

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE  
CITY OF MARICOPA AND THE  
AK-CHIN INDIAN COMMUNITY**

**THIS INTERGOVERNMENTAL AGREEMENT** (“Agreement”) is made this \_\_\_\_\_ day of August, 2012, by and between the CITY OF MARICOPA, a subdivision of the State of Arizona (“City”) and the AK-CHIN INDIAN COMMUNITY, a federally recognized Indian tribe (“Community”) (City and Community are collectively called the “Parties”)

**RECITALS:**

- A. The Parties are authorized to enter into this Agreement by A.R.S. §§ 11-951 et seq.
- B. The Community and the City represent communities who share a mutual interest in enhancing economic development and quality of life in the region.
- C. The Community and the City recognize that our shared goals are best achieved through cooperation.
- D. The Community has submitted to the Bureau of Indian Affairs (“BIA”) a Fee-to-Trust Non-gaming Application to transfer title to approximately 679 acres of land located in unincorporated Pinal County and collectively known as the Industrial/Airport Property to the United States of America to be held in trust for the Community. The Fee-to-Trust Non-gaming Application is known as the “Industrial/Airport Tract Application.” The Community also has submitted to the BIA a second Fee-to-Trust Non-gaming Application for property known as the “Golf Course Tract” to transfer property owned by it located on the west side of the City to the United States of America to be held in trust for the Community (the “Golf Course Application”). Collectively, the Industrial/Airport Tract Application and the Golf Course Tract Application are referred to herein as the “Fee-to-Trust Applications.”
- E. In connection with the Community’s Fee-to-Trust Applications, the Parties negotiated this Agreement, which addresses (1) certain subjects of mutual concern relating to the Parties’ respective governmental interests and (2) certain concerns the City identified upon review and consideration of the Fee-to-Trust Applications.
- F. The Parties also have negotiated, and intend to execute, a separate agreement called the Pre-Annexation and Development Agreement and Intergovernmental Agreement (the “Development Agreement”). The Development Agreement and this Agreement are inter-related agreements and thus the Parties agree that this Agreement shall become null and void if the Development Agreement is not executed by August 18, 2012.
- G. In exchange for the promises and consideration set forth in this Agreement and in the Development Agreement, the City has agreed to submit a letter or letters to support the Fee-To-Trust Applications and to withdraw any prior opposition thereto.

NOW, THEREFORE, in consideration of the foregoing premises and agreements herein, the Parties hereto state, confirm, and agree as follows:

**AGREEMENT:**

1. Open Communications. The Community and the City commit to maintain open communications on issues of mutual concern.

2. Growth. The Community and the City seek to provide strong, healthy neighborhoods for families to flourish and prosper as they enjoy the peaceful lifestyle that each community provides its respective members and residents.

3. Economic Development. The City and the Community share a commitment to bring positive economic development to the region in order to expand and diversify the Parties' economic base with an emphasis on quality, regionally compatible employment. While economic development efforts at times can be competitive, both Parties are interested in working together on collaborative opportunities, regional recruitment, and marketing efforts that would be mutually beneficial.

4. Regional Transportation Activities. The economic health and quality of life of both Parties is dependent on the development of transportation infrastructure that meets regional needs in both quality and capacity. The Community and the City agree to continue to work jointly in support of regional planning and development of transportation infrastructure of mutual benefit. The Community and the City shall support future expansion on roads of common interest by participating in regional transportation studies and analysis related to roadway enhancement and expansion.

5. Anderson Road and Peters and Nall Road. The Community acknowledges the existence of a sixty-six (66) foot public road easement along Anderson Road, between Peters and Nall Road and Maricopa Casa Grande Highway (the "Anderson Easement") and a thirty-three (33) foot public road easement along Peters and Nall Road as it runs along the north boundary of the Community's fee simple (Bunger) property in the Northeast Quarter of Section 15, T5S, R4E, GSRB&M, Pinal County, Arizona (the "Peters and Nall Easement"). The Parties agree that the City intends to gain control of the Anderson Easement and Peters and Nall Easement from Pinal County. The Community acknowledges that, once controlled by the City, the City will be the responsible party for the Anderson Easement and Peters and Nall Easement as it affects land owned by the Community or held in trust for the Community. The City shall administer all aspects of road maintenance and improvement pursuant to the existing public road easements in accordance with City standards. Future road expansion or new uses requiring a new road or utility easement affecting Community land must be negotiated with the Community in accordance with BIA Department of Transportation and Federal Highway Administration requirements. The City agrees to continue to cooperate in road administration with the Community. Parties agree to maintain and not restrict mutual access along the Anderson Easement and Peters and Nall Easement. Parties will give full and timely consideration of requests by each other for new road and utility easements.

