

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE MOHAVE COUNTY FLOOD CONTROL DISTRICT AND
LAKE HAVASU CITY, ARIZONA, FOR FLOOD CONTROL**

THIS INTERGOVERNMENTAL AGREEMENT BETWEEN THE MOHAVE COUNTY FLOOD CONTROL DISTRICT AND LAKE HAVASU CITY, ARIZONA, FOR FLOOD CONTROL (the "**Agreement**") is entered into, effective this _____ day of _____, 2014, between the Mohave County Flood Control District, a political subdivision of the State of Arizona, (the "**District**") and Lake Havasu City, a municipal corporation of the State of Arizona, (the "**City**"). The District and the City are sometimes collectively referred to as the "**Parties**" or individually as the "**Party**".

RECITALS

WHEREAS:

- A.** The City is authorized to enter into this Agreement under the Constitution of Arizona, Article XIII, Section 1, and other applicable laws including Arizona Revised Statutes, Title 9, Chapter 1.
- B.** The District is authorized to enter into this Agreement under the Constitution of Arizona, Article XIII, Section 7, and other applicable laws including Arizona Revised Statutes, Title 48, Chapter 21.
- C.** The District administers the Federal Emergency Management Agency ("**FEMA**") Regulations under the National Flood Insurance Program.
- D.** The District and City are within the geographical boundaries of Mohave County, a body politic and corporate of the State of Arizona, ("**Mohave County**" or the "**County**").
- E.** The District, City, and County are separate and distinct political subdivisions, but each can provide for the benefit of the other(s), for the benefit of public health, safety and welfare, and other public purposes.
- F.** The District and City desire to participate jointly in a flood control project as proposed by the City (the "**Project**"), as described on **Exhibit "A"** attached hereto, to increase safety and protect public and private property and persons within the City.
- G.** Among other things, the District receives tax proceeds as general funding for the planning, construction, and maintenance of flood control improvements.
- H.** Under the budgeting process for the District, a category of "Special Projects" has been established, setting aside monies that may be utilized by the various political subdivisions located within the boundaries of Mohave County, provided they are flood or drainage related and a part of an overall plan, cost effective, a benefit to the County, District, and, as here, City communities, and in accordance with FEMA Regulations.
- I.** The City has prepared a budget for the Project, which has been reviewed by the District, and upon which the District relies.
- J.** The City has previously participated in flood control projects during prior fiscal years, for which it has received funds. A spread sheet showing an accounting for allocations received, monies spent, and account balances (if any) is attached hereto as **Exhibit "B"**.
- K.** The City desires to receive District Special Projects funds (the "**Funding**") for the fiscal year, for part of the funds the City anticipates projected as necessary for its current Project, which Funding is described on **Exhibit "C"** attached hereto.
- L.** Pursuant to the requirements of and powers granted by Arizona Revised Statutes ("**A.R.S.**") Title 11, Chapter 7, Article 3, Section 11-952; Title 48, Chapter 21, Article 1, Section 48-3603; and, Title 9, the Parties desire to enter into this Agreement.
- M.** Acting through its duly elected governing body, by Resolution, the District's Board approved the District entering into this Agreement, and authorized the District's Chairman as its representative to execute the same on behalf of the District.

N. Acting through its duly elected governing body, by Resolution, the City's Council approved the City to enter into this Agreement, and authorized the City's Mayor as its representative to execute the same on behalf of the City.

AGREEMENTS

NOW THEREFORE, for good and valuable consideration, including consideration of the mutual promises, terms and conditions hereinafter set forth, including the mutual promises and obligations to be performed by the Parties hereto, the Parties agree as follows:

1. **INCORPORATION BY REFERENCE.** The above Recitals shall be incorporated by reference as part of the Parties' agreements and/or as the basis of consideration for this Agreement.
2. **COMMENCEMENT, DURATION, AND TERMINATION.**
 - 2.1 The effective date shall be set forth on page one (1) of this Agreement. Performance under this Agreement shall commence following the effective date and it shall continue in full force and effect until the completion of the Project, unless earlier terminated as provided hereinafter. This Agreement shall terminate of its own accord upon the satisfactory completion of all its terms and conditions, or upon one (1) year from its effective date, whichever is longer, unless extended by the Parties in writing.
 - 2.2 Either Party may terminate this Agreement, with or without cause, by one Party serving upon the other, a thirty (30)-day prior written Notice of Termination.
 - 2.3 This Agreement may be canceled in accordance with A.R.S. Title 38, Chapter 3, Article 8, Section 38-511.
 - 2.4 Nothing to the contrary withstanding, the termination or cancellation of this Agreement does not terminate the responsibility for the City's full accounting of funding and its return of any then unused funds; the continuing obligations of legal compliance under Section 5; indemnification, hold harmless and defense obligations under Section 7; and the continuing of applicable terms of this agreement as to past matters including as to funds disbursed by the District to the City as is herein otherwise set forth.
3. **PURPOSES.** The basic purpose of this Agreement is to set forth the terms and conditions of the Project, Project Work, and the financing of it regarding the Parties' roles therein.
4. **RESPONSIBILITIES [INCLUDING FINANCING AND BUDGET].** The Parties shall be responsible as follows:
 - 4.1 **District.** The District shall:
 - 4.1.1 Review the request for proposal scope of work, drawings (plans), and specifications for this Project generally described on **Exhibit "A"** for comment, if the District, in its discretion, desires to make comment. Such review or comment that may occur does not place any responsibility or liability on the District for the integrity of the Project or its work (the "**Project Work**").
 - 4.1.2 Review the budget prepared by the City (**Exhibit "B"** hereto).
 - 4.1.3 Provide Funding as available and appropriate upon the City's application to the District, as provided on **Exhibit "C"**. The Funding shall be made available following the effective date of this Agreement. The Funding is to be included in the current City Flood Control District Allocation balance or a total balance set forth on **Exhibit "C"**. Funding is to be used for the Project(s) in Fiscal Year, 2014-2015.
 - 4.2 **City.** The City shall:
 - 4.2.1 Provide Project design plan and specifications, in accordance with City, District, State, and Federal standards, to the District for its review and approval.
 - 4.2.2 Prepare and keep current a budget for the Project within which parameters the City will fiscally generate for this Project and its completion, unless the City provides any required additional funding.
 - 4.2.3 Utilize properly Arizona licensed engineers and contractors for the Project and all the Project Work.

4.2.4 Properly bond the Project as required for Public Works' projects pursuant to A.R.S. Title 34, Chapter 2, Article 1, Section 34-201 and Article 2, Section 34-222.

4.2.5 Furnish the District with a written, notarized statement of the Project engineer, contractor, and City to certify the completion of the Project Work and the City's satisfaction with the Project Work.

4.2.6 Provide the District with proof of final payments to the engineer, contractor, subcontractors, and that no liens exist against the County, District, City, or contractor in relation to the Project or the real property associated therewith.

4.2.7 As necessary, timely provide additional amounts beyond the Funding, for full funding for full completion of this Project.

4.2.8 Establish a special account for the Funding to be received and spent on this Project.

4.2.9 Provide for an independent audit by a certified public accountant setting forth the use and/or status of the Project Funding, and forward a copy of the audit to the District.

4.2.10 Return to the District, any unused Funding (if any there be) within four (4) calendar weeks of completion, termination, or cancellation of the Project.

4.2.11 The City shall contract directly for all Project Work, including its design, supervision, and construction, and be responsible for the proper disbursement of Funding paid by the Parties, pursuant to the express terms of this Agreement.

4.2.12 The City, and not the District or the County, shall be directly responsible for maintaining the Project and/or the Project Work.

4.3 **Jointly.** The District and City mutually agree:

4.3.1 To not incur legal liability for the actions of one another, other than under the terms and conditions of this Agreement. Each Party will be solely and entirely responsible for its own acts and acts of its own Board or Council members, officials, agents, and employees during the performance of this Agreement.

