

**RESOLUTION NO. 07-22**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, APPROVING AND ADOPTING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MARICOPA AND HOGENES FARMS, IN COMPLIANCE WITH A.R.S. §9-500.05.**

**WHEREAS**, pursuant to A.R.S. §9-500.05, Hogenes Farms ("Owner"), requested that the City of Maricopa enter into a Development Agreement in the form which is attached to this Resolution and by this reference made a part hereof; and

**WHEREAS**, the City of Maricopa believes that it is in the best interest of the City to enter into this Development Agreement in order to facilitate the annexation of the property subject to the Development Agreement.

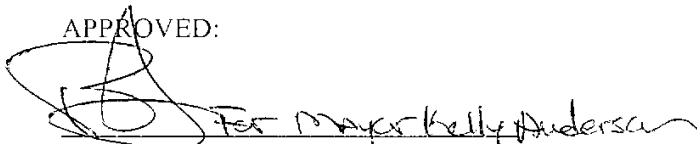
**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and City Council of the City of Maricopa, Arizona, as follows:

**Section 1.** The City of Maricopa by the requisite vote of its City Council hereby approves and adopts, and authorizes and instructs its Mayor on behalf of the City of Maricopa to enter into the Development Agreement with the Owner in the form attached to and made a part of this Resolution.

**Section 2.** Pursuant to A.R.S. §9-500.05(G), the provisions of this Resolution are not enacted as an emergency measure and shall not be effective for thirty (30) days.

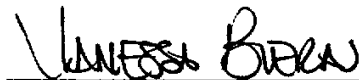
**PASSED AND ADOPTED** by the Mayor and City Council of the City of Maricopa, Arizona, this 9<sup>th</sup> day of April, 2007.

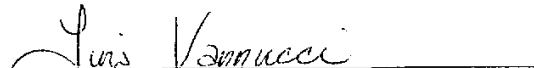
APPROVED:

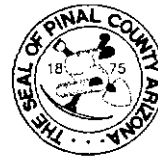
  
\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
City Attorney



When Recorded Return to:

City Clerk  
City of Maricopa  
P.O. Box 610  
Maricopa, AZ 85239

DATE/TIME: 04/12/07 1604  
FEE: \$11.00  
PAGES: 5  
FEE NUMBER: 2007-044578

### PRE-ANNEXATION DEVELOPMENT AGREEMENT

This pre-annexation development agreement ("Agreement") is entered into this 9th day of April, 2007, by and between the City of Maricopa, an Arizona Municipal Corporation ("City") and Abraham and Barbara Hogenes and Hogenes Farms (collectively "Hogenes").

Whereas, Hogenes is the owner of the property located within an unincorporated area of Pinal County and within the planning area of the City, described on Exhibit A (the "Property"). Hogenes and the City desire that the Property be annexed into the corporate limits of the City and become an integral part of the City;

Whereas, Hogenes and the City are entering into this Agreement pursuant to the provisions of A.R.S. §9-500.05. The approval of this Agreement is an administrative act, and legislative acts required to implement this Agreement will be in accordance with applicable law.

Now, therefore, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the parties hereto state, confirm and agree as follows:

1. **Annexation.**

- a. The City has initiated the annexation process by filing a blank annexation petition with the Pinal County Recorder consistent with the requirements of A.R.S. §9-471 and all other application laws, ordinances and rules (the "Annexation Laws"), to annex the Property into the City. The City has timely published, mailed and posted the required notices and held a public hearing, as required under the Annexation Laws in connection with the annexation of the Property into the City. Hogenes shall sign and deliver annexation petitions for the Property. It is understood by the parties that the City Council retains the discretion to approve or deny the annexation ordinance.
- b. In the event the annexation is rejected or otherwise fails, Hogenes and the City of Maricopa agree that this Agreement shall be null and void.