6. Cultural Resources. The City will require all applicants for a subdivision to conduct a Phase I Archeological Survey on land within 2.5 miles of the Ak-Chin border or within the undeveloped flood plain within the City. The City will also follow the requirements of its City Code that requires applicants for a subdivision to provide documentation that a site records check for potential cultural resources has been conducted in conjunction with the State Historic Preservation Office. The City will stipulate all applicants for a subdivision to provide cultural resources reports to the City as part of the permit process as to their compliance with the Arizona State Burial Discovery Laws – ARS 41-865 and/or 41-844. The City will require any applicants proposing projects crossing Community lands on easements administered by the City, to notify the Ak-Chin Cultural Resources Department and the Ak-Chin Planning Department and be in compliance with applicable Community ordinances and resolutions for portion of the project that cross Community land. Parties agree to inform one another's planning departments about any applicant proposing projects crossing both Community and City lands. The City will require applicants to report any inadvertent discovery of human remains, funerary objects or cultural artifacts to the City. Upon notification, the City will notify the Ak-Chin Cultural Resources Department (520-568-1363) of the discovery, location, and reporting party. The City agrees to hold applicants and their representatives accountable for their actions if they violate state law concerning protection of cultural resources. Furthermore, the City and the Ak-Chin Indian Community-Cultural Resources Department agrees to work closely to improve understanding of Cultural Resources Management recovery procedures and enhance communication among the Community, the City, developers and property owners concerning any inadvertent discoveries of cultural artifacts within current or future boundaries of the City.

7. Buffering. The City recognizes the Community's desire to maintain economic diversity by continuing the Community's commitment to agriculture. The Community recognizes that most of the land bordering the Community is owned by private parties and is not controlled by the City. The City embraces the concept of buffering between land uses of different character, including agriculture, to mitigate negative impacts to each. The City will encourage landowners to buffer property that adjoins the Community to ensure compatibility of development with the Community farming operations consistent with the Objectives and Land Use Recommendations set forth in the City's General Plan, which may be amended from time to time consistent with Arizona law. The City will require applicants that border the Community for new property entitlements to adopt buffering sufficient for agriculture uses as allowed by law.

8. Flood Control. The City and the Community agree to continue to cooperate in the design and approval of flood control solutions.

9. Extension of Existing Agreements. The Community and the City agree to extend public safety-related Mutual Aid agreements to any property transferred to the United States in trust for the benefit of the Community through the Fee-to-Trust Applications.

10. Miscellaneous.

a. Amendment of Agreement. This Agreement may be amended, in whole or in part, only with the mutual written consent of the Parties hereto. Within ten (10) days after any such amendment of this Agreement, the City will record such amendment in the Official Records of Pinal County, Arizona.

b. Manner of Service. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith (“Notices”) will be validly given, filed, made, delivered or served if in writing and delivered personally or sent by registered or certified United States Postal Service Mail, return receipt requested, postage prepaid to:

If to the City:	City of Maricopa 45145 W. Madison Avenue Maricopa, Arizona 85139 Attn: City Attorney
And:	Denis Fitzgibbons Fitzgibbons Law Offices, P.L.C. 1115 E. Cottonwood Lane, Suite 150 Casa Grande, Arizona 85122
If to the Community:	Ak-Chin Indian Community 42507 West Peters & Nall Road Maricopa, Arizona 85138 Attn: Louis J. Manuel, Jr., Chairman
And:	William Strickland, Jr. Strickland and Strickland, P.C. 4400 East Broadway, Suite 700 Tucson, Arizona 85711

or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address Notice will be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail must be to the addresses provided above and be by certified mail, return receipt requested. Notices are deemed effective on the date written on the return receipt.

