

RESOLUTION NO. 2021-16

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH YAVAPAI COUNTY FLOOD CONTROL DISTRICT FOR DISTRICT FUNDING OF THE STORMWATER MASTER PLAN UPDATE (PHASE 3) AND DESIGN OF THE BACK O'BEYOND CROSSING DRAINAGE IMPROVEMENTS PROJECTS.**

*WHEREAS*, the City of Sedona ("City") and the Yavapai County Flood Control District ("District") have reached an Intergovernmental Agreement concerning the distribution of a portion of *ad valorem* taxes paid by City residents for flood control projects, including storm water control; and

*WHEREAS*, the District is authorized to expend funds for flood control projects pursuant to A.R.S. § 48-3603(C)(7) and reimburse municipalities for such work, and has approved and budgeted such funds for the City in the approximate amount of \$300,000 for fiscal year 2021-2022, to be used by the City to fund the following projects: Stormwater Master Plan Update (Phase 3) and design of the Back O'Beyond Crossing Drainage Improvements, all within the Yavapai County portion of the City; and

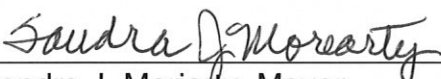
*WHEREAS*, the City is authorized by A.R.S. § 9-240(B)(5) to perform this work, and the District may enter into an appropriate Intergovernmental Agreement under A.R.S. § 48-3603(C)(9); and

*WHEREAS*, the City has reviewed the terms of the Intergovernmental Agreement and determined that it is in the proper form required by A.R.S. § 11-952;


BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA, ARIZONA THAT:

The City of Sedona, through its Mayor and Council, hereby approves the Intergovernmental Agreement with the Yavapai County Flood Control District for the District to provide the City funds in the approximate amount of three hundred thousand dollars (\$300,000) for the Stormwater Master Plan Update (Phase 3) and design of the Back O'Beyond Crossing Drainage Improvements projects, and that the Mayor is authorized to execute said Agreement on behalf of the City.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona this 27<sup>th</sup> day of July, 2021.

  
Sandra J. Moriarty, Mayor

ATTEST:

  
Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:

  
Kurt W. Christianson, City Attorney

THIS IS A CONFORMED COPY OF INSTRUMENT/  
RECORDED # 2021-0058620  
RECORDED ON 8-16-21 AT 4:41  
LESLIE M. [Signature] YAVAPAI CO. RECORDER  
DEPUTY

INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE YAVAPAI COUNTY FLOOD CONTROL DISTRICT AND THE CITY OF SEDONA  
FOR THE FISCAL YEAR 2021-2022 FINANCIAL CONTRIBUTION  
FROM THE DISTRICT TO THE CITY FOR FLOOD CONTROL  
IMPROVEMENTS

THIS INTERGOVERNMENTAL AGREEMENT BETWEEN THE YAVAPAI COUNTY FLOOD CONTROL DISTRICT AND THE CITY OF SEDONA FOR THE FISCAL YEAR 2021-2022 FINANCIAL CONTRIBUTION TO THE CITY FOR FLOOD CONTROL IMPROVEMENTS (the "Agreement") is entered into, effective this 4th day of August, 2021, between the Yavapai County Flood Control District, a political subdivision of the State of Arizona (the "DISTRICT"), and the City of Sedona, Arizona, 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 a "Party."

RECITALS

WHEREAS:

- A. The DISTRICT is a special taxing district legally created in the State of Arizona and organized by Yavapai County to include and govern its jurisdiction.
- B. The DISTRICT administers the Federal Emergency Management Agency ("FEMA") Regulations under the National Flood Insurance Program.
- C. The Yavapai County Board of Supervisors is the Board of Directors of the DISTRICT.
- D. A portion of the CITY lies within the legal boundaries of the DISTRICT.
- E. The DISTRICT, the CITY, and Yavapai County ("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 the CITY have authority to enter into Intergovernmental Agreements pursuant to Arizona Revised Statutes ("A.R.S.") §§11-952, 48-3603, and 9-240, and CITY's Code.
- 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 "Contributions" (hereinafter

“Funds”) has been established, setting aside monies that may be utilized by the various political subdivisions located within the boundaries of Yavapai County.