2. **Public Improvements.** The City of Maricopa, in consideration of annexation into its municipal limits, hereby agrees to the following relative to public improvements:

- a. Should a grade separation be constructed within the vicinity of the Green Road alignment and the Union Pacific Railroad, the City of Maricopa agrees that it will not construct and will not allow other property owners or parties to construct such roadway and grade separation on or along the Property but that the centerline of such roadway and grade separation within the vicinity of the Green Road alignment and the Union Pacific Railroad shall be constructed at least one quarter mile east of the Green Road alignment. The primary purpose of this grade separation and alignment is to create a bypass route for a large section of northerly and southerly traffic along SR 347.
- b. Should a grade separation be constructed within the vicinity of the Green Road alignment and the Union Pacific Railroad, the City of Maricopa agrees that it will provide sufficient east-west access to the Property to allow for the future residential development of the Property.

3. **Other Provisions.** The City of Maricopa, in consideration of annexation into its municipal limits, hereby agrees to the following provisions:

a. **Use.** The City of Maricopa shall exempt from any ordinance, regulation, franchise or emergency measure which regulates or limits, or purports to regulate or limit, in any fashion the use and operation of the Property by Hogenes, their heirs and assigns, for any dairy, cultivation and related operations conducted or performed on the Property for so long as the Property is used primarily for agricultural purposes. Hogenes shall have a right to reasonably increase or decrease the volume of dairy activities on the Property. The rights granted herein are in addition to any rights Hogenes may enjoy by reason of the grandfathered use of the Property. The parties hereto specifically agree that the current operations on the Property shall not constitute a nuisance or similar violation of any City ordinances, rules or regulations and the City shall not take action to enforce insect or pest control provisions or other provisions concerning manure or other smells related to the dairy, cultivation and related operations conducted or performed on the Property. Notwithstanding the foregoing, Hogenes shall comply with all applicable Federal, State and County health regulations.

b. **City Taxes.** In accordance with ARS §42-5159 A (8) and Sections 8-465 (r) and 8-660 (r) of the Maricopa City Code, and to the extent allowed by law and without creating a financial liability to the City, the City of Maricopa shall exempt Hogenes Farms, with regards to its dairy, cultivation and related operations, from:

- i. the City of Maricopa transaction privilege and use taxes and;
- ii. the City of Maricopa's business license fees as defined in Chapter 8 of the Maricopa City Code.

4. **Police Service.** Upon annexation, the City shall provide police services to all properties as described in Annexation Petition 06-02 ("Exhibit 3"), and specifically including the Property, consistent with the City's intergovernmental agreement (IGA) with Pinal County for Law Enforcement Services.

5. **Notices.** All notices, filings, consents, approvals and other communications provided for in this Agreement or given in connection herewith shall be validly given, filed, made, delivered, or served if in writing and delivered personally, or by overnight carrier, or sent by United States first class mail (or registered or certified) mail, postage prepaid, addressed as follows:

If to the City, by mail: Rick Buss, City Manager  
City of Maricopa  
P.O. Box 610  
Maricopa, AZ 85239

With a copy to: Denis Fitzgibbons,  
City Attorney  
City of Maricopa  
P.O. Box 610  
Maricopa, AZ 85239

If to the City, in person: Rick Buss, City Manager  
City of Maricopa  
44624 West Garvey  
Maricopa, AZ 85239

With a copy to: Denis Fitzgibbons,  
City Attorney

City of Maricopa  
44624 West Garvey  
Maricopa, AZ 85239

If to Hogenes, by mail: Abraham and Barbara Hogenes  
P.O. Box 570  
Maricopa, AZ 85239

With a copy to: Matthew Berens, Esq.  
Berens, Kozub, Lord & Kloberdanz, PLC  
7047 East Greenway Parkway, Suite 140  
Scottsdale, AZ 85254