c. Waiver. No delay in exercising any right or remedy will constitute a waiver thereof and no waiver by the Parties of the breach of any provision of this Agreement will be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement.

d. Attorneys' Fees and Costs. If legal action by either party is brought because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs.

e. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

f. Headings. The description headings of the paragraphs of this Agreement are inserted for convenience only and will not control or affect the meaning or construction of any of the provisions of this Agreement.

g. Entire Agreement. Except as stated in paragraphs F and G above, this Agreement constitutes the entire agreement between the Parties and will not be changed or added to except in the manner provided in Section (a) above.

h. Governing Law; Venue. This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona. Any action brought by either party for the purpose of compelling arbitration or enforcing the arbitrator's decision, as provided in Section (k) below, shall be brought in the Pinal County Superior Court for the State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county.

i. Recordation. No later than ten (10) days after the City and the Community have executed this Agreement, the City shall cause it to be recorded in its entirety in the Official Records of Pinal County, Arizona.

j. Default. Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice thereof from the other party ("Cure Period"), shall constitute a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, the non-defaulting party shall have all rights and remedies legally and equitably available to it under the terms of this Agreement. Notwithstanding the foregoing, the Parties agree that the remedies available to the non-defaulting party for award by the arbitrator (as provided in Section (k), below) shall be limited to specific performance, declaratory relief, and injunctive relief.

k. Dispute Resolution/Community's Limited Waiver Of Sovereign Immunity.

i. Dispute Resolution. Any dispute between the Parties hereto regarding the interpretation, performance, breach, or enforcement of this Agreement shall be submitted to and resolved by arbitration in accordance with procedures mutually agreed to by the Parties hereto or, when the Parties cannot agree, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbiter's authority shall be limited to granting only specific performance, declaratory relief, and injunctive relief, and, except for attorneys' fees and costs authorized under Section (d), the arbiter shall not have authority to award money damages.

ii. Community's Limited Waiver Of Sovereign Immunity.

Notwithstanding any other provision of this Agreement to the contrary, and subject to the limitations set forth in this Section, the Community expressly waives its immunity from suit only as to binding arbitration proceedings as described herein. In addition, Community expressly waives its immunity from suit for actions brought in the Pinal County Superior Court for the State of Arizona to (1) compel arbitration or (2) enforce arbitration decisions. This waiver is specifically limited to the remedies of specific performance, declaratory relief, and injunctive relief. In no instance shall any enforcement of any kind whatsoever be allowed against any assets of the Community other than to satisfy an award of costs and attorneys' fees as specified in Section (d).

i. Authority. The Community represents and warrants to the City: (1) that it is a duly formed and validly existing federally recognized Indian tribe organized pursuant to the Indian Reorganization Act of 1934; and (2) that the individual executing this Agreement on behalf of the Community is authorized and empowered to bind the Community. The City represents and warrants to the Community: (1) that it is a duly formed municipal corporation with the State of Arizona; and (2) that the individual executing this Agreement on behalf of the City is authorized and empowered to bind the City.

m. Conflict of Interest. This Agreement is subject to the terms of A.R.S. § 38-511.

n. Term. This Agreement shall continue year by year until such time as both Parties agree to terminate the Agreement upon such terms as the Parties may agree.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as provided herein.

**CITY:**

CITY OF MARICOPA, an Arizona municipal corporation

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_  
City Attorney

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Attested by:

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Pinal            )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, the Mayor of CITY OF MARICOPA, an Arizona municipal corporation.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires

**COMMUNITY:**

Ak-Chin Indian Community, a federally recognized Indian tribe

By: \_\_\_\_\_  
Name: Louis J. Manuel, Jr.  
Title: Chairman

Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_  
General Counsel, Ak-Chin Indian Community  
Name: William E. Strickland, Jr.

Date: \_\_\_\_\_

Attested by:

By: \_\_\_\_\_  
Executive Secretary, Ak-Chin Indian  
Community Council

Date: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Pinal            )

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, 2012, by Louis J. Manuel, Jr., the Chairman of the AK-CHIN INDIAN COMMUNITY, a federally recognized Indian tribe.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires

