

When recorded return to:

Pinal County Flood Control District
Scott Bender, P.E., CFM
31 N. Pinal Street, PO Box 727
Florence, AZ 85132

IGA PCFCD _____

IGA # _____

INTERGOVERNMENTAL AGREEMENT

between

PINAL COUNTY FLOOD CONTROL DISTRICT

and the

CITY OF MARICOPA

for the

**MAINTENANCE OF FLOOD CONTROL IMPROVEMENTS IN
THE SONORAN CREEK COMMERCIAL PROJECT**

This Intergovernmental Agreement (this "Agreement") is made and entered into this ___ day of _____, 2012, between the Pinal County Flood Control District, a political subdivision of the State of Arizona ("District") and the City of Maricopa, an Arizona municipal corporation ("Maricopa"). District and Maricopa are collectively referred to hereafter as the "Parties" and each individually as a "Party".

RECITALS

A. Whereas each of the Parties is authorized to enter into intergovernmental agreements for joint or cooperative action pursuant to A.R.S. § 11-952 et seq. and each has by resolution of its governing body resolved to enter into this Agreement, and copies of said resolutions are attached hereto as Exhibits A and B.

B. Whereas each of the Parties participates in the National Flood Insurance Program and is authorized to act as an agency with ultimate responsibility for the maintenance of [a] certain flood control Structures (the "the "Flood Control Structures"), subject to the requirements of 44 C.F.R. 65.10(d). District's statutory authority is set forth in A.R.S. § 48-3603(9) and Maricopa's statutory authority is set forth in A.R.S. § 9-240.

C. Whereas Sonoran Creek, LLC ("Developer") seeks to obtain from the Federal Emergency Management Agency ("FEMA") a Letter of Map Revision ("LOMR") over certain lands described in Exhibit C ("Property"). The Property is located in Pinal County, City of Maricopa. Upon approval of a LOMR the Property will be removed from the 100-year floodplain established by FEMA.

D. Whereas in order to obtain a LOMR, Developer must meet the maintenance requirements called for by and set out in 44 C.F.R. 65.10 by providing FEMA with an adopted maintenance plan for the Flood Control Structures and by showing that a qualified jurisdiction will assume ultimate responsibility for maintenance of the Flood Control Structures.

E. Whereas Maricopa intends to become the qualified jurisdiction responsible for the maintenance of the Flood Control Structures pursuant to the provisions of 44 C.F.R. 65.10(d) (the "Qualified Jurisdictions"), provided that certain conditions and contingencies are first met by the Developer as hereinafter set out in this Agreement.

F. Whereas the Parties shall execute the documents required to establish Maricopa as the Qualified Jurisdiction, once Developer has entered into an Agreement as set forth in Recital I.

G. Whereas this Agreement defines the responsibilities of the Parties concerning implementation of their agreement for Maricopa to serve as the Qualified Jurisdiction.

H. Whereas it is the intention of the Parties that Maricopa shall perform the inspections and any maintenance required pursuant to the terms of this Agreement, and Maricopa shall bear the costs of such inspections and maintenance.

I. Whereas this Agreement shall only become effective after execution of an agreement between the Developer and Maricopa that defines the primary responsibilities of the Developer for inspection, maintenance, and repair of the Flood Control Structures (the "Maintenance Agreement"). A copy of the Maintenance Agreement is attached hereto as Exhibit D.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. Recitals. The foregoing Recitals are hereby incorporated into this Agreement by reference, as if fully set out herein.

2. Maintenance. The final adopted O&M Plan prepared by Coe & Van Loo Consultants, Inc., which is attached as Exhibit D to the Maintenance Agreement is incorporated into this Agreement by reference, and sets forth the minimum required

maintenance to be performed by the Developer.

3. Performance Bond.

3.01 The Developer shall obtain and maintain throughout the term of the Maintenance Agreement a performance bond in the amount of Fifteen Thousand and No/100 Dollars (\$15,000.00) (“O&M Bond”) securing its obligation to perform the required maintenance of the Flood Control Structures.

3.02 Maricopa will draw funds from the O&M Bond only in the event the Developer fails to perform required maintenance pursuant to the Maintenance Agreement.

4. Inspection. Maricopa shall inspect the Flood Control Structures annually to determine that they are in good working order and have been maintained in accordance with the Maintenance Agreement and the requirements of 44 C.F.R. 65.10(d). Maricopa shall in addition conduct an inspection of the Flood Control Structures within a reasonable time after any entity with authority to do so, issues a declaration of disaster that includes the Property to identify and if necessary repair any damage that is necessary for the continued operation of the Flood Control Structures. Maricopa shall provide District with a written report of its inspection findings within sixty (60) days after each inspection.

