

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF MARICOPA AND THE
SEVEN RANCHES DOMESTIC WATER IMPROVEMENT DISTRICT
FOR THE HONEYCUTT ROAD WIDENING WATER MAIN RELOCATION
PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made this ___day of July, 2014, by and between the City of Maricopa, Arizona, an Arizona municipal corporation (“City”) and the Seven Ranches 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 maintains water distribution mains in existing easements along the south side of Honeycutt Road, that is the sole water source for the District;

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

D. **WHEREAS**, City and District recognize the economic and public safety benefits of working cooperatively to maintain an uninterrupted water supply for the property owners in the SRDWID service territory;

E. **WHEREAS**, City desires to cause the construction of improvements to widen Honeycutt Road between Porter Road and White and Parker Road (“Project”);

F. **WHEREAS**, the proposed street widening improvements proposed as part of the Project will require the relocation and lowering of the District’s water transmission main to maintain compliance with Arizona Department of Environmental Quality rules and regulations;

G. **WHEREAS**, in order to allow the Project to move forward on schedule, the City and District desire to enter into this Agreement.

NOW THEREFORE, City and District agree to work cooperatively to ensure that an uninterrupted water supply be provided to property owners within the SRDWID’s service territory by constructing improvements to relocate the water transmission main according to the terms and conditions and for the consideration hereinafter set forth:

I. **Obligations of the District**

The District shall, at its sole cost and expense:

A. Review project construction plans for conflicts with its water main and provide City with comments on the Project water line relocation construction plans as prepared by the City’s engineering consultants.

B. Provide the City with timely written construction inspection reports and other documentation normally utilized to keep an elected body informed of the progress of a water main relocation project.

C. Upon completion of the water main relocation portion of the Project, perform the final inspection, notify the City in writing that the Project has been constructed in accordance with the project documents and has been satisfactorily completed.

D. Accept the water main infrastructure constructed as a result of the Project after receipt of Approval of Construction from the Arizona Department of Environmental Quality (ADEQ), copies of all test reports and as-built record drawings and maintain a comparable level of service in perpetuity from such revenues and/or fees generated by all users within the SRDWID's service boundaries as may be adjusted from time to time.

E. Comply with the provisions of laws, regulations, and contract and grant agreements applicable to any federal or state program providing funding to the Project, and maintain a system of internal controls sufficient to provide reasonable assurance of compliance with these requirements.

II. **Obligations of the City**

The City shall, at its sole cost and expense:

A. Provide such plans, specifications and other documents normally required in relation to the water main relocation portion of the Project, including, but not limited to design plans, reports, construction contracts and bid advertisements.

B. Submit an Application to Construct Drinking Water Facilities, water main relocation construction plans, design report and technical specifications to ADEQ for their review and issuance of an Approval to Construct Drinking Water Facilities.

C. Provide through the City's engineering consultant periodic observations of the water main infrastructure constructed as a result of the Project following applicable professional standards, State Law, and City Code and policies and procedures related thereto.

D. Provide overall construction administration of the water main relocation portion of the Project and designate a project specific contact person that will facilitate coordination between the District and the City's general contractor, and its sub-contractors, vendors and suppliers.

E. Require the City's general contractor to submit product information and shop drawings for review and approval by the District prior to commencing water main work for all water main components including but not limited to bedding sand, water pipe, water valves, fittings, tapping saddles, corporation stops, meter boxes, ball valves, metallic warning tape, and valve frames and covers.

F. Require the City's general contractor to provide all water main construction staking, trench bedding and backfill compaction testing, water main pressure testing, water main chlorination and disinfection, bacteriological testing and water main as-built surveying.

G. Require that the City's general contractor at all times make the Project improvements and construction activities accessible to and receive direction from the District's representatives including , but not limited to Inspectors, System Operators and Engineer and promptly provide the District's representatives with the results of all testing and as-built measurements.

H. Require that the City's engineering consultants prepare as-built construction plans specific to the water main relocation, prepare an Engineer's Certificate of Completion and make the required submittals to ADEQ for their review and issuance of an Approval of Construction.

I. Furnish the District with as built record water main construction plans in the form of three (3) full size as built plan sets, three (3) 11" x 17" as built plan sets and one (1) digital copy in AutoCAD release 2007 compatible format together with a copy of the ADEQ Approval of Construction.

J. Be solely responsible for contractor claims for additional compensation caused by Project delays attributable to the City.

III. **Term.** This Agreement shall be effective upon the approval by both the City's Mayor and Council and the District's Board of Supervisors. This Agreement shall remain in effect until terminated pursuant to the provisions provided hereunder, otherwise this Agreement shall be effective until the Project is complete, all costs and expenses required by this Agreement have been paid and the water main infrastructure has been accepted by the District.

V. **Miscellaneous Provisions**

A. **Recitals.** The foregoing recitals are hereby incorporated into this Agreement by reference as if more fully stated herein.

