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OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
Virginia Ross

DATE/TIME: 06/22/2022 1500
FEE: \$0.00
PAGES: 30
FEE NUMBER: 2022-071767

When recorded return to:
Pinal County Flood Control District
Christopher Wanamaker, P.E., CFM
PO Box 727
Florence, AZ 85132

IGA PCFCD FL21-016

IGA # FL21-016

INTERGOVERNMENTAL AGREEMENT

between

PINAL COUNTY FLOOD CONTROL DISTRICT

and the

CITY OF MARICOPA

for the

**MAINTENANCE OF FLOOD CONTROL IMPROVEMENTS
IN THE HOGENES FARMS PROJECT**

This Intergovernmental Agreement (this "Agreement") is made and entered into this 22 day of June, 2022, between the Pinal County Flood Control District, a political subdivision of the State of Arizona ("District") and the City of Maricopa, an Arizona municipal corporation ("Maricopa"). District and Maricopa are collectively referred to hereafter as the "Parties" and each individually as a "Party".

RECITALS

A. Whereas, each of the Parties is authorized to enter into intergovernmental agreements for joint or cooperative action pursuant to A.R.S. § 11-952 et seq. and each has by approval of its governing body resolved to enter into this Agreement, and copies of said approvals are attached hereto as Exhibits A and B.

B. Whereas, each of the Parties participates in the National Flood Insurance Program and is authorized to act as an agency with ultimate responsibility for the maintenance of certain flood control structures, subject to the requirements of 44 C.F.R. 65.10(d). District's statutory authority is set forth in A.R.S. § 48-3603C(3) and C(9) and Maricopa's statutory authority is set forth in A.R.S. § 9-240.

C. Whereas, TRS 15, LLC, an Arizona limited liability company (hereinafter collectively referred to as "Owner"), seeks to obtain from the Federal Emergency Management Agency ("FEMA") a Letter of Map Revision ("LOMR") over certain lands

described in Exhibit C ("Property"). The Property is located in Pinal County, City of Maricopa. Upon approval of a LOMR, the Property will be removed from the 100-year floodplain established by FEMA.

D. Whereas, Owner plans to construct the following improvements: a combination channel/spreader basin system that will convey flows around the west side of the Property. These improvements shall be collectively referred to herein as the "Flood Control Structures".

E. Whereas, in order to obtain a LOMR, Owner must meet the maintenance requirements called for by and set out in 44 C.F.R. 65.10 by providing FEMA with an adopted maintenance plan for the Flood Control Structures and by showing that a qualified jurisdiction will assume ultimate responsibility for maintenance of the Flood Control Structures.

F. Whereas, Maricopa intends to become the qualified jurisdiction responsible for the maintenance of the Flood Control Structures pursuant to the provisions of 44 C.F.R. 65.10(d) (the "Qualified Jurisdictions"), provided that certain conditions and contingencies are first met by the Owner as hereinafter set out in this Agreement.

G. Whereas, the Parties shall execute the documents required to establish Maricopa as the Qualified Jurisdiction, once Owner has entered into an Agreement as set forth in Recital J.

H. Whereas, this Agreement defines the responsibilities of the Parties concerning implementation of their agreement for Maricopa to serve as the Qualified Jurisdiction.

I. Whereas, it is the intention of the Parties that Maricopa shall perform the inspections and any maintenance required pursuant to the terms of this Agreement, and Maricopa shall bear the costs of such inspections and maintenance.

J. Whereas, the Owner and Maricopa have executed an agreement that defines the primary responsibilities of the Owner for inspection, maintenance, and repair of the Flood Control Structures (the "Maintenance Agreement"), which is attached hereto as Exhibit D. Such Maintenance Agreement shall be effective upon receipt of a FEMA approved CLOMR as reviewed and acknowledged by Pinal County.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. Recitals. The foregoing Recitals are hereby incorporated into this Agreement by reference, as if fully set out herein.

2. Maintenance. The final adopted O&M Plan, which is attached as Exhibit 4 to the Maintenance Agreement, is incorporated into this Agreement by reference, and sets forth the minimum required maintenance to be performed by the Owner. Maricopa shall

require the Owner to perform the required maintenance. In the event the Owner fails to conduct required maintenance, Maricopa shall conduct all required maintenance. Maricopa may withdraw funds from the Performance Bond referenced in paragraph 3.01 below. Maricopa's responsibility to conduct required maintenance, not conducted by Owner, is not contingent upon its ability to draw on the Performance Bond or the sufficiency of the Performance Bond.

3. Performance Bond.

3.01 Maricopa shall require the Owner or the Hogenes Farms Homeowners Association, an Arizona non-profit corporation ("Association") to obtain and maintain throughout the term of the Maintenance Agreement a performance bond in the amount of Twenty Five Thousand and No/100 Dollars (\$25,000.00) ("O&M Bond") securing its obligation to perform the required maintenance of the Flood Control Structures.

3.02 Maricopa will draw funds from the O&M Bond in the event the Owner or the Association fails to perform required maintenance pursuant to the Maintenance Agreement.

4. Inspection. Maricopa shall inspect the Flood Control Structures annually to determine if they are in good working order and have been maintained in accordance with the Maintenance Agreement and the requirements of 44 C.F.R. 65.10(d). In addition, Maricopa shall conduct an inspection of the Flood Control Structures within a reasonable time after any entity with authority to do so, issues a declaration of disaster that includes the Property to identify and if necessary, repair any damage that is necessary for the continued operation of the Flood Control Structures. Maricopa shall provide District with a written report of its inspection findings within sixty (60) days after each inspection.

5. Administrator. In the event it is necessary for Maricopa to assume maintenance of the Flood Control Structures, Maricopa shall act as the administrator for the Parties in carrying out their duties subject to the provisions of this Agreement.

6. Miscellaneous Provisions.

6.01 This Agreement shall become effective upon recording in the Office of the Pinal County Recorder.

6.02 This Agreement may be canceled for conflict of interest without further obligation or penalty in accordance with A.R.S. § 38-511.

6.03 Except as to the claims described in paragraph 6.03.1, each party to this Agreement (indemnitor) shall, to the extent permissible by law, indemnify, defend and hold harmless the others (indemnitees) including agents, officers, directors, governors and employees thereof, from and against any loss or expense incurred as a result of any claim or suit of any nature whatsoever, which arises out of indemnitor's negligent or wrongful acts or omissions pursuant to this Agreement. Such indemnification obligation shall encompass any personal injury, death or property damages resulting from the indemnitor's negligent or wrongful acts or omissions, as well as reasonable attorney's fees, court costs, and other expenses relating to the defense against claims or litigation,

incurred by the indemnitee. Indemnitee shall be liable for its own negligence or wrongful acts as provided by law.

6.03.1 However, as to any claims against the Pinal County Flood Control District and/or Pinal County that the Flood Control District and/or County have responsibility or liability due to the provisions of A.R.S. 48-3610.E, Maricopa shall, to the extent permissible by law, indemnify, defend and save harmless the District and/or Pinal County, including agents, officers, directors, governors and employees thereof, from any loss or expense incurred as a result of such a claim or suit. Such indemnification obligation is intended to be a specific indemnity obligation rather than the general indemnity obligations set forth in the previous paragraph regarding all other types of claims or suits and shall encompass any personal injury, death or property damages, as well as reasonable attorney's fees, court costs, and other expenses relating to the defense of such claims or litigation.

6.04 All notices or demands required to be given pursuant to the terms of the Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the following address or such other address as is designated by the Party in writing. Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated in receipt if delivered by certified or registered mail.

Clerk, Pinal County Flood Control District
P.O. Box 727
Florence, Arizona 85132

City of Maricopa,
Attn: City Manager
39700 West Civic Center Plaza
Maricopa, Arizona 85138

6.05 Neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver. The acceptance by any Party of sums less than may be due and owing to it at any time shall not be construed as an accord and satisfaction.

6.06 Nothing in this Agreement shall be construed as either limiting or

extending the lawful jurisdiction of any Party hereto other than as expressly set forth herein, and each Party retains its separate identity under law, and all of the immunities attendant thereto.

6.07 Except as expressly provided herein, this constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement. This Agreement may not be altered except in writing signed by each of the Parties.

6.08 This Agreement shall remain in force and effect until the FEMA maps depicting the flow of water to the Property no longer show flows that require the Flood Control Structures and Maricopa has received notice from FEMA of such a change or until a district or other governmental entity accepts ownership of and the maintenance obligations related to the Flood Control Structures.

6.09 Nothing contained in this Agreement is intended to nor shall it be construed as a representation that FEMA will approve any LOMR for the Property nor that the statutes, rules and regulations governing the Flood Control Structures (including those set out in 44 C.F.R. 65.10(d)) will not change over time. The Parties do not warrant nor represent to any person not a party hereto that the requirements for the Owner will not change to require more or greater flood protection. In the event any such change should occur it will be the responsibility of the Owner to meet any additional or new requirements placed on them by Federal or State law including but not limited to any new maintenance requirements. It is not the intent of this Agreement that any party, not a signator to this Agreement, shall have any rights under it nor the right to enforce any of its provisions. All rights and obligations assumed or granted hereunder are personal to the signatory jurisdictions. Nothing contained herein is intended by the parties to create any third party beneficiary rights enforceable against them.

6.10 This Agreement shall not be interpreted to create any rights in or obligation to any third party. Nothing in this Agreement is intended to create any third party beneficiaries.

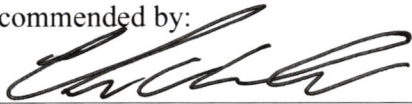
6.11 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by any party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, 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 brings 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 agreed that the prevailing Party in such action shall recover its costs including reasonable attorneys' fees, as determined by the court.

IN WITNESS WHEREOF, the parties executed this Agreement the day and year first written above.

PINAL COUNTY FLOOD CONTROL DISTRICT

A Political Subdivision of the State of Arizona

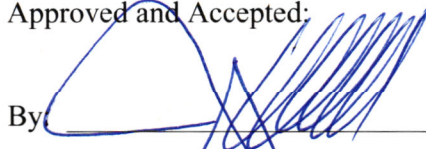
Recommended by:



6/14/2022

Christopher Wanamaker
Chief Engineer, Pinal County Flood Control District

Approved and Accepted:



6/22/2022

By: _____
Chairman, Board of Directors

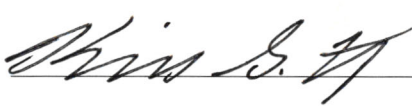
Attest:



6/22/2022

By: _____
Clerk of the Board

The foregoing Intergovernmental Agreement has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned General Counsel for the District, who has determined that it is in proper form and within the powers and authority granted to the Pinal County Flood Control District under the laws of the State of Arizona.