5. Further Actions. Decisions and actions that are not specifically referenced and provided for in this Agreement shall be made and undertaken jointly by the Parties, pursuant to the approval of the appropriate individual or body of each Party, and the execution of any necessary documents.

6. Administrator. In the event it is necessary for Maricopa to assume maintenance of the Flood Control Structures, Maricopa shall act as the administrator for the Parties in carrying out their duties subject to the provisions of this Agreement.

7. Miscellaneous Provisions.

7.01 This Agreement shall become effective upon recording in the Office of the Pinal County Recorder.

7.02 This Agreement may be canceled for conflict of interest without

further obligation or penalty in accordance with A.R.S. § 38-511.

7.03 Except as to the claims described in paragraph 7.03.1, each party to this Agreement (indemnitor) shall, to the extent permissible by law, indemnify, defend and hold 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.

7.03.1 However, as to any claims against the Pinal County Flood Control District and/or Pinal County that the Flood Control District and/or County have responsibility or liability due to the provisions of A.R.S. 48-3610.E, Maricopa shall, to the extent permissible by law, indemnify, defend and save harmless the District and/or Pinal County, including agents, officers, directors, governors and employees thereof, from any loss or expense incurred as a result of such a claim or suit. Such indemnification obligation is intended to be a specific indemnity obligation rather than the general indemnity obligations set forth in the previous paragraph regarding all other types of claims or suits and shall encompass any personal injury, death or property damages, as well as reasonable attorneys fees, court costs, and other expenses relating to the defense of such claims or litigation.

7.04 All notices or demands required to be given pursuant to the terms of the Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the following address or such other address as is designated by the Party in writing. Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated in receipt if delivered by certified or registered mail.

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

City of Maricopa, City Manager
P.O. Box 610
Maricopa, Arizona 85239

7.05 Neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver. The acceptance by any Party of sums less than may be due and owing to it at any time shall not be construed as an accord and satisfaction.

7.06 Nothing in this Agreement shall be construed as either limiting or extending the lawful jurisdiction of any Party hereto other than as expressly set forth herein, and each Party retains its separate identity under law, and all of the immunities attendant thereto.

7.07 Except as expressly provided herein, this constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement. This Agreement may not be altered except in writing signed by each of the Parties.

7.08 This Agreement shall remain in force and effect until the FEMA maps depicting the flow of water to the Property no longer show flows that require the Flood Control Structures and Maricopa has received notice from FEMA of such a change.

7.09 Nothing contained in this Agreement is intended to nor shall it be construed as a representation that FEMA will approve any LOMR for the Property nor that the statutes, rules and regulations governing the Flood Control Structures (including those set out in 44 C.F.R. 65.10(d)) will not change over time. The Parties do not warrant nor represent to any person not a party hereto that the requirements for the Developer will not change to require more or greater flood protection. In the event any such change should occur it will be the responsibility of the Developer to meet any

additional or new requirements placed on them by Federal or State law including but not limited to any new maintenance requirements. It is not the intent of this Agreement that any party, not a signator to this Agreement, shall have any rights under it nor the right to enforce any of its provisions. All rights and obligations assumed or granted hereunder are personal to the signatory jurisdictions. Nothing contained herein is intended by the parties to create any third party beneficiary rights enforceable against them.

7.10 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 any 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, 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 brings 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 agreed that the prevailing Party in such action shall recover its costs including reasonable attorneys' fees, as determined by the court.

IN WITNESS WHEREOF, the parties executed this Agreement the day and year first written above.

PINAL COUNTY FLOOD CONTROL DISTRICT
A Political Subdivision of the State of Arizona

Recommended by:

A.J. Blaha, P.E., C.F.M. Date
Director, Pinal County Public Works

Approved and Accepted:

By: _____
David Snider Date
Chairman, Board of Directors

Attest:

By: _____
Clerk of the Board Date

The foregoing Intergovernmental Agreement has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned General Counsel for the District, who has determined that it is in proper form and within the powers and authority granted to the Pinal County Flood Control District under the laws of the State of Arizona.

Julie M. Lemmon Date
General Counsel for the District

CITY OF MARICOPA
A Municipal Corporation

By: _____
Christian Price Date
Mayor, City of Maricopa

Attest: _____
City Clerk Date

The foregoing Intergovernmental Agreement 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 Maricopa under the laws of the State of Arizona.

City Attorney Date