenance are specifically excluded from the reimbursable PROJECT costs.

- 7.2 The invoice(s) submitted to the DISTRICT shall include copies of the PROJECT – related billings, invoices, payment vouchers, change orders, or any other backup documentation establishing the amount paid and that the costs being invoiced to the DISTRICT meet the requirements of this Agreement for reimbursement.
 - 7.3 CITY shall review the PROJECT design as submitted to ensure that the design meets or exceeds engineering standards and that the design is appropriate for PROJECT purposes and buildable. CITY is responsible for the design and any additional PROJECT costs related to errors or omissions in the design.
8. The following costs are expressly excluded from the PROJECT costs under this Agreement:
 - 8.1 Multi-use, landscaping, and aesthetic features.
 - 8.2 Personnel and administrative expenses costs incurred by either PROJECT PARTNER.
 - 8.3 Design, design review, and any redesign costs.
9. The DISTRICT shall:
 - 9.1 Reimburse 100 percent (100 %) of the PROJECT cost incurred up to \$250,000 and invoiced by the CITY. DISTRICT funds will be from the DISTRICT's secondary tax levy revenues and DISTRICT funding shall be contingent upon the availability of DISTRICT Capital Improvement Program budget funding and in no circumstance shall reimbursement to the CITY exceed \$250,000 for this PROJECT. The DISTRICT's percentage cost share for the PROJECT shall not be amended under this Agreement.
 - 9.2 Within 60 days of receipt of an invoice from the CITY reimburse the CITY per the terms of this Agreement.
 - 9.3 Participate in a final inspection of the completed PROJECT with the CITY.
10. The CITY shall:
 - 10.1 Fund the entire PROJECT cost.
 - 10.2 Serve as lead agency for all aspects of PROJECT implementation.
 - 10.3 Fully fund and not seek DISTRICT reimbursement for all costs excluded from this Agreement, such as but not limited to recreation, aesthetic, or transportation enhancements, or obtain such funding from other entities.
 - 10.4 Provide PROJECT plans and specifications to the DISTRICT, including interim submittals as appropriate, for review and comment. Incorporate DISTRICT comments into the PROJECT as appropriate. The CITY shall not construe DISTRICT review comments, or lack of review comments, as concurrence with the technical or structural adequacy of the PROJECT.

- 10.5 Acquire all necessary land rights for the PROJECT in accordance with state statutes and make all land acquisition records available to the DISTRICT for review, at the DISTRICT'S option.
- 10.6 Provide any proposed construction change orders to the DISTRICT for review and approval if the DISTRICT requests such review during the construction phase.
- 10.7 Coordinate a final inspection of the completed PROJECT with the DISTRICT.
- 10.8 At PROJECT completion, prepare a final accounting and invoice the DISTRICT for its share of the PROJECT construction costs.
 - 10.8.1 Final accounting shall include an accounting of all sources of PROJECT funding, if sources not reasonably discoverable by City staff other than the DISTRICT are available, validating that the CITY has not received reimbursements for the PROJECT from multiple entities, public or private, that collectively exceed the PROJECT construction cost.
- 10.9 Be responsible for operation and maintenance of the completed PROJECT.
 - 10.9.1 The maintenance activities to be performed include, but are not limited to, maintaining the flood control function of the PROJECT, including vegetation control and removal, debris removal, earth backfill to address soil removal, and riprap replacement.
 - 10.9.1.1 The CITY shall conduct inspections of the completed PROJECT annually and immediately following storm events meeting or exceeding the PROJECT design level.
- 10.10 Be fully responsible for the completed PROJECT and any public or private use of the PROJECT and indemnify, defend and hold harmless the DISTRICT as provided in paragraph 16 herein.
- 10.11 If necessary, obtain a United States Army Corps of Engineers' Section 404 Environmental Permit for the PROJECT. The cost of this permit and any required mitigation are not a component of the shared PROJECT construction cost included in this Agreement.
- 10.12 Require that any contractor selected for the PROJECT:
 - 10.12.1 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);
 - 10.12.2 Agree that a breach of the warranty under paragraph 10.12.1 shall be deemed a material breach of contract and is subject to penalties up to and including termination of the contract;

10.12.3 Agree that the DISTRICT retains the legal right to inspect the papers of the contractor or subcontractor employee(s) who work(s) on this PROJECT to ensure that contractor or subcontractor is complying with the warranty under paragraph 10.12.1;