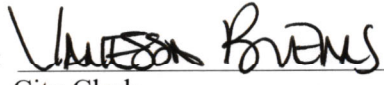


6/10/22

General Counsel for the District

CITY OF MARICOPA
An Arizona Municipal Corporation

By:  for. 6/8/22
Christian Price Date
Mayor, City of Maricopa

Attest:  6/8/22
City Clerk Date



The foregoing Intergovernmental Agreement has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned attorney who has determined that it is in proper form and within the power and authority granted to the City of Maricopa under the laws of the State of Arizona.

 6/7/2022
City Attorney Date

RESOLUTION NO. 22-33

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN PINAL COUNTY FLOOD CONTROL DISTRICT AND THE CITY OF MARICOPA FOR THE MAINTENANCE OF FLOOD CONTROL IMPROVEMENTS IN HOGENES FARMS.

WHEREAS, the City of Maricopa and Pinal County Flood Control District desire to enter into an Intergovernmental Agreement for the Maintenance of Flood Control Improvements in Hogenes Farms 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 Intergovernmental Agreement in order to identify Maricopa as the qualified jurisdiction for the maintenance the flood control structures in Hogenes Farms.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Maricopa, Arizona, that 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 Intergovernmental Agreement with Pinal County Flood Control District for the maintenance of flood control improvements in Hogenes Farms in the form attached to and made a part of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the City of Maricopa, Arizona, this 7th day of June, 2022.



Christian Price
Mayor

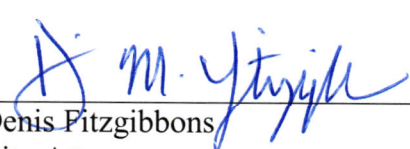
ATTEST:



Vanessa Bueras, MMC
City Clerk



APPROVED AS TO FORM:



Denis Fitzgibbons
City Attorney

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OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
Virginia Ross

DATE/TIME: 06/22/2022 1500
FEE: \$0.00
PAGES: 2
FEE NUMBER: 2022-071766

When recorded return to:
Christopher Wanamaker, P.E.
Pinal County Flood Control District
P.O. Box 727
Florence, AZ 85132

Resolution No. 062222-FL21-016

**RESOLUTION FOR THE APPROVAL OF AN INTERGOVERNMENTAL
AGREEMENT WITH THE CITY OF MARICOPA FOR THE
MAINTENANCE OF FLOOD CONTROL IMPROVEMENTS FOR THE
HOGENES FARMS PROJECT**

WHEREAS, the Pinal County Flood Control District (District) was established in accordance with provisions of Arizona Revised Statutes Title 48, Chapter 21, which authorizes the Board of Directors of the Pinal County Flood Control District (Board) to construct, operate and maintain flood control works and storm drainage facilities within or without the District for the benefit of the District; and,

WHEREAS, Both the District and the City of Maricopa ("City") are authorized to enter into intergovernmental agreements for joint or cooperative action pursuant to A.R.S. § 11-952 et seq.; and,

WHEREAS, each of the Parties participates in the National Flood Insurance Program and is authorized to act as an agency with ultimate responsibility for the maintenance of certain flood control structures, subject to the requirements of 44 C.F.R. 65.10(d). District's statutory authority is set forth in A.R.S. § 48-3603(9) and Maricopa's statutory authority is set forth in A.R.S. § 9-240; and

WHEREAS, Whereas, TRS 15, LLC, an Arizona limited liability company ("Property Owner") seeks to obtain from the Federal Emergency Management Agency ("FEMA") a Letter of Map Revision ("LOMR") over property it owns within the corporate limits of the City of Maricopa. Upon approval of a LOMR, the Property will be removed from the 100-year floodplain established by FEMA; and

WHEREAS, the Property Owner will construct flood control structures as part of their project; and

WHEREAS, in order to obtain a LOMR, Property Owner must meet the maintenance requirements called for by and set out in 44 C.F.R. 65.10 by providing FEMA with an adopted maintenance plan for the Flood Control Structures and by showing that a qualified jurisdiction will assume ultimate responsibility for maintenance of the Flood Control Structures; and

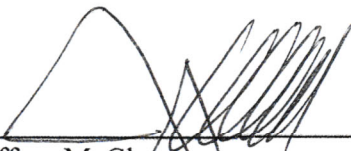
RESOLUTION NO. 062222-FL21-016

WHEREAS, the District and the City wish to enter an agreement that sets forth the rights and responsibilities of the Parties regarding the inspection, maintenance and repair of the flood control structures

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Pinal County Flood Control District approves the Intergovernmental Agreement between the Pinal County Flood Control District and the City of Maricopa for the Maintenance of Flood Control Improvements in the Hogenes Farms Project; and,


BE IT FURTHER RESOLVED that the Chairman of the Board of Directors is authorized to execute the Agreement on behalf of the Flood Control District.

Dated this 22 day of June, 2022.



Jeffrey McClure
Chairman, Board of Directors

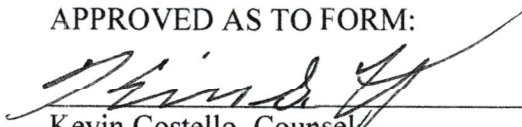
ATTEST:



Natasha Kennedy
Clerk of the Board



APPROVED AS TO FORM:



Kevin Costello, Counsel
Pinal County Flood Control District

Exhibit C
Property

A portion of Section 20 and a portion of the North Half of Section 29, Township 4 South, Range 3 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, and more particularly described as follows:

BEGINNING at a GLO brass cap at the southwest corner of said Section 20, thence North 00 degrees 43 minutes 29 seconds West, along the west line of the Southwest Quarter of said Section 20, 2,640.00 feet to a GLO brass cap at the west quarter corner of said Section 20;

thence North 0 degrees 41 minutes 18 seconds West, along the west line of the Northwest Quarter of said Section 20, 2,640.37 feet to the northwest corner of said Section 20;

thence South 89 degrees 15 minutes 27 seconds East, along the north line of said Northwest Quarter, 552.22 feet to the beginning of a non-tangent curve, concave southwest, from which the radius point bears South 21 degrees 58 minutes 22 seconds West a distance of 34,340.61 feet;

thence southeasterly 5,320.09 feet along the arc of said curve to the right through a central angle of 8 degrees 52 minutes 35 seconds to a point on the east line of the Northeast Quarter of said Section 20;

thence South 0 degrees 54 minutes 26 seconds East, along said east line, 315.71 feet to the east quarter corner of said Section 20;

thence South 0 degrees 51 minutes 01 seconds East, 2,636.97 feet to the southeast corner of said Section 20;

thence South 0 degrees 10 minutes 26 seconds East, along the east line of the Northeast Quarter of said Section 29, 55.00 feet to a point on the south line of the north 55 feet of the North Half of said Section 29;

thence North 89 degrees 32 minutes 34 seconds West, along said south line, 3,968.44 feet to a point on the west line of the East Half of the Northwest Quarter of said Section 29;

thence North 0 degrees 05 minutes 02 seconds West, along said west line, 55.00 feet to the northeast corner of said East Half of the Northwest Quarter;
thence North 89 degrees 29 minutes 01 seconds West, along the south line of the Southwest Quarter of said Section 20, 1,323.07 feet to the POINT OF BEGINNING.

Containing an area of 22,981,053 square feet or 527.5724 acres, more or less.
S:\Projects\2021\21-0191\Civil_Constuction Documents\PDF\20220517 - Site Plan Exhibit

1602



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
Virginia Ross

DATE/TIME: 06/22/2022 1500

FEE: \$0.00

PAGES: 16

FEE NUMBER: 2022-071765

When Recorded Return To:

City Clerk
City of Maricopa
39700 West Civic Center Plaza
Maricopa, Arizona 85139

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT ("Agreement") is entered into this 8th day of June, 2022, by the City of Maricopa, an Arizona municipal corporation ("City"), TRS 15, LLC, an Arizona limited liability company ("Owner"), and Hogenes Farms Homeowners Association, an Arizona nonprofit corporation ("Association"). The City, Owner and Association are each referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

- A. Owner owns the real property legally described on Exhibit 1 attached, commonly referred hereto as Hogenes Farms (the "Property").
- B. Portions of the Property are located within a currently-existing floodplain (the "Floodplain") without the flood control solution referenced in Recital C below.
- C. Owner has designed and engineered a flood control solution that has been submitted for a Conditional Letter of Map Revision ("Hogenes Farms CLOMR") from the Federal Emergency Management Agency ("FEMA") to remove the Property from the Floodplain. In order to remove the Property from the Floodplain, Owner shall secure approval of flood mitigation plans by FEMA which will result in the issuance of the Hogenes Farms CLOMR. The Hogenes Farms CLOMR will require the construction of certain flood mitigation structures (the "Flood Control Structures") within the boundaries of the Property, and upon completion of the Flood Control Structures, Owner will request that FEMA issue a Letter of Map Revision ("LOMR") confirming removal from the Floodplain. The Flood Control Structures are graphically depicted on Exhibit 2 attached hereto.
- D. Pursuant to 44 C.F.R. 65.10(d), in order to qualify for the issuance of a LOMR, Owner must provide evidence to FEMA that ultimate responsibility for maintenance of the Flood Control Structures is under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the National Flood Insurance Program (an "Agency").
- E. The City qualifies as an Agency under the terms of 44 C.F.R. 65.10(d).
- F. The Flood Control Structures shall be owned and maintained by the Owner or the Association subject to Section 2(I) hereof. The primary obligation and responsibility for the inspection, maintenance, repair and insurance of the Flood Control Structures has been delegated to Owner or Association under this Agreement as required by the applicable provisions of 44 C.F.R. 65.10(d), as amended from time to time.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein, the Parties agree as follows:

1. ACKNOWLEDGEMENT OF OWNER'S CONSIDERATION.

The City agrees that the Flood Control Structures and Owner's execution of this Agreement satisfies any stipulations within the land entitlement approvals for the Property, or portions thereof, and the City's duty to protect the general health, safety, and welfare of the public. City agrees not to impose any stipulations or other requirements relating to the Flood Control Structures or the removal of the Property from the Floodplain in connection with the entitlements for the Property, except as may be required by FEMA. Owner acknowledges that there are a number of approvals and permits that are required as part of the development of the Property (currently referred to as *Hogenes Farms*) that will eventually allow the issuance of a building permit, which approvals are generally set forth on Exhibit 3 attached hereto.

2. FLOOD CONTROL STRUCTURES MAINTENANCE PLANS.

A. FEMA Approval of Flood Control Structures. Owner shall submit the design of the Flood Control Structures to FEMA for review and approval of the construction of the Flood Control Structures and the issuance of a Condition Letter of Map Revision related thereto. As a qualified Agency under the terms of 44 C.F.R. 65.10(d) and based upon Owner's and/or Association's assurances that it will be primarily responsible for the required maintenance of the Flood Control Structures as required by the applicable provisions of 44 C.F.R. 65.10(d), as amended from time to time, the City agrees to execute the Operation and Maintenance Plan for the Flood Control Structures ("O&M Plan"), a copy of which is attached hereto as Exhibit 4 and to take all steps reasonably necessary to cause FEMA to issue the LOMR for the Property in connection with the Flood Control Structures as soon as reasonably possible, and to include the Property in the LOMR when issued.

