When Recorded Return to:
Magma Flood Control District
C/O Stephen Cooper, District Counsel
221 North Florence St.
Casa Grande, AZ 85122-4420

INTERGOVERNMENTAL AGREEMENT

Among

PINAL COUNTY, PINAL COUNTY FLOOD CONTROL DISTRICT

and the

MAGMA FLOOD CONTROL DISTRICT

for the

DESIGN AND CONSTRUCTION (PHASE 2)

of the

MIDDLE MAGMA REGIONAL FLOOD CONTROL PROJECT

IGA MFCD 2024-01

Agenda Item _____

This Intergovernmental Agreement (Agreement) is entered into by and among Pinal County, a political subdivision, acting by and through its Board of Supervisors hereinafter called the COUNTY, Pinal County Flood Control District a municipal corporation and political subdivision, acting by and through its Board of Directors hereinafter called PCFCD, and the Magma Flood Control District, a political subdivision, acting by and through its Board of Directors, hereinafter called MFCD. MFCD, the COUNTY and PCFCD are hereinafter collectively called the PROJECT PARTNERS.

This Agreement shall become effective as of the date it has been executed by all parties and may be recorded by the Pinal County Recorder.

STATUTORY AUTHORIZATION

1. MFCD is empowered by Arizona Revised Statutes (A.R.S.) Sections 48-2811 and 48-2812, as revised, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of MFCD.

2. A.R.S. Sections 48-2811 and 48-2667 authorizes the MFCD to acquire land for public purposes.

3. The PCFCD is empowered by Arizona Revised Statutes (A.R.S.) Section 48-3603, as revised, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the PCFCD.

4. The PROJECT PARTNERS are authorized to enter into intergovernmental agreements for the purposes of jointly exercising any powers common to the parties and may enter into agreements with one another for joint or cooperative action pursuant to A.R.S. Section 11-951 *et seq.*

BACKGROUND

5. In the late 1950's the original Magma Watershed Work Plan was created with assistance from the federal government. The plan covered an area consisting of 70,064 acres in north-central Pinal County. The plan identified four components to the Magma system that were needed to mitigate existing and future drainage and flooding problems within the watershed. In the early 1960's the MFCD was formed to receive funding and assistance from the federal agency currently known as the United States Department of Agriculture Natural Resource Conservation Service (NRCS) which ultimately constructed 3 of the 4 Magma system components (the Magma Dam, and both the Upper and Lower Magma Channels). Within the last 13 years, NRCS has funded and assisted MFCD with the rehabilitation of the 3 existing Magma system components in order to bring the flood control facilities up to current engineering design and safety standards. Federal funding for the 4th component of the Magma system [the Middle Magma Channel (MMC)] did not materialize and subsequently was never designed or constructed. Over time, with no flood control infrastructure in place, and no existing regional planning and/or detailed studies to serve as a guide for the middle magma area, construction of piece meal flood control infrastructure and residential dwellings constructed within or near the MMC alignment have resulted in the creation of well-known legacy flooding areas which have constrained the entirety of the Magma system for decades and prevented the system from functioning as originally envisioned in the watershed work plan.

6. The issues surrounding the well-known legacy flooding areas have for years created challenging problems for each of the local governments which have a stake holder interest in the Middle Magma area. For many years informal discussions between local governmental entities on what could be done to collectively address the legacy flooding areas had been unsuccessful because the cost of a regional solution was beyond the collective budget the entities could reasonably put together and no federal funding could be identified to assist with the problem.

7. In 2018, the U.S. Congress passed the farm bill which included funding for Public Law 83-566, the Watershed Protection and Flood Prevention Act of 1954, as amended, including the Watershed and Flood Prevention Operations Program (the Program) administered by the NRCS. In the summer of 2018, upon learning that the Program could provide federal funding for a regional flood control solution for the Middle Magma area, local governmental entities began working together, applied to receive a grant for the Middle Magma Arizona Regional Flood Control Project (hereinafter referred to as the PROJECT). The 2018 grant application was not approved. However, local governmental entities again worked together, reaffirmed their conceptual agreement to split remaining local share of the PROJECT costs, and revised and strengthened the details of the PROJECT before resubmitting a grant application to the Program in the summer of 2019. In July of 2020, the NRCS awarded a grant for the planning phase of the PROJECT and ultimately provided $577,871.39 of federal funding to complete this work.

8. On October 28, 2020, the PROJECT PARTNERS entered into an intergovernmental agreement (IGA MFCD 2020-01) for the purpose of completing Phase 1 (planning and design) of the PROJECT. IGA MFCD 2020-01 also anticipated that a future agreement would be entered into by the PROJECT PARTNERS to address Phase 2 of the PROJECT (which would include finalizing design and construction plans, rights-of-way acquisition, utility relocation, construction, construction management, and operation and maintenance) which is the intent and purpose of this Agreement—the second agreement relating to the PROJECT between the PROJECT PARTNERS.

9. The planning for the PROJECT is now complete culminating in an approved Final Watershed Plan – Environmental Assessment (Plan-EA) for the Middle Magma Arizona Regional Flood Control Project. The Plan-EA has been approved by NRCS, the U.S. Bureau of Reclamation (BOR), and the U.S. Bureau of Land Management (BLM).

10. PROJECT design is currently 60% complete. To date, the PROJECT PARTNERS have funded $57,771 of the PROJECT costs (inclusive of, but not limited to portions of planning and design). NRCS has funded all remaining costs. In August of 2024 NRCS awarded and authorized a grant of $450,200 to complete design of the PROJECT.