4.3.2 Nothing to the contrary withstanding, the Parties recognize the funds to be used by both Parties pursuant to this Agreement are tax funds. The agreements herein for Funding are based upon projected tax funds to be received. In the event the project income is not received, there is the possibility that some or all of the funds anticipated by this Agreement and set forth herein will not be available. In the event income falls short of the projected income for either Party, then either Party may otherwise, in its sole discretion, reduce or delete some of the Funding set forth in this Agreement. Each Party will make best effort to give ten (10) days notice to the other Party in the event such funds will not be available, and will therewith give as much notice as possible as to the amount the Funding must be reduced. Should either Party be unable to provide some or all of the Funding set forth in this Agreement, following notice of same to the other Party, the Parties agree this Agreement automatically will be amended or canceled to reflect said change(s) without further action, without any claim of damages by either Party, and without penalty to either Party.

4.3.3 All Project Work is the sole responsibility of the City, and not that of the District or County. All real property and its appurtenances (the "**Property**") upon which Project Work will occur, is owned or under the control of the City and not owned or under the control of the District or County.

4.3.4 **Exhibits "D" and "E"** attached hereto are authenticated copies of the Resolutions of the County and City, authorizing said Parties to enter into this Agreement.

4.3.5 It is noted that as a part of this Agreement are the written determinations of the attorneys for the Parties that this Agreement is in proper form and within the powers and authority granted to said Parties under the laws of the State of Arizona.

4.3.6 To act for the good faith implementation of this Agreement and its covenants, including full and complete timely performance.

5. **LAWS.** The Parties shall each be fully responsible for compliance with all statutes, ordinances, codes, regulations, rules, court decrees or other laws (hereinafter collectively "**Laws**") applicable to it as part of fully performing the Project with regards to their respective roles. This Agreement shall not relieve either Party of any obligation or responsibility imposed upon it by Laws.

6. **NOTICE.** Any notice that is necessary shall be in writing and given by telefax, personal delivery, by deposit with an overnight express delivery service such as Federal Express, or by deposit in the United States Mail, certified mail-return receipt requested, postage prepaid, addressed to a Party at the address set forth below, or such other address as a Party may designate in writing by prior notice. The date notice is given shall be the date on which the notice is delivered if notice is given by personal delivery or overnight express delivery service, or three (3) days from the date of deposit in the Mail, if the notice is sent through the United States Mail. Notice shall be deemed to have been received on the date on which the notice is delivered, if notice is given by personal delivery or overnight express delivery service, or three (3) days following the date of deposit in the mail, if notice is sent through the United States Mail.

DISTRICT:

Mail or Deliver To:

Nicholas S. Hont, P.E.
Development Services Department Director
Mohave County Flood Control District
P.O. Box 7000
Kingman, Arizona 86402-7000

or

3250 E. Kino Avenue
Kingman, Arizona 86409

Copy To:

Matthew J. Smith, County Attorney
Mohave County Attorney's Office
Attention: Mohave County Development Services
P. O. Box 7000
Kingman, Arizona 86402-7000

or

3250 E. Kino Avenue
Kingman, Arizona 86409

CITY:

Mail or Deliver To:

Charlie Cassens, City Manager
Lake Havasu City
2330 McCulloch Blvd. N.
Lake Havasu City, AZ 86403

Copy To:

Kelly Garry, City Attorney
Lake Havasu City
2330 McCulloch Blvd. N.
Lake Havasu City, AZ 86403

7. **INDEMNIFICATION.** The City agrees to defend, indemnify, and hold harmless the County, its Board of Supervisors, officers, employees, agents, or other representatives from any and all claims for damages or otherwise arising under this Agreement and from any negligent acts of the City, its officers, employees, agents or other representatives.