B. Costs of O&M Plan. Owner or Association, their successors and assigns, shall pay all costs for maintaining the Flood Control Structures in accordance with the O&M Plan and in compliance with all federal, state and local laws, regulations and ordinances, as amended from time to time. Owner shall have the primary obligation and responsibility for inspecting, maintaining, repairing and insuring the Flood Control Structures until the FEMA maps depicting the flow of water to the Property no longer show flows that require the Flood Control Structures to protect development on the Property from the 100-year flood and the City has received notice ("FEMA Notice") from FEMA of such a change; provided, that the FEMA Notice is not required to specifically refer to the Property nor the Flood Control Structures.

C. Performance Bond. Owner or Association shall obtain and maintain a performance bond in the amount of Twenty Five Thousand and No/100 Dollars (\$25,000.00) ("O&M Bond") securing its obligations under this Agreement. Owner's or Association's obligation to maintain the O&M Bond shall automatically terminate upon the City's receipt of the FEMA Notice or a termination occurring pursuant to Section 2(I) hereof. Upon such termination, the City agrees to promptly release the O&M Bond to Owner or Association. Not later than ninety (90) days prior to its expiration, the O&M Bond will need to be replaced with a bond of similar specifications. If the City draws from the O&M Bond pursuant to Section 2(H), Owner or Association shall take the steps necessary to maintain the O&M Bond at \$25,000.

D. Insurance. Prior to commencement of construction of the Flood Control Structures, Owner or Association, their successors and assigns, shall obtain and maintain a general liability insurance policy with limits of at least \$1,000,000 per occurrence, with a least a \$5,000,000 excess insurance policy for bodily injury and property damage issued by a State of Arizona authorized insurance company. The policy term or any renewals thereof shall remain in effect for the term of this Agreement. Owner or Association shall maintain insurance which covers the Flood Control Structures against flood damage and such other risks as may be included in the broadest form of extended coverage insurance as may, from time to time, be

available in an amount sufficient to insure the fair replacement cost of the Flood Control Structures in the event of a major flood or other event causing total or substantial destruction of the Flood Control Structures. The City shall be named as an additional insured under the policy and proof of insurance shall be supplied to the City on an annual basis. The insurance policy shall provide that the City be given at least thirty (30) days advance written notice of any material changes, cancellation or non-renewal notification of any policy, and in the event of such material change, cancellation or non-renewal notification, Owner or Association shall immediately replace said policy with another policy to the satisfaction of the City with the receipt of a certificate of insurance for such policy by the City at least ten (10) days prior to the effective date of the material changes, cancellation or non-renewal of any policy. In the event that Owner or Association fails to maintain the requisite insurance, the City shall have the right to immediately secure a similar insurance policy in its name with the total cost of the premium and all monies that may become due during the term of this Agreement being charged to Owner or Association. Owner's or Association's obligation to maintain the insurance required under this Section shall automatically terminate upon the City's receipt of the FEMA Notice or a termination pursuant to Section 2(I) hereof.

Owner shall name Association and City as third party beneficiary and additional insureds under all insurance, indemnification or warranty received from contractors constructing the Flood Control Structures, including completed operations coverage.

E. Notwithstanding the termination of Owner's or Association's obligations under this Agreement upon the City's receipt of the FEMA Notice, Owner or Association shall continue to comply with all local rules and regulations regarding drainage requirements and, in the event Owner or Association desires to remove or modify the Flood Control Structures upon the City's receipt of the FEMA Notice, Owner or Association shall, at their sole cost and expense, provide the City with written certification from an Arizona licensed engineer stating that the removal or modification of the Flood Control Structures will not cause flooding or drainage issues for the surrounding properties.

F. Indemnity.

(i) Owner and Association shall indemnify, defend, and hold harmless the City, its officials and employees from any third party claims, demands, liabilities, losses or causes of action of any nature whatsoever arising out of the use, construction or maintenance of the Flood Control Structures or out of Owner's or Association's activities under this Agreement, including all other acts or omissions on the part of Owner or Association or any person acting for or on behalf of Owner or Association, and from against any orders, judgments or decrees which may be entered and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or in the investigation thereof.

(ii) The City shall indemnify, defend, and hold harmless Owner and Association, their officials and employees from any third party claims, demands, liabilities, losses or causes of action of any nature whatsoever arising out of the negligent acts or omissions of City personnel or its agents entering on to, in or around the Property and/or Flood Control Structures in connection with the City's inspection of the Flood Control Structures as provided for under this Agreement, including all other acts or omissions on the part of the City or any person acting for or on behalf of the City, and from against any orders, judgments or decrees which may be entered and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or in the investigation thereof. In no event shall the City have any obligations under this subsection for any claims, demands, liabilities, losses or causes of action arising out of the use, construction or maintenance of the Flood Control Structures other than as stated in the preceding sentence.

G. Access Easement. Owner and the Association grants to the City and its employees, consultants and contractors, a non-exclusive easement over, upon and under the portion of the Property containing the Flood Control Structures for any and all purposes necessary for the City to inspect, maintain

and restore the Flood Control Structures during the term of this Agreement. The access easement granted herein shall terminate when the FEMA maps depicting the flow of water to the Property no longer show flows that require the Flood Control Structures and City has received notice from FEMA of such a change.

H. In the event Owner or Association, their successors or assigns, fail to either inspect, maintain or restore the Flood Control Structure, or any part thereof, to a safe condition satisfactory to the City in conformance with the terms hereof, the City may elect to either perform such duties with personnel from the City or contract third parties to do so, the reasonable and documented costs of which shall be (i) drawn from the O&M Bond; or (ii) if the O&M Bond is insufficient to pay for the costs of such inspection, maintenance or restoration, charged to Owner, their successors or assigns. Failure of Owner to pay for such costs within thirty (30) days after receipt of written notice from the City outlining such costs, subject to applicable cure periods as provided in this Agreement, shall be considered a breach of this Agreement. In the event of a breach of this Agreement by Owner or Association as stated in the prior sentence, Owner or Association, their successors or assigns, shall pay the City's reasonable outside attorneys' fees and costs of collection arising in any action to recover costs for restoration of the Flood Control Structures or any part thereof.

I. Termination Upon Formation of Maintenance District or Completion of Regional Improvement. Some or all of the Flood Control Structures are intended to be part of a regional flood control project that may be maintained by a separate district or governmental entity. This Agreement shall terminate as to such Flood Control Structures upon such District or other governmental entity agreeing to become responsible for the maintenance of the Flood Control Structures and entering into a new maintenance agreement for the Flood Control Structures that will supersede and nullify this Agreement.

3. **ASSIGNMENT.** Except as herein specifically stated, the rights and obligations created herein run with ownership of the Property and/or portions thereof, and shall inure to the benefit of and be binding upon Owner and the Association, the City and their respective successors and assigns. Upon transfer of the Property or a portion thereof by Owner or the Association or subsequent owner, the new owner shall be deemed to have assumed the rights and responsibilities of Owner or Association hereunder for that portion of the Property that has been transferred. Upon such transfer, Owner or Association shall be automatically released from this Agreement for the portion of the Property that has been transferred provided that (i) the Flood Control Structures have been constructed and accepted by the Association; and (ii) the Association is no longer controlled by the Owner or other developer, meaning there is only one voting class which has elected the board of the Association, and the declarant and designated builders no longer have special rights to appoint or elect the board ("Turnover of Control of the Association"). In the event that such transfer occurs before the Flood Control Structures have been constructed and accepted by the Association and the Turnover of Control of the Association has occurred, Owner or Association shall only be released from this Agreement for the portion of the Property that has been transferred provided: (i) the Owner or Association or subsequent owner has given the City written notice of the assignment, which shall include the name, address and facsimile number, if available, of the new owner for notice purposes; and (ii) the new owner has agreed in writing to be subject to all of the applicable provisions of this Agreement. Owner and successor owners shall have no further obligations under this Agreement once the Flood Control Structures have been completed and accepted by the Association and Turnover of Control of the Association, other than the obligation to pay assessments as set forth in the Declaration of Covenants, Conditions and Restrictions recorded against the Property. The Association shall cause assessments to be made as needed to fund obligations of the Association under this Agreement.

4. **GENERAL PROVISIONS.**

A. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such

signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

B. Incorporation of Exhibits and Recitals. All Exhibits referred to herein and the Recitals stated above are hereby incorporated by reference into this Agreement.

C. Effective Date. This Agreement shall become effective upon approval by the City of this Agreement during a public meeting and the full execution of the Agreement by the Parties.

D. Cooperation. The Parties agree to diligently and in good faith cooperate to process all applications as expeditiously as reasonably possible to take such other actions as are reasonably necessary to carry out the intent of this Agreement.

E. Representatives. Each Party shall designate a representative to act as a liaison between City, its various departments, and Owner (“Representatives”). The Representatives shall be available at all reasonable times to assist with the Parties’ performance under this Agreement. Either Party may change the Representative by giving notice to the other Party of the name, title, address, and telephone number of the replacement.

F. Notices. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be in writing and delivered personally, by facsimile or sent by United States Mail in a postage prepaid envelope via certified mail, return receipt requested, addressed to the other to the address provided herein or as may be changed in writing:

“City”
City of Maricopa
39700 West Civic Center Plaza
Maricopa, Arizona 85139
Attn: Maricopa City Manager
Telephone: 520-316-6852
Facsimile: (520) 568-9120
Email: rick.horst@maricopa-az.gov

Copy to:
Maricopa City Attorney
c/o Denis Fitzgibbons
Fitzgibbons Law Offices
1115 East Cottonwood Lane
P.O. Box 11208
Casa Grande, AZ 85310-0148
Telephone: (520) 426-3824
Facsimile: (520) 426-9355
Email: denis@fitzgibbonslaw.com

“Owner”
TRS 15, LLC
8601 N. Scottsdale Rd., Ste. 335
Scottsdale, AZ 85253
Attention: Brian Hegardt
Telephone: (602) 420-3355
Email: bhegardt@cox.net

“Association”
Hogenes Farms Community Master Association
8601 N. Scottsdale Rd., Ste. 335
Scottsdale, AZ 85253

Attention: Brian Hegardt
Telephone: (602) 420-3355
Email: bhgardt@cox.net

All such notices, demands or other communications will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon confirmed delivery or refusal to accept delivery by the addressee, (ii) if delivered by U.S. Mail in the manner described above be deemed effective upon the earlier of receipt or five (5) business days after deposit in a United States post office or with a United States postal officer, (iii) if delivered by a recognized national overnight delivery service be deemed effective one (1) business day after deposit with such service upon confirmed delivery or refusal to accept delivery by the addressee, and (iv) if delivered by facsimile be deemed effective upon confirmation of successful transmission by the sender's facsimile machine (in each case regardless of whether such notice, demand or other communication is received by any person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this Section).