B. **Indemnification.** To the extent permitted by law, each party hereto shall indemnify, defend, save, and hold harmless the other party, its agents, representatives, officers, directors, officials, and employees from and against any and all claims, demands, proceedings, suits, actions, losses, and damages of every kind and description, and expenses, including but not limited to attorneys' fees, arbitration expenses, court costs, and the cost of appellate proceedings, which may be brought or made against or incurred by the indemnified party on account of bodily injury, sickness, disease, death, or injury to, impairment or destruction of property, including losses of use resulting there from caused in whole or in part, relating to, arising out of, or resulting from the negligent acts, professional errors, fault, mistakes, or negligent omissions, whether active or passive, of the indemnifying party, the indemnifying party's employees, agents, representatives, its subcontractors and their employees, agents or representatives, and including any party for whose negligent acts, errors, mistakes, or negligent omissions the indemnifying party may be legally liable in connection with or incident to the performance of this Agreement and arising out of Workers' Compensation claims, unemployment disability compensation claims, or employees' liability claims of the indemnifying party's employees and its subcontractors' employees, and claims under similar such laws or obligations. Except as otherwise provided herein, and to the extent permitted by law, the City shall indemnify, defend, save, and hold harmless District, its agents, representatives, officers, directors, officials and employees from and against any and all claims, demands, proceedings, suits, actions, losses, and damages of every kind and description and expenses as the result of claims made by its general contractor and their sub-contractors, vendors and suppliers. To the fullest extent permitted by

law, the indemnifying party shall be responsible for its own negligent acts, omissions, and mistakes, and those of its employees, agents, sub-consultants, and subcontractors. Every obligation of this indemnification paragraph shall survive the completion of the services hereunder and the termination of this Agreement.

C. Insurance. Each Party shall provide and maintain in full force while this agreement is in effect (i) Public Liability and property damage insurance from a reliable insurance company authorized to transact business in Arizona in an amount of not less than \$1,000,000 for bodily injury or death or property damage, one occurrence, and (ii) workers' compensation insurance as required by Arizona law. Public liability and property damage insurance shall list the other party as an additional insured. Each Party shall provide proof of such insurance on an annual basis, and within thirty (30) days after each Party renews its insurance coverage. Either Party that obtains knowledge of any injury, loss, damage or claim arising out of the construction of the Project which may subject the other Party to any liability shall immediately give written notice of such possible claim to the other Party. In the event that a claim is made against either or both Parties to this Agreement and both Parties have obtained insurance coverage from an insurance company, the primary insurance shall be that of the Party who was served with the claim, absent a showing that the damage to property or injury to or death of person(s) arose out of the sole act, omission or negligence of the other Party or its departments, officers, employees and/or agents.

D. Assignment and Delegation Prohibited. Neither Party may assign any of its rights nor delegate any of its duties under this Agreement without the prior written consent of the other Party which may be withheld for any reason or for no reason.

E. No Third Party Beneficiaries. Only the Parties may enforce this Agreement. The Parties do not intend through this Agreement to confer enforceable rights on any non-Party and do not intend to create any third Party beneficiaries to this Agreement.

F. Notices. All notices to the other party required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

If to City:	City of Maricopa Attn: City Manager 39700 West Civic Center Plaza Maricopa, AZ 85138
Copy to:	City of Maricopa Attn: City Attorney 39700 West Civic Center Plaza Maricopa, AZ 85138
If to District:	Maricopa Domestic Water Improvement District Attn: Office Manager P.O. Box 209 Maricopa, AZ 85139
Copy to:	Stephen R. Cooper Cooper & Rueter, LLP

P.O. Box 15005
Casa Grande, AZ 85130

G. Amendments to Agreement. This Agreement may be amended from time to time by written agreement of both Parties.

H. Waiver of Terms and Conditions. The failure to exercise any right, power or privilege under this Agreement shall not operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of that or any right, power or privilege. The acceptance by either party of sums less than may be due and owing to it at any time shall not be construed as an accord or satisfaction.

I. Section Headings. Captions and section headings used herein are for convenience only, are not a part of this Agreement, shall not be deemed to limit or alter any provisions hereof, and shall not be deemed relevant in construing this Agreement.

J. 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.

K. Mediation. 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 mediation. The matter in dispute shall be submitted to a mediator mutually selected by District and the City. In the event that the parties cannot agree upon the selection of a mediator 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 mediator. The cost of any such mediator shall be divided equally between the City and District. The results of the mediation shall be nonbinding on the parties.

L. Entire Agreement. This Agreement and any attachments represents the entire Agreement between City and District and supersedes 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.

M. Non-Discrimination. Both parties shall comply with all applicable State and Federal employment laws, rules, and regulations including the Americans with Disabilities Act and Executive Order 99-4, which requires that all persons shall have equal access to employment opportunities regardless of race, color, religion, sex, age, national origin or political affiliation.

N. Contract Language District and City agree that all contracts awarded to contractors in connection with the work to be performed under this Agreement shall include a provision stating that the contractor understands and acknowledges that contractor must comply with: the

Americans with Disabilities Act; The Immigration Reform and Control Act of 1986; the Drug Free Workplace Act of 1989; A.R.S. §34-301; A.R.S. §34-302; A.R.S. §35-391; A.R.S. §35-393; A.R.S. §41-4401, and A.R.S. §23-214(A); and, that the contractor shall include this provision in any contract the contractor enters into with any and all of its subcontractors who provide services under any contract awarded to contractor by the District or the City for the work to be performed under this Agreement.

O. Severability. If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

P. Conflicts of Interest. The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this contract.

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