- I. The DISTRICT has approved and budgeted Funds to provide funding assistance for flood mitigation work and is authorized to expend such Funds for flood control project (including storm water control) to political subdivisions for project so long as the project are flood or drainage related, cost-effective, a benefit to the County, the DISTRICT, and the political subdivision and are in accordance with FEMA regulations.
- J. The CITY has experienced storm water control and flooding problems for a number of years in various locations and seeks to mitigate such problems to increase safety and protect public and private property and persons within the CITY.
- K. The CITY seeks to improve its storm water control, make drainage improvements, and/or mitigate flooding problems with Phase 3 of the Stormwater Master Plan Update and with the design of a drainage crossing on Back O’ Beyond Road (hereinafter the “Project”).
- L. The CITY desires to receive DISTRICT Funds for the 2021-2022 fiscal year to be used for its Project.
- M. The DISTRICT has budgeted Funds to support the Project in an amount not to exceed Three Hundred Thousand Dollars (\$300,000) for fiscal year 2021-2022 which begins on July 1, 2021.

#### 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, IT IS AGREED BETWEEN THE CITY AND THE DISTRICT AS FOLLOWS:

#### I. PURPOSE

The purpose of this Agreement is to authorize the DISTRICT to pay and contribute to the CITY Funds in support of the CITY’s Project. Such funding for fiscal year 2020-2021 shall not exceed Three Hundred Thousand Dollars (\$300,000).

#### II. COMMENCEMENT, DURATION, AND TERMINATION

The effective date is as set forth on page one (1) of this Agreement. Performance under this Agreement shall commence following the effective date and shall terminate upon the earliest of:

- A. The completion of the Project as determined by the CITY;
- B. The exhaustion of the Funds allocated to the CITY for the Project;
- C. June 30, 2022; or
- D. The mutual agreement of the Parties.

If this Agreement terminates for any reason, any unused portion of the Funds shall not be available to the CITY without further agreement of the Parties.

### III. RESPONSIBILITIES OF PARTIES

#### A. The CITY shall:

1. Be solely responsible for the design, engineering, bidding, right-of-way acquisition, supervision, construction, inspection, administration, and project management of the Project and for contracting directly for all Project work.
2. If plans are used to bid, provide the DISTRICT a copy of the final Project plans.
3. Use the Funds for the Project in fiscal year 2021-2022.
4. Use the Funds exclusively for costs associated with the Project described above.
5. When requesting Funds from the DISTRICT, provide detailed invoices with supporting documentation for the request(s).
6. Request Funds from the DISTRICT on or before July 31, 2022 (for work completed in fiscal year 2021-2022).
7. Be responsible for the proper disbursement of the Funds provided by the DISTRICT.
8. Be responsible for maintaining the Project and the resulting improvements.

#### B. The DISTRICT shall:

1. Make Funds available to the CITY for the Project as approved by the Board of Directors.
2. Provide funding as available and appropriate upon proper request(s) by the CITY.
3. Pay properly invoiced requests monthly or on an alternate schedule as agreed to by the CITY and DISTRICT.
4. Pay properly invoiced requests for work completed by the CITY in fiscal year 2021-2022 so long as CITY's requests are received by the DISTRICT on or before July 31, 2022.

#### C. The DISTRICT and CITY mutually agree:

1. That they recognize the Funds to be used by 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 projected 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. All monetary obligations under this agreement shall be subject to annual budget approval of the respective governing bodies of the parties. A failure of either party's governing body to approve funding for payment of any obligation hereunder shall constitute grounds for termination of this agreement.
2. The Project is the sole responsibility of the CITY, and not of the DISTRICT or the County. All real property upon which the Project work will occur is within the CITY limits and not owned or under the control of the DISTRICT or County.