G. Waiver. No delay in exercising any right or remedy by the Parties shall constitute a waiver thereof. Waiver of any of the terms of this Agreement shall not be valid unless in writing and signed by all Parties hereto. The failure of any Party to enforce the provisions of the Agreement or require performance of any of its provisions shall not be construed as a waiver of such provisions or affect the right of the Party to enforce all of the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach thereof.

H. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona.

I. Choice of Forum. Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Pinal (or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

J. Exercise of Authority. It is understood and agreed that Owner shall not exercise any of the authority or sovereign powers of the City and shall not represent themselves as an agent(s) for the City. Nothing in this Agreement shall be construed to create any partnership, joint venture, or principal agency relationship between the Parties.

K. Recordation. The City shall record this Agreement in the official records of the Pinal County Recorder within ten (10) days after all parties sign the Agreement.

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

M. Severability of Provisions. Each term and provision of this Agreement shall be considered severable and if any term or provision of this Agreement be declared or be determined to be illegal or invalid, the validity of the remaining terms and provisions shall not be affected thereby, and said illegal or invalid term or provision shall not be deemed a part of this Agreement, notwithstanding any other provision of this Agreement to the contrary.

N. Time of the Essence. Time is of the essence to this Agreement and with respect to the performance required by each Party hereunder.

O. Further Assurances. The Parties hereto agree to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement. If any approval is required of any Party in furtherance of the rights under this Agreement, such approval shall not be unreasonably delayed or withheld.

P. Amendments. No amendment shall be made to this Agreement except by written document executed by all the Parties. Within ten (10) days after the effective date of any amendment, the amendment shall be recorded with the Pinal County Recorder.

Q. Headings and Construction. The headings for the Paragraphs and sub-paragraphs of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said Paragraphs or sub-paragraphs nor in any way affect interpretation of this Agreement. When used herein, the terms "include" or "including" shall mean without limitation because of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require. The term "person" shall include an individual, corporation, partnership, trust, estate, or any other duly formed entity. If the last day of any time period stated herein should fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona. If a cross-reference within any provision cites a particular Article, Section, or Subsection number of this Agreement, it shall be a reference to the referred Article, Section, or Subsection and its subparts.

R. Attorneys' Fees. In the event it becomes necessary for a Party to this Agreement to bring an action at law or other proceedings to enforce any of the terms or provisions of this Agreement, the successful Party in any such action or proceeding may apply for reasonable attorney fees pursuant to A.R.S. § 12-341.01.

S. Default. Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within thirty (30) days after written notice thereof from another Party (the "Cure Period"), shall constitute a default under this Agreement; provided, however, that if the failure is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision thereof, then the Party shall have such additional time as may be necessary to perform or comply so long as the Party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation.

T. Good Standing; Authority. Each of the Parties represents and warrants to the other (i) that it is duly formed and validly existing; (ii) that it is an entity qualified to do business in Arizona with respect to Owner, or a political subdivision of the state with respect to the City; and (iii) that the individuals executing this Agreement, on behalf of their respective Parties are authorized and empowered to bind the Party, and the Property with respect to Owner.

U. Force Majeure. The time period for performance and/or performance of any Party and the duration of this Agreement shall be extended by any causes that are beyond the control of the Party required to perform, such as an act of God, civil or military disturbance, delays resulting from any act or omission of governmental authorities or utilities, labor strike, injunctions in connection with litigation, labor or material shortage, or acts of terrorism.

V. Entire Agreement. This constitutes the entire agreement between the Parties pertaining to its subject matter. All prior and contemporaneous agreements, representations and

understandings of the Parties, oral or written (including any term sheets, discussion outlines or similar documents), are hereby superseded and merged into this Agreement.

W. Dispute Resolution. In the event a dispute arises under this Agreement, the initiating Party shall send written notice to the other Party of the commencement of the ninety (90) day moratorium on litigation the Parties have agreed shall be instituted. During the ninety (90) day period, the Parties agree to attempt to settle the dispute through non-binding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association (“AAA”) but shall not be under the administration of the AAA unless agreed to by the Parties in writing, in which case all administrative fees shall be divided evenly between the City and Owner. The matter in dispute shall be submitted to a mediator mutually selected by the City and Owner. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the City and Owner shall request that the Presiding Judge of the Superior Court in and for the County of Pinal, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years’ experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the City and Owner. The results of the mediation shall be nonbinding with any Party free to initiate litigation upon the conclusion of the latter of the mediation or of the ninety (90) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. § 12-2238, to the extent allowed by the Arizona Open Meetings Law, § 38-431 et. seq.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the date first written above.

CITY OF MARICOPA, an Arizona municipal corporation

By: *Christian Price* For.
Christian Price, Mayor

Date: 6/8/22

ATTEST:

Approved as to Form:

Vanessa Bueras
Vanessa Bueras, CMC
Clerk



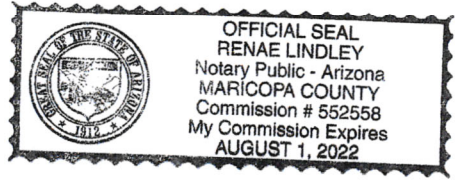
Denis M. Fitzgibbons
Denis M. Fitzgibbons
City Attorney

STATE OF ARIZONA)
) ss.
County of Pinal)

The foregoing Agreement was acknowledged before me this 17th day of MAY, 2022 by Christian Price, who acknowledged himself as the Mayor of the City of Maricopa, and being authorized to do so, executed the foregoing instrument on behalf of the City for purposes therein stated.

Renae Lindley
Notary Public

My Commission Expires:
8/1/2022



TRS 15, LLC, an Arizona limited liability company

By: *Brian Hegardt*
Name: Brian Hegardt
Its: Mortgage
Date: 5/17/2022

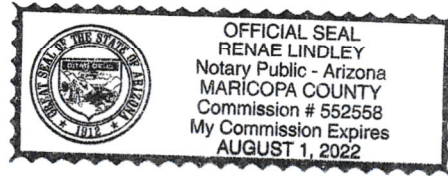
STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 17th day of MAY, 2022, before me personally appeared, BRIAN HEARPT as MEMBER of TRS 15, LLC, an Arizona limited liability company, being authorized to do so, and acknowledged that he signed the above document for the purposes therein contained.

Renae Lindley
Notary Public

My Commission Expires: 8/1/2022

HOGENES FARMS HOMEOWNERS ASSOCIATION,
an Arizona non-profit corporation



By: [Signature]
Name: John Wittrock
Its: President
Date: 5-16-2022

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 16th day of MAY, 2022, before me personally appeared, JOHN WITTROCK, as President of Hogenes Farms Homeowners Association, an Arizona non-profit corporation, being authorized to do so, and acknowledged that s/he signed the above document for the purposes therein contained.

Renae Lindley
Notary Public

My Commission Expires:
8/1/2022

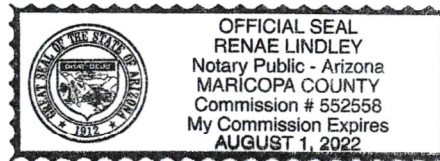


EXHIBIT 1

Legal Description of the Property

A portion of Section 20 and a portion of the North Half of Section 29, Township 4 South, Range 3 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, and more particularly described as follows:

BEGINNING at a GLO brass cap at the southwest corner of said Section 20, thence North 00 degrees 43 minutes 29 seconds West, along the west line of the Southwest Quarter of said Section 20, 2,640.00 feet to a GLO brass cap at the west quarter corner of said Section 20;

thence North 0 degrees 41 minutes 18 seconds West, along the west line of the Northwest Quarter of said Section 20, 2,640.37 feet to the northwest corner of said Section 20;

thence South 89 degrees 15 minutes 27 seconds East, along the north line of said Northwest Quarter, 552.22 feet to the beginning of a non-tangent curve, concave southwest, from which the radius point bears South 21 degrees 58 minutes 22 seconds West a distance of 34,340.61 feet;

thence southeasterly 5,320.09 feet along the arc of said curve to the right through a central angle of 8 degrees 52 minutes 35 seconds to a point on the east line of the Northeast Quarter of said Section 20;

thence South 0 degrees 54 minutes 26 seconds East, along said east line, 315.71 feet to the east quarter corner of said Section 20;

thence South 0 degrees 51 minutes 01 seconds East, 2,636.97 feet to the southeast corner of said Section 20;

thence South 0 degrees 10 minutes 26 seconds East, along the east line of the Northeast Quarter of said Section 29, 55.00 feet to a point on the south line of the north 55 feet of the North Half of said Section 29;

thence North 89 degrees 32 minutes 34 seconds West, along said south line, 3,968.44 feet to a point on the west line of the East Half of the Northwest Quarter of said Section 29;

thence North 0 degrees 05 minutes 02 seconds West, along said west line, 55.00 feet to the northeast corner of said East Half of the Northwest Quarter;
thence North 89 degrees 29 minutes 01 seconds West, along the south line of the Southwest Quarter of said Section 20, 1,323.07 feet to the POINT OF BEGINNING.

