

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
PINAL COUNTY AND THE CITY OF MARICOPA
FOR ACCESS TO COUNTY PROPERTY**

This Intergovernmental Agreement (“**IGA**” or “**Agreement**”) is entered into this _____ day of _____, 2022 by and between Pinal County, a political subdivision of the State of Arizona (“**COUNTY**”), and the City of Maricopa, a municipal corporation of the State of Arizona (“**CITY**”), for access to County property. COUNTY and CITY may also be referred to hereinafter as “**Party**” individually and as “**Parties**” collectively.

RECITALS

WHEREAS, Pinal County, a political subdivision of the State of Arizona, hereinafter referred to as “County”, and the City of Maricopa, a municipal corporation of the State of Arizona, hereinafter referred to as “City” are authorized to enter intergovernmental agreements for the purposes of contracting for services, jointly exercising powers common to the contracting parties, and taking joint or cooperative action pursuant to ARS-11-952 *et seq.*; and

WHEREAS, the County is the owner of the real property legally described or depicted on Exhibit “A” attached hereto (the “County Property”), and City desires access to the County Property for the purpose of removing the chain link fence along W. Edwards Avenue and installing a new concrete masonry unit (CMU) block fence; and

WHEREAS, the County desires to grant and the City desires to accept a temporary license on, over, upon and across portions of the County Property for purposes of removing the current chain link fence along W. Edwards Avenue and installing a new concrete masonry unit (CMU) block fence as described and depicted on Exhibit “B” attached hereto (the “CMU Fence”), and for all other uses contemplated by this Agreement; and

WHEREAS, the Parties agree that the license will be defined, at a minimum, by the designated areas in Exhibit “C” (the “License Area”).

NOW, THEREFORE, the Parties, pursuant to the above and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

I. License

The County, in consideration of the terms, covenants and conditions contained in this Agreement to be observed and performed, hereby grants and conveys a temporary, non-exclusive license for the purposes of removing the current chain link fence along W. Edwards Avenue and installing the CMU Fence, and for all other uses expressly contemplated by this Agreement in the License Area.

II. Restrictions on Use of License Area

The City's rights shall be strictly confined to those set forth above in Section I. Without limiting the foregoing restriction, the City shall have no authority to do and shall not do or permit or attempt any of the following in the License Area or on the County Property: (i) undertake any major repairs or replacements, (ii) haul away any personalty or fixtures except for that which is plainly valueless rubbish, (iii) remove any structure, soil, rock, minerals or commodities therefrom, or permit any waste whatsoever, (iv) store or use any hazardous materials (as defined below) thereon, and/or (v) alter, construct or place any buildings or structures, including fences and walls, or other improvements, except as specifically set forth herein.

The City hereby covenants as follows:

- A. The City will at all times during the term of this Agreement and in connection with its access to and use of the License Area as provided herein, observe and perform all laws, ordinances, rules and regulations made by any governmental authority for the time being applicable to said use and/or applicable to the County Property.
- B. The City will not commit or suffer any act or neglect whereby the License Area or the County Property shall at any time during the term of this Agreement become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics' and materialmen's liens, and will indemnify, defend, save and hold the County and the License Area harmless from and against all loss, cost and expense with respect thereto.

The license is not exclusive and does not grant exclusive access or possession to the License Area. The County and anyone acting for, on behalf of or through the County shall at all times have access to the County property for any purpose not inconsistent with this license, provided, however, that unless the City is in breach hereof, the County shall not interfere with the rights hereunder.

The City shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or about the County Property or the License Area any flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including without limitation any substances defined as, or included in, the definition of "hazardous substances", "hazardous wastes", "hazardous materials", or "toxic substances" under any federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or hazardous materials, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and any similar state and local laws and ordinances and the regulations now or hereafter adopted and published and/or promulgated pursuant thereto (collectively "hazardous materials").

III. Termination

This Agreement may be terminated at any time upon mutual agreement of the Parties. This Agreement will automatically terminate upon the completion of the construction of the CMU Fence. Upon the termination of this Agreement, the City will peaceably deliver up to the County, unfettered possession of the County Property in the same or better condition as existed prior to the City's access thereon.

IV. Maintenance

While removing the chain link fence and constructing the CMU Fence, City will maintain and keep the License Area in good condition and state of repair, free from trash and debris and in compliance with all applicable laws. After the construction of the CMU Fence, County shall maintain and keep the License Area and the CMU Fence in a reasonable condition and state of repair. This provision shall survive the termination of the Agreement.