8. **OTHER CONDITIONS OR PROVISIONS**

8.1 **Incorporation of Exhibits.** All terms and conditions of the Exhibits not inconsistent herewith shall be and are incorporated herein by reference into this Agreement. The Exhibits to this Agreement are as follows:

Exhibit "A"	Project Description
Exhibit "B"	Accounting of Prior Funding and Balance
Exhibit "C"	Project Funding
Exhibit "D"	District Resolution
Exhibit "E"	City Resolution

8.2 **Severability.** The terms of this Agreement are severable. Any waiver by the Parties of any provision herein shall not impair the right of any Party to enforce any other provision of the Agreement. Such provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable Laws. Such provision shall be ineffective solely to the extent of such prohibition of invalidity. Such prohibition or invalidity shall not invalidate the remainder of the provisions or any other provision.

8.3 **Voluntary Execution.** The Parties acknowledge having read the Agreement in its entirety and voluntarily sign the Agreement with the intended purpose that it be fully binding as set forth.

8.4 Arbitration. In the event of a dispute, the Parties agree to use arbitration only to the extent it is required by A.R.S. § 12-1518 or otherwise required by Arizona Rules of Civil Procedure. The Parties shall agree to fully exhaust administrative remedies before filing litigation.

8.5 Trust and Repose. The City acknowledges the District places trust and repose in the City, its council members, officials, officers, employees, and agents. The City avows and warrants it will faithfully and fully perform under the terms of this Agreement, including obtaining and maintaining or having obtained and maintained any State of Arizona or local licenses or permits through the entire Project in order to perform or have properly, timely and fully performed the services and activities required. Therewith, the City shall maintain all bonds and insurances required by Laws and herein.

8.6 Record Retention. Records for this Project shall be retained not less than five (5) years from the date of final completion.

8.7 Independent Parties. Each Party acknowledges, understands, and agrees that it undertakes its responsibilities and obligations independent of the other, and that neither Party nor its employees or agents shall be considered an employee of the other under this Agreement or the activities resultant therefrom.

8.9 No Implied Authority. This Agreement shall not be considered to imply authority to perform any tasks, accept any responsibility, or to do any other thing in relation hereto, not expressly set forth herein.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the dates set forth below. This Agreement shall be effective as of the date first above written, but without limitation, the District Board approving this Agreement, which the Board may or may not do, in its discretion.

LAKE HAVASU CITY, a municipal corporation of the State of Arizona

Date Signed

By _____
Mark S. Nexsen, Mayor of Lake Havasu City

MOHAVE COUNTY FLOOD CONTROL DISTRICT,
a political subdivision of the State of Arizona

Date Signed

By _____
Hildy Angius, Chairman of the District

REVIEWED AND RECOMMENDED:

MOHAVE COUNTY FLOOD CONTROL DISTRICT

Date Signed

By _____
Nicholas S. Hont, P.E., Flood Control District Chief Engineer

**APPROVED AS TO FORM AND IN
COMPLIANCE WITH A.R.S. § 11-952:**

LAKE HAVASU CITY ATTORNEY

Date Signed

By _____
Kelly Garry, City Attorney

**APPROVED AS TO FORM AND IN
COMPLIANCE WITH A.R.S. § 11-952:**

MOHAVE COUNTY ATTORNEY

Date Signed

By _____
Matthew J. Smith, County Attorney

ATTESTATION OF CITY APPROVAL

I, Kelly Williams, Clerk of the Lake Havasu City, Arizona, hereby certify that the City Council of the Lake Havasu City, Arizona, on the _____ day of _____, 2014, approved on behalf of the Lake Havasu City, an Arizona municipal corporation, for the purposes stated, the foregoing Agreement.

(Seal) _____
Kelly Williams, Clerk of Lake Havasu City

ATTESTATION OF COUNTY APPROVAL

I, Peggy Prince, Clerk of the Board of Supervisors of Mohave County, a body politic and corporate of the State of Arizona, sitting as the Directors of the Mohave County Flood Control District, a political subdivision of the State of Arizona, hereby certify that said Flood Control District on the _____ day of _____, 2014 approved on behalf of the Flood Control District for the purposes stated, the foregoing Agreement.

(Seal) _____
Peggy Prince, Clerk of the Mohave County Board of Supervisors