Containing an area of 22,981,053 square feet or 527.5724 acres, more or less

EXHIBIT 2
Limits of Flood Control Structures

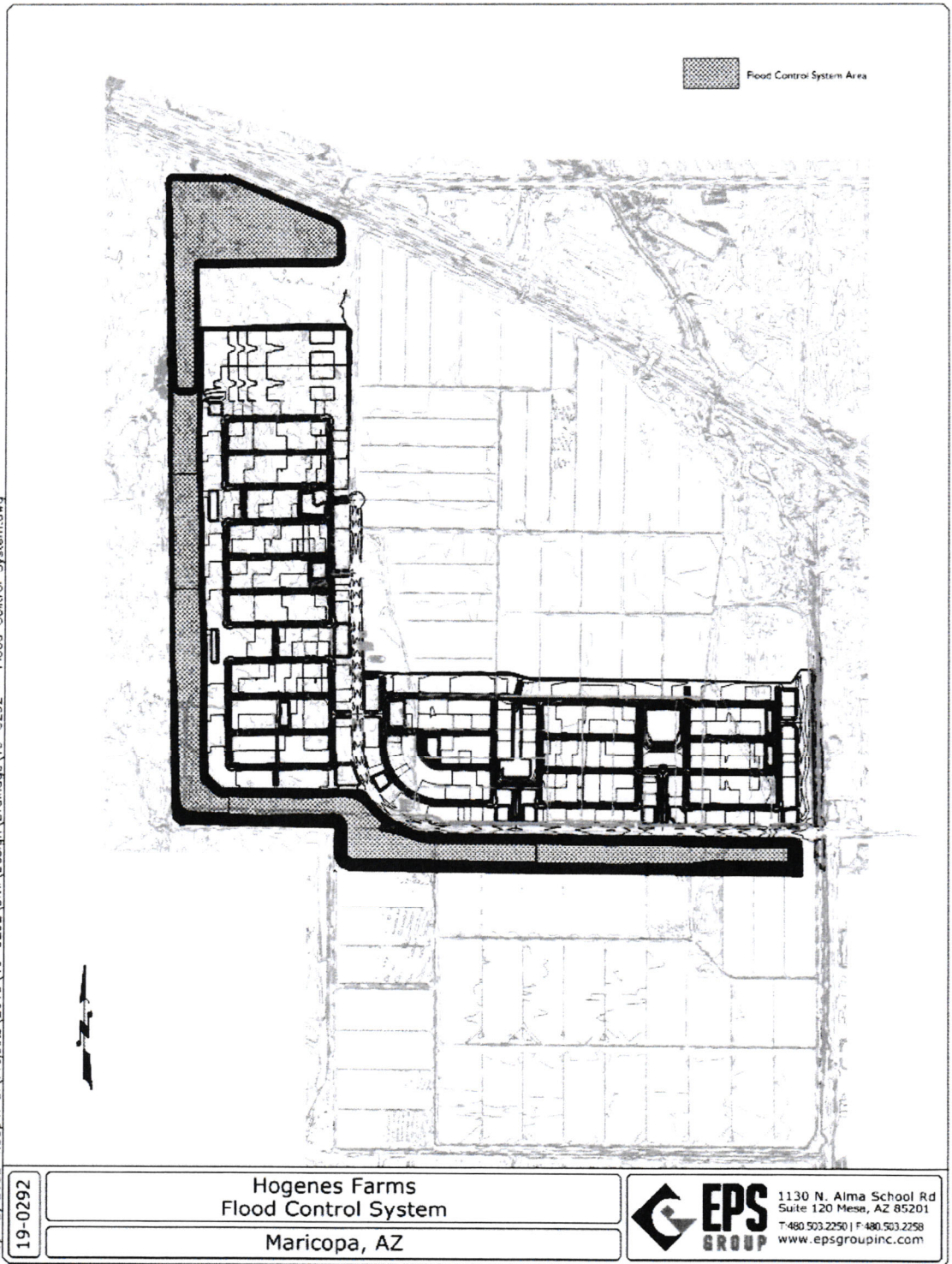


EXHIBIT 3
Approvals and Permits Required

Item	Parties
Development Agreement (for guarantee of maintenance)	City and Owner
Inter-Governmental Agreement	City of Maricopa, City Council Meeting
Inter-Governmental Agreement	Pinal County, County Board of Supervisors
Hogenes Farms CLOMR	Pinal County & FEMA
Approval of construction documents	City of Maricopa and Pinal County
Floodplain Use Permit	Pinal County
Dust Permit	Pinal County
Grading and Drainage and Utility Permits (construction of flood control solution work would commence)	City of Maricopa
ROW Permit for offsite construction	City of Maricopa
LOMR*	Pinal County and FEMA
Building Permits**	City of Maricopa

*If Owner was interested in an at-risk building permit Pinal County and the City have agreed to review the LOMR paperwork after the construction of the Flood Control Structures is complete, including the HEC-RAS model, and allowing an at-risk building permit if deemed appropriate. Owner would have to apply for a building permit from both Pinal County and the City of Maricopa. The fees for co-permitting the project would be applicable. Since the proposed building structure would technically still be in a floodplain, the applicant would also have to apply for an additional Floodplain Use Permit for the structure. The certificate of occupancy would be held until the issuance of the LOMR or proof of flood insurance.

**The applicant for any building structure would have to work through a parallel process to obtain any and all necessary approvals and permits such as site plan approval, grading and drainage, utilities, paving, and a building permit. This process can be started immediately, and coordinated with the Owner engineering plans.

EXHIBIT 4

Operations and Maintenance Plan

This operation and maintenance statement applies to the Hogenes Farms (Site) for the proposed channel/basin system presented in the Design Concept Plans to mitigate the Vekol Wash flood hazard in the City of Maricopa, Pinal County, Arizona and is intended to meet the requirements for review of the CLOMR. The proposed channel/basin is located on private land; however the city has oversight of the area to ensure that maintenance is performed. The Homeowners Association (HOA) and/or owners are responsible for ensuring that all necessary maintenance activities for the channel/basin system are accomplished, pursuant to a Maintenance Agreement with the City, to which this document is attached as an exhibit. The HOA Facilities Maintenance Supervisor will be responsible to notify the City of regular maintenance performance and provide annual maintenance reports.

The purpose of this statement is to establish the on-going operations and maintenance procedures for the channel/basin within the floodplain of the Vekol Wash. The channel area may erode, scour, change shape, widen, and narrow over time. To address the potential changes, steps may need to be taken to restore the channel/basin corridor. These steps may include re-establishing the design grade along the channel/basin in locations where erosion has occurred. Also, as a result of erosion, trees and shrubs may become uprooted and other debris may buildup within the drainage corridor. Obstructions within the drainage corridor must be removed. Failure to provide maintenance may prevent the channel/basin from performing at its intended conveyance capacity. Maintenance is the responsibility of HOA, developers, owners, etc. for facilities on private property within drainage easements and/or tracts.

Ongoing maintenance of the designed improvements may be required to preserve the design integrity and purpose of the channel/basin system. Inspection is a requirement of maintenance. The following sections should be used to guide routine operations, inspections, and maintenance. The channel/basin may have sections that impact other adjacent property owners and/or agencies and the permitting requirements and conditions imposed by the jurisdictional agency need to be followed regarding the operation and maintenance guidelines.

A regular maintenance program will be required to have the channel/basin system perform to the level of protection as presented in the projects' plans and specifications. In conjunction with this CLOMR, the following Operation and Maintenance Plan has been provided below for the subject project:

Inspections of the improvements will be performed and documented on an annual basis. Additional inspections will be performed after significant storm events. The inspector reviewing and signing off on the channel inspection shall be a registered civil engineer licensed in the State of Arizona. Field inspection, photography, field surveys, and monitoring shall be performed by, or under the direct supervision of, the registered engineer. A field inspection report shall be completed and submitted to the City within fifteen (15) days from the time that an inspection of the subject flood control facility has been performed.

- The HOA and/or owners are responsible for ensuring that all necessary maintenance activities for the channel/basin are accomplished by the Facilities Maintenance Supervisor. The Facilities Maintenance Supervisor will be responsible to notify the City of regular maintenance performance and provide annual maintenance reports.
- Field inspections are a necessary part of operation since early detection of gradual changes can reduce maintenance costs. Routine inspections provide a way to monitor the performance of the flood control facilities.
- Field inspections shall be completed daily during those times when the flood waters in the conveyance channel/basin exceed a depth of two (2) feet over the length of the facility for a period exceeding 24 hours
- Post-storm inspections should be performed as soon as possible after flood conditions have subsided. Although the flood control system is designed for 100-Year flow conditions, it is still susceptible to damage during other flow conditions. Post-storm inspection records should be kept and maintained by the Facilities Maintenance Supervisor.
- Listed below are key elements to be inspected annually and following storm events
 1. Side slope integrity: Monitor and address erosion along the channel/basin corridor side slope and along the development fill grading to provide continued stability.
 2. Vegetation: Review channel corridor vegetation health. Review potential for dying trees to fall or become uprooted during a flood event. Once established, minor grasses may be permitted to grow 6" to 12" before maintenance activities should commence. Shrubs are permitted between 24" to 36" in diameter and trees with a trunk diameter of 3"-9". Dead shrubs and trees must be removed.
 3. Erosion: Monitor areas for the development of erosion, head cutting, or undercutting of the channel/basin banks and flood control structures. Provide mitigation as required for areas of erosion to maintain the integrity of the flood control system within the defined drainage easement/tract.
 4. Sediment build-up: Monitor the depth of sediment deposition in the improved channel/basin and/or along the side slopes of the grading. Non-destructive markers in key places may be installed to establish normal operative channel depths so that sediment build-up is monitored. Removal of sediment must occur when sediment build-up has reached 6" at a maximum.

Maintenance activities for the improvements include, but are not limited to:

1. Removal of debris and excessive sediment build-up.
2. Repair or replacement of erosion damaged areas.
3. Installation of erosion control measures as needed.



PINAL COUNTY

WIDE OPEN OPPORTUNITY

AGENDA ITEM
June 22, 2022
ADMINISTRATION BUILDING A
FLORENCE, ARIZONA

REQUESTED BY: Joshua Plumb/Andrew Smith

Funds #: 68

Dept. #: 311

Dept. Name: Flood Control District

Director: Andrew Smith

BRIEF DESCRIPTION OF AGENDA ITEM AND REQUESTED BOARD ACTION:

Discussion/approval/disapproval of Resolution No. _____ authorizing the Pinal County Flood Control District to enter into an Intergovernmental Agreement with the City of Maricopa and authorizing the Chair of the Pinal County Flood Control Board of Directors to execute the agreement. The purpose of this agreement is to define the maintenance and inspection responsibilities, for compliance with the National Flood Insurance Program, in regard to the Flood Control Improvements built in the Hogenes Farms development within the City of Maricopa, Supervisor District #1. (FL21-016) (Joshua Plumb/Andrew Smith)

BRIEF DESCRIPTION OF THE FISCAL CONSIDERATIONS AND/OR EXPECTED FISCAL IMPACT OF THIS AGENDA ITEM:

There will be no fiscal impact to Pinal County caused by the approval or disapproval of the IGA with the City of Maricopa.

BRIEF DESCRIPTION OF THE EXPECTED PERFORMANCE IMPACT OF THIS AGENDA ITEM:

The authorization of the Pinal County Flood Control District to enter into an IGA with the City of Maricopa will allow the Hogenes Farms development in the City of Maricopa to move forward with their application for a Conditional Letter of Map Revision.