6. **Counterparts.** This Agreement may be executed in two or more counterparts each of which shall be deemed and original, but all of which together constitute one and the same instrument. The signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.
7. **Headings.** The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions thereof.
8. **Exhibits and Recitals.** Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof. The Recitals set forth at the beginning of this Agreement are incorporated herein and the parties hereby confirm the accuracy thereof.
9. **Further Acts.** Each of the parties hereto shall promptly execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement. The parties agree that all conditions and contingencies set forth in this Agreement are critical in the development of the Property.
10. **Time is of the Essence.** Time is of the essence for each of the terms and provisions of this Agreement.
11. **Inurement.** This Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.
12. **Term.** The term of this Agreement shall commence on the date and at the time a resolution approving and adopting this Agreement is approved by the City Council, and shall terminate on the 25<sup>th</sup> anniversary of such date unless extended by mutual agreement of the parties.
13. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understandings of the parties, oral or written, are superseded and merged into this Agreement.
14. **Amendment.** This Agreement may be amended only by a written amendment executed by the City and HOGENES.
15. **Good Standing, Authority.** Hogenes represents and warrants to the City that (a) Hogenes Farms is duly formed and validly existing under the laws of the State of Arizona and qualified to do business in the State of Arizona; and (b) the individual(s) executing this Agreement on behalf of Hogenes Farms are authorized to do so. The City represents and warrants to Hogenes that (i) the City is a municipal corporation duly formed and validly existing under the

laws of the State of Arizona, and (ii) the individual(s) executing this Agreement on behalf of the City are authorized to do so.

16. **Severability.** If any portion of any provision of this Agreement is declared void or unenforceable, such portion shall be severed from this Agreement and the remainder of the provision and remainder of this Agreement shall remain in full force and effect. The parties acknowledge and agree that, although the parties believe that the terms and conditions contained in this Agreement do not constitute an impermissible restriction of the police power of the City, and that it is their express intention that such terms and conditions be construed and applied as provided herein, to the fullest extent possible, it is their *further intention* that, to the extent any such term or condition is found to constitute an impermissible restriction of the police power of the City, such term or condition shall be construed and applied in such lesser fashion as may be necessary to reserve to the City all such power and authority that cannot be restricted by contract.
17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, and the parties consent to jurisdiction and venue in Pinal County, Arizona, and the parties consent to jurisdiction and venue in Pinal County, Arizona.
18. **Cancellation for Conflict of Interest.** This Agreement is subject to the cancellation provisions for conflicts of interest pursuant to A.R.S. §38-511.
19. **Waiver.** Hogenes intends to encumber the Property with this Agreement. Hogenes agrees and consents to all the conditions imposed by this Agreement, and by signing this Agreement waives any and all claims, suits, damages, compensation and causes of action for diminution in value of the Property owners of the Property may have now or in the future under the provisions of A.R.S. Sections 12-1134 through and including 12-1136 resulting from this Agreement or the Annexation.

In Witness Whereof, the parties have executed this Agreement to be effective on the date and at the time a Resolution approving and adopting this Agreement is approved by the City Council of the City of Maricopa.

City of Maricopa

Date: APRIL 9, 2007

Attest: Vanessa Bueras  
Vanessa Bueras, City Clerk

City of Maricopa, an Arizona Municipal Corporation

Kelly O. Anderson  
For Mayor Kelly Anderson  
Kelly O. Anderson, Mayor

Approved as to Form an Authority:

John Vannucci

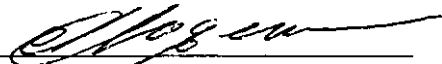
Denis Fitzgibbons, City Attorney

(additional signatures on following page)


Hogenes

Date: 4/9/07

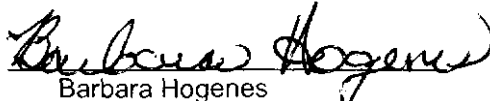
Hogenes Farms Limited Partnership,  
an Arizona limited partnership

By:   
Abraham Hogenes, General Partner

Date: 4/9/07

By:   
Abraham Hogenes

Date: 4/9/07

By:   
Barbara Hogenes

**"EXHIBIT A"**  
**LEGAL DESCRIPTION**

All that portion of Section 20, Township 4 South, Range 3 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, lying South of the right of way line of the Southern Pacific Railroad;

EXCEPT one-half of all minerals, oils, gases as reserved in Deed recorded in Docket 72, page 27, records of Pinal County, Arizona.