V. Mutual Indemnity

The City agrees, to the extent permitted by law, to indemnify, defend and hold harmless County, its officers, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, or damages of any kind or nature which result from any act or omission of the City, its agents, employees or anyone acting under its direction, control or on its behalf in connection with the License Area or the obligations pursuant to this Agreement unless due solely to County negligence.

The County agrees, to the extent permitted by law, to indemnify, defend and hold harmless City, its officers, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, or damages of any kind or nature which result from any act or omission of the County, its agents, employees or anyone acting under its direction, control or on its behalf in connection with the License Area or the obligations pursuant to the Agreement unless due solely to City's negligence.

VI. Miscellaneous Provisions

A. Notices. Any notices to the other Party required under this Agreement shall be in writing and sent to the following personnel:

If to CITY: City Manager
39700 W. Civic Center Pl.
Maricopa, AZ 85138

With a Copy to: City Attorney
Attn: Denis Fitzgibbons
PO Box 11208
Casa Grande, AZ 85130

If to County: County Manager
135 N. Pinal St.
Florence, AZ 85132

- B. Waiver of Terms and Conditions.** The failure of either Party to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.
- C. Relationship of the Parties.** Each Party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, associate, or any other representative capacity of the other party. This Agreement shall not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein. This Agreement shall be strictly construed against the creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein. Nothing contained in this Agreement confers any right to any person or entity not a party to this Agreement.
- D. 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. 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.
- E. Non-Assignment.** Neither Party shall assign its interest in this Agreement, in whole or in part, without the prior written consent of the other Party. Neither Party shall assign any monies due or to become due to it hereunder without the prior written consent of the other Party.
- F. 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.
- G. 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 Agreement.
- H. Other Duties Imposed By Law.** Nothing in this Agreement shall be construed as relieving the involved public agencies of any obligation or responsibility imposed on it by law.
- I. Interparty Dispute Resolution.** If a dispute between the Parties arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation within sixty (60) days, the Parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation. The Parties shall mutually agree upon a mediator. Each

party agrees to bear its own costs of mediation, and to split the mediator fee. If mediation fails, any claim or action arising out of this Agreement shall be brought in the Pinal County Superior Court in Florence, Arizona.

- J. No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, be construed to, create any partnership, joint venture or employment relationship between the Parties or create any employer-employee relationship between the Parties' employees. Neither Party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other Party, including, but without limitation, the other Party's obligation to withhold Social Security and income taxes for itself or any of its employees.
- K. Non-Appropriation.** Notwithstanding any other provision in this Agreement, this Agreement may be terminated if for any reason either party does not appropriate sufficient monies for the purpose of maintaining this Agreement. In the event of such cancellation, the canceling party shall have no further obligation other than for payment for services rendered prior to cancellation.
- L. Uncontrollable Events.** No Party shall be considered to be in default in the performance of any obligations under this Agreement (other than obligations of a Party to pay costs and expenses) if failure of performance is due to an uncontrollable event. The term "uncontrollable event" means any cause beyond the control of the Party affected, including but not limited to flood, earthquake, storm, fire, epidemic, war, riot, civil disturbance or disobedience, labor dispute, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority or the electorate, labor or material shortage, sabotage and restraint by court order or public authority, that by exercise of due diligence and foresight the Party reasonably could not have been expected to avoid and that by exercise of due diligence it will be unable to overcome. A Party that is rendered unable to fulfill any obligation by reason of an uncontrollable event shall exercise due diligence to remove such inability with all reasonable dispatch.
- M. No Third Party Beneficiaries.** Nothing in this Agreement is intended to create duties or obligations to or rights in third parties not Parties to this Agreement or affect the legal liability of either Party to the Agreement by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.
- N. Headings.** The section headings throughout this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.
- O. Modification.** This Agreement shall not be modified or extended except by a mutually signed written agreement.
- P. Entire Agreement.** This Agreement may not be modified except by written addendum.
- Q. Authority to Execute.** The individuals executing this Agreement on behalf of the Parties hereto represent that they have authority to execute this Agreement on behalf of such parties, and represent that upon execution, this Agreement shall be binding and no further action is or shall be necessary to make the Agreement enforceable in its

entirety.

R. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date and year specified below.

CITY OF MARICOPA

PINAL COUNTY

Its: _____

Chairman, Board of Supervisors

ATTEST:

ATTEST:

Vanessa Bueras, MMC
City Clerk

Clerk of the Board of Supervisors

Date: _____

Date: _____

Approved as to form and within
The scope of authority of the City of Maricopa

Approved as to form and within
the scope of authority of Pinal County

City Attorney

County Attorney

Date: _____

Date: _____