MOTION:

Approved as presented

History

Time

Who

Approval

ATTACHMENTS:

FEIR + Return IGA

1604



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
Virginia Ross

DATE/TIME: 06/22/2022 1500
FEE: \$0.00
PAGES: 16
FEE NUMBER: 2022-071765

When Recorded Return To:

City Clerk
City of Maricopa
39700 West Civic Center Plaza
Maricopa, Arizona 85139

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT (“Agreement”) is entered into this 8th day of June, 2022, by the City of Maricopa, an Arizona municipal corporation (“City”), TRS 15, LLC, an Arizona limited liability company (“Owner”), and Hogenes Farms Homeowners Association, an Arizona nonprofit corporation (“Association”). The City, Owner and Association are each referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. Owner owns the real property legally described on Exhibit 1 attached, commonly referred hereto as Hogenes Farms (the “Property”).
- B. Portions of the Property are located within a currently-existing floodplain (the “Floodplain”) without the flood control solution referenced in Recital C below.
- C. Owner has designed and engineered a flood control solution that has been submitted for a Conditional Letter of Map Revision (“Hogenes Farms CLOMR”) from the Federal Emergency Management Agency (“FEMA”) to remove the Property from the Floodplain. In order to remove the Property from the Floodplain, Owner shall secure approval of flood mitigation plans by FEMA which will result in the issuance of the Hogenes Farms CLOMR. The Hogenes Farms CLOMR will require the construction of certain flood mitigation structures (the “Flood Control Structures”) within the boundaries of the Property, and upon completion of the Flood Control Structures, Owner will request that FEMA issue a Letter of Map Revision (“LOMR”) confirming removal from the Floodplain. The Flood Control Structures are graphically depicted on Exhibit 2 attached hereto.
- D. Pursuant to 44 C.F.R. 65.10(d), in order to qualify for the issuance of a LOMR, Owner must provide evidence to FEMA that ultimate responsibility for maintenance of the Flood Control Structures is under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the National Flood Insurance Program (an “Agency”).
- E. The City qualifies as an Agency under the terms of 44 C.F.R. 65.10(d).
- F. The Flood Control Structures shall be owned and maintained by the Owner or the Association subject to Section 2(I) hereof. The primary obligation and responsibility for the inspection, maintenance, repair and insurance of the Flood Control Structures has been delegated to Owner or Association under this Agreement as required by the applicable provisions of 44 C.F.R. 65.10(d), as amended from time to time.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein, the Parties agree as follows:

1. ACKNOWLEDGEMENT OF OWNER'S CONSIDERATION.

The City agrees that the Flood Control Structures and Owner's execution of this Agreement satisfies any stipulations within the land entitlement approvals for the Property, or portions thereof, and the City's duty to protect the general health, safety, and welfare of the public. City agrees not to impose any stipulations or other requirements relating to the Flood Control Structures or the removal of the Property from the Floodplain in connection with the entitlements for the Property, except as may be required by FEMA. Owner acknowledges that there are a number of approvals and permits that are required as part of the development of the Property (currently referred to as *Hogenes Farms*) that will eventually allow the issuance of a building permit, which approvals are generally set forth on Exhibit 3 attached hereto.

2. FLOOD CONTROL STRUCTURES MAINTENANCE PLANS.

A. FEMA Approval of Flood Control Structures. Owner shall submit the design of the Flood Control Structures to FEMA for review and approval of the construction of the Flood Control Structures and the issuance of a Condition Letter of Map Revision related thereto. As a qualified Agency under the terms of 44 C.F.R. 65.10(d) and based upon Owner's and/or Association's assurances that it will be primarily responsible for the required maintenance of the Flood Control Structures as required by the applicable provisions of 44 C.F.R. 65.10(d), as amended from time to time, the City agrees to execute the Operation and Maintenance Plan for the Flood Control Structures ("O&M Plan"), a copy of which is attached hereto as Exhibit 4 and to take all steps reasonably necessary to cause FEMA to issue the LOMR for the Property in connection with the Flood Control Structures as soon as reasonably possible, and to include the Property in the LOMR when issued.

B. Costs of O&M Plan. Owner or Association, their successors and assigns, shall pay all costs for maintaining the Flood Control Structures in accordance with the O&M Plan and in compliance with all federal, state and local laws, regulations and ordinances, as amended from time to time. Owner shall have the primary obligation and responsibility for inspecting, maintaining, repairing and insuring the Flood Control Structures until the FEMA maps depicting the flow of water to the Property no longer show flows that require the Flood Control Structures to protect development on the Property from the 100-year flood and the City has received notice ("FEMA Notice") from FEMA of such a change; provided, that the FEMA Notice is not required to specifically refer to the Property nor the Flood Control Structures.

C. Performance Bond. Owner or Association shall obtain and maintain a performance bond in the amount of Twenty Five Thousand and No/100 Dollars (\$25,000.00) ("O&M Bond") securing its obligations under this Agreement. Owner's or Association's obligation to maintain the O&M Bond shall automatically terminate upon the City's receipt of the FEMA Notice or a termination occurring pursuant to Section 2(I) hereof. Upon such termination, the City agrees to promptly release the O&M Bond to Owner or Association. Not later than ninety (90) days prior to its expiration, the O&M Bond will need to be replaced with a bond of similar specifications. If the City draws from the O&M Bond pursuant to Section 2(H), Owner or Association shall take the steps necessary to maintain the O&M Bond at \$25,000.

D. Insurance. Prior to commencement of construction of the Flood Control Structures, Owner or Association, their successors and assigns, shall obtain and maintain a general liability insurance policy with limits of at least \$1,000,000 per occurrence, with a least a \$5,000,000 excess insurance policy for bodily injury and property damage issued by a State of Arizona authorized insurance company. The policy term or any renewals thereof shall remain in effect for the term of this Agreement. Owner or Association shall maintain insurance which covers the Flood Control Structures against flood damage and such other risks as may be included in the broadest form of extended coverage insurance as may, from time to time, be

available in an amount sufficient to insure the fair replacement cost of the Flood Control Structures in the event of a major flood or other event causing total or substantial destruction of the Flood Control Structures. The City shall be named as an additional insured under the policy and proof of insurance shall be supplied to the City on an annual basis. The insurance policy shall provide that the City be given at least thirty (30) days advance written notice of any material changes, cancellation or non-renewal notification of any policy, and in the event of such material change, cancellation or non-renewal notification, Owner or Association shall immediately replace said policy with another policy to the satisfaction of the City with the receipt of a certificate of insurance for such policy by the City at least ten (10) days prior to the effective date of the material changes, cancellation or non-renewal of any policy. In the event that Owner or Association fails to maintain the requisite insurance, the City shall have the right to immediately secure a similar insurance policy in its name with the total cost of the premium and all monies that may become due during the term of this Agreement being charged to Owner or Association. Owner's or Association's obligation to maintain the insurance required under this Section shall automatically terminate upon the City's receipt of the FEMA Notice or a termination pursuant to Section 2(I) hereof.

Owner shall name Association and City as third party beneficiary and additional insureds under all insurance, indemnification or warranty received from contractors constructing the Flood Control Structures, including completed operations coverage.

E. Notwithstanding the termination of Owner's or Association's obligations under this Agreement upon the City's receipt of the FEMA Notice, Owner or Association shall continue to comply with all local rules and regulations regarding drainage requirements and, in the event Owner or Association desires to remove or modify the Flood Control Structures upon the City's receipt of the FEMA Notice, Owner or Association shall, at their sole cost and expense, provide the City with written certification from an Arizona licensed engineer stating that the removal or modification of the Flood Control Structures will not cause flooding or drainage issues for the surrounding properties.

F. Indemnity.

(i) Owner and Association shall indemnify, defend, and hold harmless the City, its officials and employees from any third party claims, demands, liabilities, losses or causes of action of any nature whatsoever arising out of the use, construction or maintenance of the Flood Control Structures or out of Owner's or Association's activities under this Agreement, including all other acts or omissions on the part of Owner or Association or any person acting for or on behalf of Owner or Association, and from against any orders, judgments or decrees which may be entered and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or in the investigation thereof.

(ii) The City shall indemnify, defend, and hold harmless Owner and Association, their officials and employees from any third party claims, demands, liabilities, losses or causes of action of any nature whatsoever arising out of the negligent acts or omissions of City personnel or its agents entering on to, in or around the Property and/or Flood Control Structures in connection with the City's inspection of the Flood Control Structures as provided for under this Agreement, including all other acts or omissions on the part of the City or any person acting for or on behalf of the City, and from against any orders, judgments or decrees which may be entered and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or in the investigation thereof. In no event shall the City have any obligations under this subsection for any claims, demands, liabilities, losses or causes of action arising out of the use, construction or maintenance of the Flood Control Structures other than as stated in the preceding sentence.

G. Access Easement. Owner and the Association grants to the City and its employees, consultants and contractors, a non-exclusive easement over, upon and under the portion of the Property containing the Flood Control Structures for any and all purposes necessary for the City to inspect, maintain

and restore the Flood Control Structures during the term of this Agreement. The access easement granted herein shall terminate when the FEMA maps depicting the flow of water to the Property no longer show flows that require the Flood Control Structures and City has received notice from FEMA of such a change.

H. In the event Owner or Association, their successors or assigns, fail to either inspect, maintain or restore the Flood Control Structure, or any part thereof, to a safe condition satisfactory to the City in conformance with the terms hereof, the City may elect to either perform such duties with personnel from the City or contract third parties to do so, the reasonable and documented costs of which shall be (i) drawn from the O&M Bond; or (ii) if the O&M Bond is insufficient to pay for the costs of such inspection, maintenance or restoration, charged to Owner, their successors or assigns. Failure of Owner to pay for such costs within thirty (30) days after receipt of written notice from the City outlining such costs, subject to applicable cure periods as provided in this Agreement, shall be considered a breach of this Agreement. In the event of a breach of this Agreement by Owner or Association as stated in the prior sentence, Owner or Association, their successors or assigns, shall pay the City's reasonable outside attorneys' fees and costs of collection arising in any action to recover costs for restoration of the Flood Control Structures or any part thereof.

I. Termination Upon Formation of Maintenance District or Completion of Regional Improvement. Some or all of the Flood Control Structures are intended to be part of a regional flood control project that may be maintained by a separate district or governmental entity. This Agreement shall terminate as to such Flood Control Structures upon such District or other governmental entity agreeing to become responsible for the maintenance of the Flood Control Structures and entering into a new maintenance agreement for the Flood Control Structures that will supersede and nullify this Agreement.

3. ASSIGNMENT. Except as herein specifically stated, the rights and obligations created herein run with ownership of the Property and/or portions thereof, and shall inure to the benefit of and be binding upon Owner and the Association, the City and their respective successors and assigns. Upon transfer of the Property or a portion thereof by Owner or the Association or subsequent owner, the new owner shall be deemed to have assumed the rights and responsibilities of Owner or Association hereunder for that portion of the Property that has been transferred. Upon such transfer, Owner or Association shall be automatically released from this Agreement for the portion of the Property that has been transferred provided that (i) the Flood Control Structures have been constructed and accepted by the Association; and (ii) the Association is no longer controlled by the Owner or other developer, meaning there is only one voting class which has elected the board of the Association, and the declarant and designated builders no longer have special rights to appoint or elect the board ("Turnover of Control of the Association"). In the event that such transfer occurs before the Flood Control Structures have been constructed and accepted by the Association and the Turnover of Control of the Association has occurred, Owner or Association shall only be released from this Agreement for the portion of the Property that has been transferred provided: (i) the Owner or Association or subsequent owner has given the City written notice of the assignment, which shall include the name, address and facsimile number, if available, of the new owner for notice purposes; and (ii) the new owner has agreed in writing to be subject to all of the applicable provisions of this Agreement. Owner and successor owners shall have no further obligations under this Agreement once the Flood Control Structures have been completed and accepted by the Association and Turnover of Control of the Association, other than the obligation to pay assessments as set forth in the Declaration of Covenants, Conditions and Restrictions recorded against the Property. The Association shall cause assessments to be made as needed to fund obligations of the Association under this Agreement.