### VII. INDEMNIFICATION

To the fullest extent permitted by law, the CITY agrees to defend, indemnify, and hold harmless the DISTRICT, its Board of Directors, officers, employees, agents, or other representatives, 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. This Indemnification provision shall survive the termination of this Agreement.

#### VIII. OTHER PROVISIONS

- A. NOTICE. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by certified mail, return receipt requested, addressed as follows:

CITY OF SEDONA  
City Manager  
102 Roadrunner Drive  
Sedona, AZ 86336

DISTRICT  
Yavapai County Flood Control District Director  
1120 Commerce Drive  
Prescott, AZ 86305

- B. ENTIRE AGREEMENT. This Agreement represents the entire understanding between the parties with respect to the subject matters herein, and may be amended, modified, or waived only by written instrument signed by both Parties.
- C. CONFLICT OF INTEREST. This contract is subject to the cancellation provisions of A.R.S. §38-511.
- D. SEVERABILITY. In case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained therein.
- E. NON-DISCRIMINATION. The Parties shall comply with Executive Order 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules and regulations, including the Americans with Disabilities Act. The Parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.
- F. EMPLOYMENT VERIFICATION. Both parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to their employment of their employees, and with the requirements of A.R.S. §§ 23-214 and 41-4401 (together the "State and Federal Immigration Laws"). A breach of the foregoing warranty shall be deemed a material breach of this Agreement, and the parties shall have the right to terminate this Agreement for such a breach, in addition to any other applicable remedies. The parties retain the legal right to inspect the papers of each contractor or


subcontractor employee of either who performs work pursuant to this Agreement to verify performance of the foregoing warranty of compliance with the State and Federal Immigration Laws.

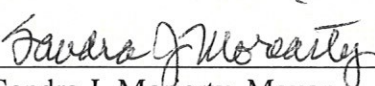
G. LAWS. The Parties shall each be fully responsible for compliance with all statutes ordinances, codes, regulations, rules, court decrees, or other laws (hereinafter "Laws") applicable to it as part of fully performing the Project with regards to their respective roles. This Agreement shall not relieve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

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

YAVAPAI COUNTY  
FLOOD CONTROL DISTRICT


CITY OF SEDONA

  
\_\_\_\_\_  
Craig L. Brown, Chairman                      8-11-21                      Date  
Board of Directors  
Yavapai County Flood Control District

  
\_\_\_\_\_  
Sandra J. Moriarty, Mayor                      11/28/21                      Date  
City of Sedona

ATTEST:

  
\_\_\_\_\_  
Kim Kapin    8-11-21    Date  
Clerk of the Board of Directors


  
\_\_\_\_\_  
Susan L. Irvine    7/28/2021    Date  
Sedona City Clerk



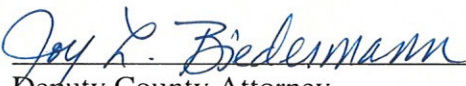
DETERMINATIONS OF COUNSEL  
FOR THE  
INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE YAVAPAI COUNTY FLOOD CONTROL DISTRICT AND THE CITY OF SEDONA  
FOR THE FISCAL YEAR 2021-2022 FINANCIAL CONTRIBUTION  
FROM THE DISTRICT TO THE CITY FOR FLOOD CONTROL IMPROVEMENT

Pursuant to A.R.S. §11-952, the foregoing Agreement has been submitted to the undersigned Attorney City of Sedona. The undersigned has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona and the City of Sedona.

  
\_\_\_\_\_  
Kurt W. Christianson, City Attorney                      Date  
City of Sedona

Pursuant to A.R.S. §11-952, the foregoing Agreement has been submitted to the undersigned Attorney for the Yavapai County Flood Control District, Prescott, Arizona. The undersigned has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Yavapai County Flood Control District.

  
\_\_\_\_\_  
Deputy County Attorney                      Date  
Flood Control District