11. Any local permits required for the PROJECT shall be issued by the appropriate PROJECT PARTNER at no cost to the PROJECT.
12. Either party to this Agreement may with mutual written agreement of all parties, delegate responsibilities to another party. Any delegation, however, shall not relieve the delegating party of its original responsibilities as defined herein.
13. In the case of any dispute over any items in this Agreement, the parties 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.
14. Each party to this Agreement shall take reasonable and necessary actions within its authority to ensure that only storm water is discharged into the PROJECT, and that such discharges into the PROJECT comply at the point of discharge with any applicable requirements of the U.S. Environmental Protection Agency Clean Water Act, Arizona Pollutant Discharge Elimination System or any other applicable discharge requirements, including any permit requirements.
15. The parties to this Agreement agree to equally share the cost of PROJECT compliance and cost audit to be initiated within 60 days of PROJECT completion, if requested by a PROJECT PARTNER. An independent auditing firm agreed to by both PROJECT PARTNERS will perform the audit. Any payments or reimbursements necessary to bring the PROJECT into compliance with the audit findings shall be made within 45 calendar days of acceptance by all parties of the audit report.
16. 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, 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. Indemnitee shall be liable for its own negligence or wrongful acts as provided by law.
17. Each party to this Agreement shall comply with A.R.S. Sections 41-4401 and 23-214, subsection A.
 - 17.1 Each party to this Agreement retains the legal right to inspect the records of the other party's and any contractors' or subcontractors' employees performing work under this Agreement to verify compliance with A.R.S. Sections 41-4401 and 23-214, subsection A.

17.2 Failure by either party to this Agreement to comply with A.R.S. Sections 41-4401 and 23-214, subsection A shall be deemed a breach of this Agreement and is subject to penalties up to and including termination of the Agreement.

18. All notices or demands upon either party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Pinal County Flood Control District
County Engineer
P.O. Box 727
Florence, Arizona 85132

City of Maricopa
City Engineer
39700 W. Civic Center Plaza
Maricopa, Arizona 85138

19. Each party to this Agreement will pay for and not seek reimbursement for its own personnel and administrative costs associated with this PROJECT, including but not limited to the following, unless specifically identified otherwise in this Agreement: design, design review, redesign, contract preparation, construction, construction management, operation, maintenance, permitting, management and administration.
20. This Agreement shall expire two (2) years from the date of recording with the County Recorder, or upon completion of the PROJECT and after all funding obligations and reimbursements have been satisfied in accordance with this Agreement, whichever is the first to occur. The County Engineer may agree in writing to extend the expiration date for up to two additional years upon a demonstration by the CITY that an extension is justified. By mutual written agreement of the DISTRICT and CITY this Agreement may be otherwise amended or terminated. Potential amendments are restricted by paragraphs 7.1 and 8 of this Agreement. The liability, operation and maintenance, and indemnification provisions of this Agreement shall survive the expiration of this Agreement. This Agreement is subject to cancellation by either party pursuant to the provisions of A.R.S. Section 38-511.
21. Attached to this Agreement or contained herein are the written determinations by the appropriate attorneys for the parties to this Agreement, that these agencies are authorized under the laws of the State of Arizona to enter into this Agreement and that it is in proper form.
22. If legislation is enacted after the effective date of this Agreement 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 either party.
23. The PROJECT will be planned and designed to be a part of the 100-year solution for this area impacted by a FEMA designated Special Flood Hazard Area.
24. 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.

25. Neither party shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subconsultants or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the PROJECT. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular consultants, subconsultants, vendors or investors desired by CITY in connection with the Project. CITY agrees that CITY alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.
26. CITY and DISTRICT each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring either party to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or City Code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

CITY OF Maricopa
A Municipal Corporation

Approved and Accepted By:

Mayor Date

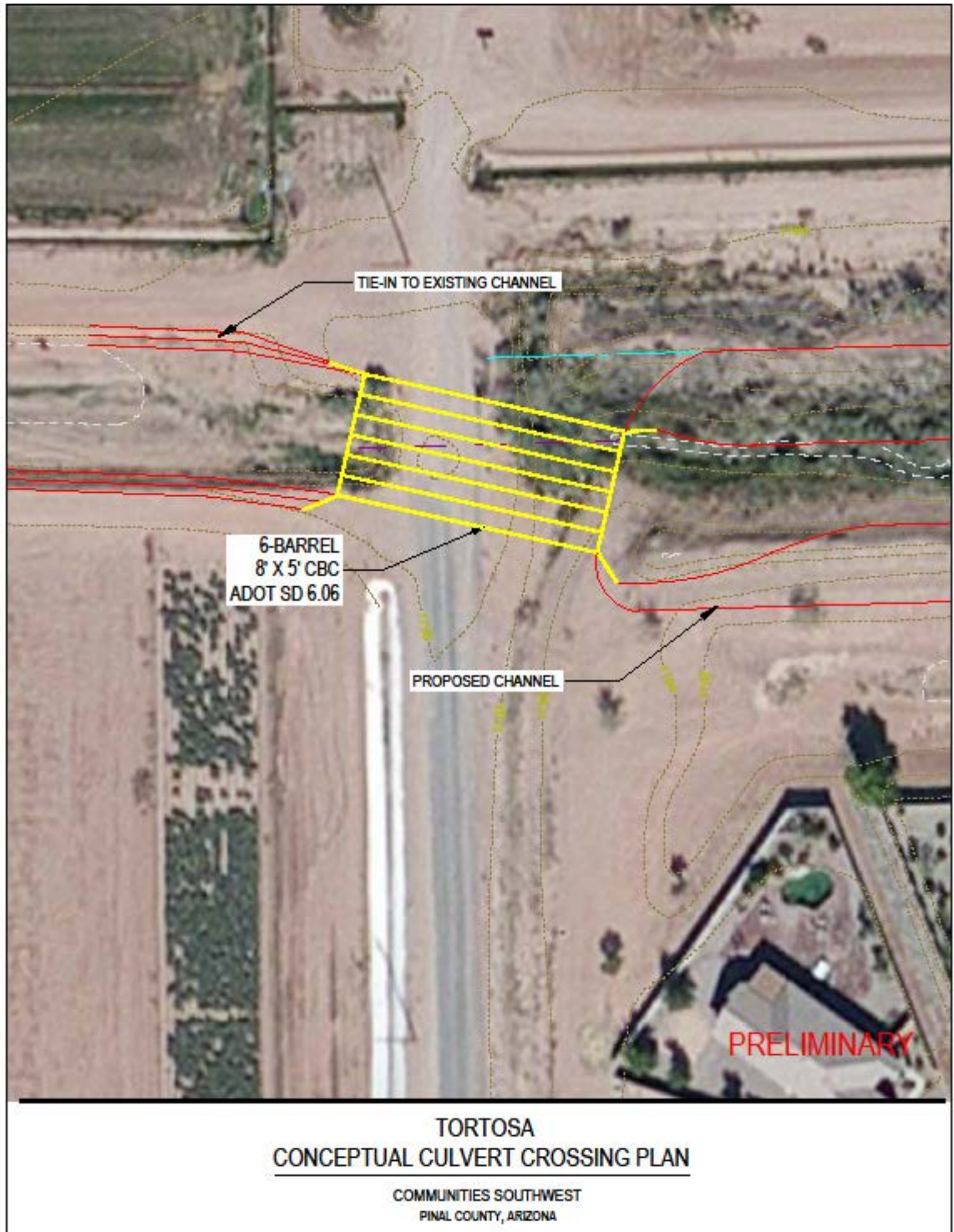
Attest:

By: _____
City Clerk Date

The foregoing Intergovernmental Agreement FCD _____ has been reviewed pursuant to A.R.S. Section 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 under the laws of the State of Arizona.

City Attorney Date

Exhibit A



PROJECT DESCRIPTION

- Several existing homes within the Tortosa Development near the intersection of Hartman and Honeycutt Roads in the City of Maricopa may be encumbered by a Special Flood Hazard Area (SFHA) delineation currently in the process of review, approval and implementation by the Federal Emergency Management Agency (FEMA)
- Photographs of flooding in this area have been attached to this Intergovernmental Agreement.
- Future improvements within the Gila River Indian Community (GRIC) adjacent to the north may reduce the ability for storm water collected along the northern boundary of the Tortosa Development where the flooding occurs to outfall northward toward GRIC.
- A future drainage corridor improvement located along the northern boundary of the existing Tortosa Development is expected to provide a drainage outfall for storm water originating upstream of the existing Tortosa Development as well as remove the existing development from the FEMA (SFHA).
- The proposed PROJECT request is a box culvert with the approximate dimensions of six (8ft. x 5ft.) barrels. It is proposed for this box culvert to be designed to safely carry public traffic over it and become a part of the drainage system designed to remove the Special Flood Hazard Area and mitigate flooding of existing homes and property when it may be constructed in the future.

Project Name: Tortosa, NEC Honeycutt and Hartman Road
 Project Location: Pinal County, Arizona

Culvert Description	Culvert Span =	8	Feet
	Culvert Height =	5	Feet
	Culvert Length =	110	Feet
	Number of Barrels =	6	
Culvert Quantities	Barrel(s) =	482	Cubic Yards
	Inlet Headwall =	14	Cubic Yards
	Outlet Headwall =	21	Cubic Yards
	Total =	517	Cubic Yards
Rip Rap Apron	Volume of Rip Rap =	50	Cubic Yards
Earth Work	Excavation Volume =	2,400	Cubic Yards
Assumed Cost	Assumed Unit Price of Concrete =	300	\$/ Cubic Yard
	Assumed Unit Price of Rip Rap =	40	\$/ Cubic Yard
	Assumed Unit Price of Earth Work =	10	\$/ Cubic Yard
	Estimated Cost for Culvert Box =	144,600	Dollars
	Estimated Cost for Inlet Headwall =	4,200	Dollars
	Estimated Cost for Outlet Headwall =	6,300	Dollars
	Estimated Cost for Rip Rap =	2,000	Dollars
	Estimated Cost of Culvert =	158,000	Dollars
	Estimated Cost for Earthwork =	24,000	Dollars
	Survey =	4,000	Dollars
	Engineering =	24,000	Dollars
Assumed 15% Contingency Cost =	31,500	Dollars	

Preliminary Opinion of Probable Cost = 241,500 Dollars

Note:

1. Culvert quantities based off of ADOT standard drawings
2. Fifteen degree (15°) Skew assumed for headwalls
3. Inlet and Outlet wing quantities based off of ADOT standard drawings with a 4:1 slope
4. Rip Rap quantities calculated as estimated width multiplied by the estimated length multiplied by 2 X estimated d₅₀
5. Information is preliminary and subject to change based on more detailed information and design.

DRAFT