4. GENERAL PROVISIONS.

A. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such

signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

B. Incorporation of Exhibits and Recitals. All Exhibits referred to herein and the Recitals stated above are hereby incorporated by reference into this Agreement.

C. Effective Date. This Agreement shall become effective upon approval by the City of this Agreement during a public meeting and the full execution of the Agreement by the Parties.

D. Cooperation. The Parties agree to diligently and in good faith cooperate to process all applications as expeditiously as reasonably possible to take such other actions as are reasonably necessary to carry out the intent of this Agreement.

E. Representatives. Each Party shall designate a representative to act as a liaison between City, its various departments, and Owner (“Representatives”). The Representatives shall be available at all reasonable times to assist with the Parties’ performance under this Agreement. Either Party may change the Representative by giving notice to the other Party of the name, title, address, and telephone number of the replacement.

F. Notices. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be in writing and delivered personally, by facsimile or sent by United States Mail in a postage prepaid envelope via certified mail, return receipt requested, addressed to the other to the address provided herein or as may be changed in writing:

“City”
City of Maricopa
39700 West Civic Center Plaza
Maricopa, Arizona 85139
Attn: Maricopa City Manager
Telephone: 520-316-6852
Facsimile: (520) 568-9120
Email: rick.horst@maricopa-az.gov

Copy to:
Maricopa City Attorney
c/o Denis Fitzgibbons
Fitzgibbons Law Offices
1115 East Cottonwood Lane
P.O. Box 11208
Casa Grande, AZ 85310-0148
Telephone: (520) 426-3824
Facsimile: (520) 426-9355
Email: denis@fitzgibbonslaw.com

“Owner”
TRS 15, LLC
8601 N. Scottsdale Rd., Ste. 335
Scottsdale, AZ 85253
Attention: Brian Hegardt
Telephone: (602) 420-3355
Email: bhegardt@cox.net

“Association”
Hogenes Farms Community Master Association
8601 N. Scottsdale Rd., Ste. 335
Scottsdale, AZ 85253

Attention: Brian Hegardt
Telephone: (602) 420-3355
Email: bhegardt@cox.net

All such notices, demands or other communications will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon confirmed delivery or refusal to accept delivery by the addressee, (ii) if delivered by U.S. Mail in the manner described above be deemed effective upon the earlier of receipt or five (5) business days after deposit in a United States post office or with a United States postal officer, (iii) if delivered by a recognized national overnight delivery service be deemed effective one (1) business day after deposit with such service upon confirmed delivery or refusal to accept delivery by the addressee, and (iv) if delivered by facsimile be deemed effective upon confirmation of successful transmission by the sender's facsimile machine (in each case regardless of whether such notice, demand or other communication is received by any person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this Section).

G. Waiver. No delay in exercising any right or remedy by the Parties shall constitute a waiver thereof. Waiver of any of the terms of this Agreement shall not be valid unless in writing and signed by all Parties hereto. The failure of any Party to enforce the provisions of the Agreement or require performance of any of its provisions shall not be construed as a waiver of such provisions or affect the right of the Party to enforce all of the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach thereof.

H. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona.

I. Choice of Forum. Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Pinal (or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

J. Exercise of Authority. It is understood and agreed that Owner shall not exercise any of the authority or sovereign powers of the City and shall not represent themselves as an agent(s) for the City. Nothing in this Agreement shall be construed to create any partnership, joint venture, or principal agency relationship between the Parties.

K. Recordation. The City shall record this Agreement in the official records of the Pinal County Recorder within ten (10) days after all parties sign the Agreement.

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

M. Severability of Provisions. Each term and provision of this Agreement shall be considered severable and if any term or provision of this Agreement be declared or be determined to be illegal or invalid, the validity of the remaining terms and provisions shall not be affected thereby, and said illegal or invalid term or provision shall not be deemed a part of this Agreement, notwithstanding any other provision of this Agreement to the contrary.

N. Time of the Essence. Time is of the essence to this Agreement and with respect to the performance required by each Party hereunder.

O. Further Assurances. The Parties hereto agree to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement. If any approval is required of any Party in furtherance of the rights under this Agreement, such approval shall not be unreasonably delayed or withheld.

P. Amendments. No amendment shall be made to this Agreement except by written document executed by all the Parties. Within ten (10) days after the effective date of any amendment, the amendment shall be recorded with the Pinal County Recorder.

Q. Headings and Construction. The headings for the Paragraphs and sub-paragraphs of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said Paragraphs or sub-paragraphs nor in any way affect interpretation of this Agreement. When used herein, the terms “include” or “including” shall mean without limitation because of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require. The term “person” shall include an individual, corporation, partnership, trust, estate, or any other duly formed entity. If the last day of any time period stated herein should fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona. If a cross-reference within any provision cites a particular Article, Section, or Subsection number of this Agreement, it shall be a reference to the referred Article, Section, or Subsection and its subparts.

R. Attorneys’ Fees. In the event it becomes necessary for a Party to this Agreement to bring an action at law or other proceedings to enforce any of the terms or provisions of this Agreement, the successful Party in any such action or proceeding may apply for reasonable attorney fees pursuant to A.R.S. § 12-341.01.

S. Default. Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within thirty (30) days after written notice thereof from another Party (the “Cure Period”), shall constitute a default under this Agreement; provided, however, that if the failure is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision thereof, then the Party shall have such additional time as may be necessary to perform or comply so long as the Party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation.

T. Good Standing; Authority. Each of the Parties represents and warrants to the other (i) that it is duly formed and validly existing; (ii) that it is an entity qualified to do business in Arizona with respect to Owner, or a political subdivision of the state with respect to the City; and (iii) that the individuals executing this Agreement, on behalf of their respective Parties are authorized and empowered to bind the Party, and the Property with respect to Owner.

U. Force Majeure. The time period for performance and/or performance of any Party and the duration of this Agreement shall be extended by any causes that are beyond the control of the Party required to perform, such as an act of God, civil or military disturbance, delays resulting from any act or omission of governmental authorities or utilities, labor strike, injunctions in connection with litigation, labor or material shortage, or acts of terrorism.

V. Entire Agreement. This constitutes the entire agreement between the Parties pertaining to its subject matter. All prior and contemporaneous agreements, representations and

understandings of the Parties, oral or written (including any term sheets, discussion outlines or similar documents), are hereby superseded and merged into this Agreement.

W. **Dispute Resolution.** In the event a dispute arises under this Agreement, the initiating Party shall send written notice to the other Party of the commencement of the ninety (90) day moratorium on litigation the Parties have agreed shall be instituted. During the ninety (90) day period, the Parties agree to attempt to settle the dispute through non-binding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association (“AAA”) but shall not be under the administration of the AAA unless agreed to by the Parties in writing, in which case all administrative fees shall be divided evenly between the City and Owner. The matter in dispute shall be submitted to a mediator mutually selected by the City and Owner. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the City and Owner shall request that the Presiding Judge of the Superior Court in and for the County of Pinal, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years’ experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the City and Owner. The results of the mediation shall be nonbinding with any Party free to initiate litigation upon the conclusion of the latter of the mediation or of the ninety (90) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. § 12-2238, to the extent allowed by the Arizona Open Meetings Law, § 38-431 et. seq.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the date first written above.

CITY OF MARICOPA, an Arizona municipal corporation

By: [Signature] For.
Christian Price, Mayor

Date: 6/8/22

ATTEST:

Approved as to Form:

[Signature]
Vanessa Bueras, CMC
Clerk



[Signature]
Denis M. Fitzgibbons
City Attorney

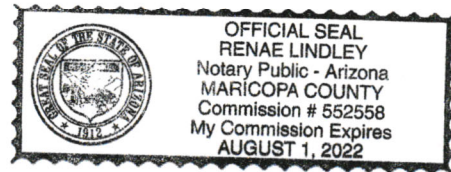
STATE OF ARIZONA)
) ss.
County of Pinal)

The foregoing Agreement was acknowledged before me this 17th day of MAY, 2022 by Christian Price, who acknowledged himself as the Mayor of the City of Maricopa, and being authorized to do so, executed the foregoing instrument on behalf of the City for purposes therein stated.

[Signature]
Notary Public

My Commission Expires:

8/1/2022



TRS 15, LLC, an Arizona limited liability company

By: [Signature]
Name: Brian Hegardt
Its: Manager
Date: 5/17/2022

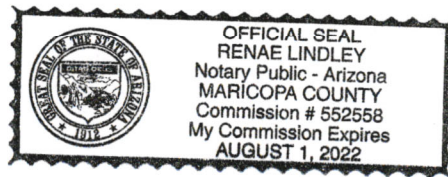
STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 17th day of MAY, 2022, before me personally appeared, BRIAN HAZARD, as MEMBER of TRS 15, LLC, an Arizona limited liability company, being authorized to do so, and acknowledged that he signed the above document for the purposes therein contained.

Renae Lindley
Notary Public

My Commission Expires: 8/1/2022

HOGENES FARMS HOMEOWNERS ASSOCIATION,
an Arizona non-profit corporation



By: *John Wittrock*
Name: John Wittrock
Its: PRESIDENT
Date: 5-16-2022

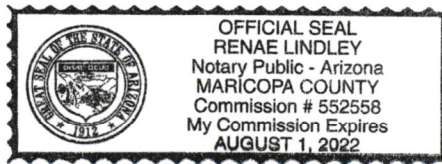
STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 16th day of MAY, 2022, before me personally appeared, JOHN WITTROCK, as President of Hogenes Farms Homeowners Association, an Arizona non-profit corporation, being authorized to do so, and acknowledged that s/he signed the above document for the purposes therein contained.

Renae Lindley
Notary Public

My Commission Expires:

8/1/2022



LIST OF EXHIBITS

EXHIBIT 1	LEGAL DESCRIPTION
EXHIBIT 2	LIMITS OF FLOOD CONTROL STRUCTURES
EXHIBIT 3	APPROVALS AND PERMITS REQUIRED
EXHIBIT 4	O&M PLAN

EXHIBIT 1

Legal Description of the Property

A portion of Section 20 and a portion of the North Half of Section 29, Township 4 South, Range 3 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, and more particularly described as follows:

BEGINNING at a GLO brass cap at the southwest corner of said Section 20, thence North 00 degrees 43 minutes 29 seconds West, along the west line of the Southwest Quarter of said Section 20, 2,640.00 feet to a GLO brass cap at the west quarter corner of said Section 20;

thence North 0 degrees 41 minutes 18 seconds West, along the west line of the Northwest Quarter of said Section 20, 2,640.37 feet to the northwest corner of said Section 20;

thence South 89 degrees 15 minutes 27 seconds East, along the north line of said Northwest Quarter, 552.22 feet to the beginning of a non-tangent curve, concave southwest, from which the radius point bears South 21 degrees 58 minutes 22 seconds West a distance of 34,340.61 feet;

thence southeasterly 5,320.09 feet along the arc of said curve to the right through a central angle of 8 degrees 52 minutes 35 seconds to a point on the east line of the Northeast Quarter of said Section 20;

thence South 0 degrees 54 minutes 26 seconds East, along said east line, 315.71 feet to the east quarter corner of said Section 20;

thence South 0 degrees 51 minutes 01 seconds East, 2,636.97 feet to the southeast corner of said Section 20;

thence South 0 degrees 10 minutes 26 seconds East, along the east line of the Northeast Quarter of said Section 29, 55.00 feet to a point on the south line of the north 55 feet of the North Half of said Section 29;

thence North 89 degrees 32 minutes 34 seconds West, along said south line, 3,968.44 feet to a point on the west line of the East Half of the Northwest Quarter of said Section 29;

thence North 0 degrees 05 minutes 02 seconds West, along said west line, 55.00 feet to the northeast corner of said East Half of the Northwest Quarter;
thence North 89 degrees 29 minutes 01 seconds West, along the south line of the Southwest Quarter of said Section 20, 1,323.07 feet to the POINT OF BEGINNING.

Containing an area of 22,981,053 square feet or 527.5724 acres, more or less

EXHIBIT 2
Limits of Flood Control Structures

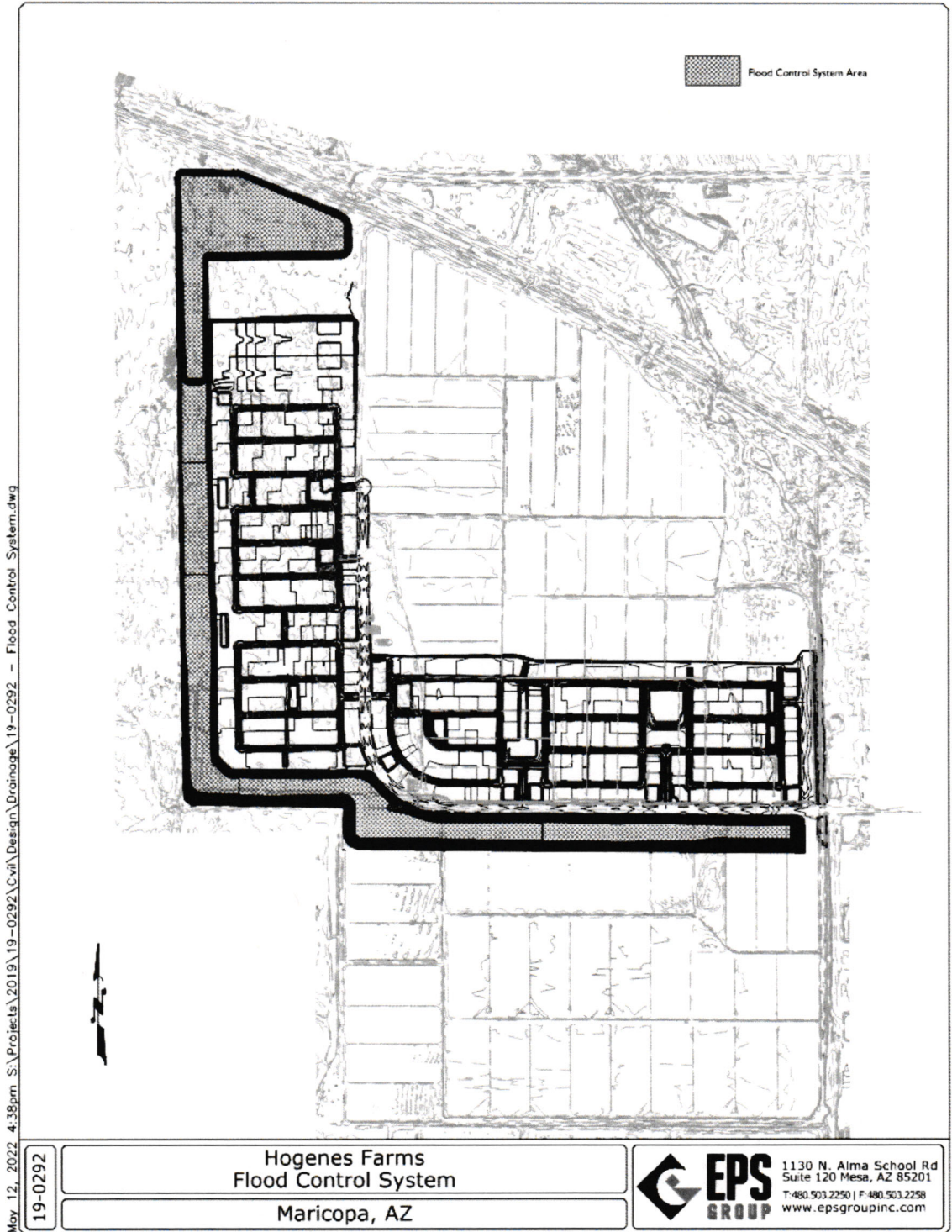


EXHIBIT 3
Approvals and Permits Required

Item	Parties
Development Agreement (for guarantee of maintenance)	City and Owner
Inter-Governmental Agreement	City of Maricopa, City Council Meeting
Inter-Governmental Agreement	Pinal County, County Board of Supervisors
Hogenes Farms CLOMR	Pinal County & FEMA
Approval of construction documents	City of Maricopa and Pinal County
Floodplain Use Permit	Pinal County
Dust Permit	Pinal County
Grading and Drainage and Utility Permits (construction of flood control solution work would commence)	City of Maricopa
ROW Permit for offsite construction	City of Maricopa
LOMR*	Pinal County and FEMA
Building Permits**	City of Maricopa

*If Owner was interested in an at-risk building permit Pinal County and the City have agreed to review the LOMR paperwork after the construction of the Flood Control Structures is complete, including the HEC-RAS model, and allowing an at-risk building permit if deemed appropriate. Owner would have to apply for a building permit from both Pinal County and the City of Maricopa. The fees for co-permitting the project would be applicable. Since the proposed building structure would technically still be in a floodplain, the applicant would also have to apply for an additional Floodplain Use Permit for the structure. The certificate of occupancy would be held until the issuance of the LOMR or proof of flood insurance.

**The applicant for any building structure would have to work through a parallel process to obtain any and all necessary approvals and permits such as site plan approval, grading and drainage, utilities, paving, and a building permit. This process can be started immediately, and coordinated with the Owner engineering plans.

EXHIBIT 4
Operations and Maintenance Plan

This operation and maintenance statement applies to the Hogenes Farms (Site) for the proposed channel/basin system presented in the Design Concept Plans to mitigate the Vekol Wash flood hazard in the City of Maricopa, Pinal County, Arizona and is intended to meet the requirements for review of the CLOMR. The proposed channel/basin is located on private land; however the city has oversight of the area to ensure that maintenance is performed. The Homeowners Association (HOA) and/or owners are responsible for ensuring that all necessary maintenance activities for the channel/basin system are accomplished, pursuant to a Maintenance Agreement with the City, to which this document is attached as an exhibit. The HOA Facilities Maintenance Supervisor will be responsible to notify the City of regular maintenance performance and provide annual maintenance reports.

The purpose of this statement is to establish the on-going operations and maintenance procedures for the channel/basin within the floodplain of the Vekol Wash. The channel area may erode, scour, change shape, widen, and narrow over time. To address the potential changes, steps may need to be taken to restore the channel/basin corridor. These steps may include re-establishing the design grade along the channel/basin in locations where erosion has occurred. Also, as a result of erosion, trees and shrubs may become uprooted and other debris may buildup within the drainage corridor. Obstructions within the drainage corridor must be removed. Failure to provide maintenance may prevent the channel/basin from performing at its intended conveyance capacity. Maintenance is the responsibility of HOA, developers, owners, etc. for facilities on private property within drainage easements and/or tracts.

Ongoing maintenance of the designed improvements may be required to preserve the design integrity and purpose of the channel/basin system. Inspection is a requirement of maintenance. The following sections should be used to guide routine operations, inspections, and maintenance. The channel/basin may have sections that impact other adjacent property owners and/or agencies and the permitting requirements and conditions imposed by the jurisdictional agency need to be followed regarding the operation and maintenance guidelines.

A regular maintenance program will be required to have the channel/basin system perform to the level of protection as presented in the projects' plans and specifications. In conjunction with this CLOMR, the following Operation and Maintenance Plan has been provided below for the subject project:

Inspections of the improvements will be performed and documented on an annual basis. Additional inspections will be performed after significant storm events. The inspector reviewing and signing off on the channel inspection shall be a registered civil engineer licensed in the State of Arizona. Field inspection, photography, field surveys, and monitoring shall be performed by, or under the direct supervision of, the registered engineer. A field inspection report shall be completed and submitted to the City within fifteen (15) days from the time that an inspection of the subject flood control facility has been performed.

- The HOA and/or owners are responsible for ensuring that all necessary maintenance activities for the channel/basin are accomplished by the Facilities Maintenance Supervisor. The Facilities Maintenance Supervisor will be responsible to notify the City of regular maintenance performance and provide annual maintenance reports.
- Field inspections are a necessary part of operation since early detection of gradual changes can reduce maintenance costs. Routine inspections provide a way to monitor the performance of the flood control facilities.
- Field inspections shall be completed daily during those times when the flood waters in the conveyance channel/basin exceed a depth of two (2) feet over the length of the facility for a period exceeding 24 hours
- Post-storm inspections should be performed as soon as possible after flood conditions have subsided. Although the flood control system is designed for 100-Year flow conditions, it is still susceptible to damage during other flow conditions. Post-storm inspection records should be kept and maintained by the Facilities Maintenance Supervisor.
- Listed below are key elements to be inspected annually and following storm events
 1. Side slope integrity: Monitor and address erosion along the channel/basin corridor side slope and along the development fill grading to provide continued stability.
 2. Vegetation: Review channel corridor vegetation health. Review potential for dying trees to fall or become uprooted during a flood event. Once established, minor grasses may be permitted to grow 6" to 12" before maintenance activities should commence. Shrubs are permitted between 24" to 36" in diameter and trees with a trunk diameter of 3"-9". Dead shrubs and trees must be removed.
 3. Erosion: Monitor areas for the development of erosion, head cutting, or undercutting of the channel/basin banks and flood control structures. Provide mitigation as required for areas of erosion to maintain the integrity of the flood control system within the defined drainage easement/tract.
 4. Sediment build-up: Monitor the depth of sediment deposition in the improved channel/basin and/or along the side slopes of the grading. Non-destructive markers in key places may be installed to establish normal operative channel depths so that sediment build-up is monitored. Removal of sediment must occur when sediment build-up has reached 6" at a maximum.

Maintenance activities for the improvements include, but are not limited to:

1. Removal of debris and excessive sediment build-up.
2. Repair or replacement of erosion damaged areas.
3. Installation of erosion control measures as needed.