11. A 3rd grant from NRCS must ultimately be approved in order to receive federal funding for construction of the PROJECT. Based upon the existing 60% design plans, the current preliminary PROJECT cost estimate (inclusive of both the cost of construction and the cost of acquiring needed land rights) is $16,667,393. The PROJECT PARTNERS are both hopeful and cautiously optimistic that a grant from NRCS will be obtained to construct the PROJECT. The grant approval process will involve discussions/negotiations with NRCS to determine a percentage of the total PROJECT cost that will be federally funded, as well as to determine the PROJECT cost categories that NRCS programmatically cannot fund and which must be funded at the local level by the PROJECT PARTNERS.

12. In a previous similar and related flood control project, MFCD received federal funding from NRCS which provided 65% of the total project costs and the local stakeholders were responsible for coming up with the remaining 35% of the project costs. Although this PROJECT is exploring options to receive federal funding from various NRCS programs which cost splits dramatically differ, the PROJECT PARTNERS are hopeful (to do better than the previous cost split) to obtain a grant from NRCS for this PROJECT that will result in roughly a 70% federal and 30% local cost split.

13. This Agreement is intended to cover all remaining work and phases that are or may be needed to complete the PROJECT including, but not limited to the following: the balance of the design and preparation of the construction plans, rights-of-way acquisition, utility relocation, construction, construction management, and operation and maintenance.

14. Benefits of the PROJECT include the following:

    - If federal funding is received as planned, the PROJECT will provide a significant federal investment into the local community (Estimated total federal investment: approximately $11.7 million).

    - Completes unimpeded regional flood control and drainage backbone infrastructure originally planned to be built out in the 1960s.

    - Safely conveys flood waters (up to 100-year flood events) originating within the Magma watershed through the continuous uninterrupted flood control system to its outlet in the Gila River.

    - Reduces flooding hazards to existing upstream and downstream residents, structures, improvements, roads and utilities.

    - Establishes an inter-governmental long-range regional drainage master plan which includes a detailed flood control infrastructure build out plan enabling future development activity to appropriately pay for the build out of additional channel improvements which may be needed to accommodate future growth.

    - Resolves three existing legacy flooding areas along the Middle Magma wash:

        1. The residential communities of Crestfield Manor and Wild Horse Estates abut natural drainage ways of the Magma wash that have not been improved and do not meet current flood safety design standards. The natural drainage way can quickly be overwhelmed in

storm events causing public safety issues and costly damage to residential properties and area infrastructure.

2. Located upstream of where the Magma wash crosses the CAP Canal within an overchute is an area where the magma wash has historically breached its embankment on several occasions, causing floodwaters to build up behind the CAP training dike (in opposition to the design intent). The rising floodwaters have then flooded adjacent agricultural lands and overtopped the CAP Canal embankment, damaging the canal and sending floodwaters and sedimentation downstream in the canal.

3. The area between Wild Horse Estates and East Franklin Road where historic breaching of an earthen dike has flooded adjacent lands.

PURPOSE OF THE AGREEMENT

15. This Agreement [the second IGA relating to the PROJECT between the PROJECT PARTNERS (as further detailed in paragraph 8 of this Agreement)] identifies and defines the responsibilities of MFCD, the COUNTY, and the PCFCD for the remaining PROJECT activities. Should there be a conflict in the terms of any prior IGA and this Agreement, the PROJECT PARTNERS agree the terms of this Agreement shall control.

TERMS OF AGREEMENT

16. The PROJECT, as referenced herein and defined in paragraph 7, and is detailed within the Plan-EA described in paragraph 9 of this Agreement.

17. The PROJECT COST, as referenced herein, encompasses the following costs directly associated with the PROJECT and shall be inclusive of any direct costs incurred by any of the PROJECT PARTNERS upon approval of this Agreement:

    17.1 All costs associated with continuing and finalizing the design and construction plans needed to accomplish the goals of the PROJECT.

    17.2 All costs associated with identifying, valuing, and acquiring rights-of-way, land rights, and access authorizations needed to accomplish the goals of the PROJECT.

    17.3 All costs associated with obtaining any permits or permissions needed to accomplish the goals of the PROJECT, including but not limited to Costs of obtaining United States Army Corps of Engineers Section 404 Environmental Permits for the PROJECT, and costs associated with the mitigation efforts required by this permit process.

    17.4 All costs associated with construction of the PROJECT including, but not limited to construction management, quality assurance, materials testing, survey work, and other post-design contract services needed for the PROJECT.

    17.5 All costs associated with any utility relocation, improvements, or modifications to existing infrastructure (public or private) needed to accomplish the goals of the PROJECT either as required by the final construction plans or as deemed necessary by the PROJECT engineer.

    17.6 Each PROJECT PARTNER will pay for, and not seek reimbursement for, its own personnel and internal administrative costs associated with this PROJECT unless such costs are specifically identified otherwise in this Agreement.

18. The PROJECT COST associated with this Agreement is estimated to be $16,667,393 (See Table 1 in Section 17.1 below). The PROJECT COST estimate does not include $1,028,071 which NRCS has previously awarded to complete the PROJECT planning and to prepare the final design and construction plans for the PROJECT (now underway). PROJECT PARTNERS are currently seeking additional federal funding from NRCS (no guarantees exist) to fund construction of the PROJECT in the amount of approximately $11,667,175 (approximately 70% of the estimated PROJECT COST). The PROJECT PARTNERS shall be responsible for funding any portion of the PROJECT COST which is not federally funded. The PROJECT PARTNERS currently estimate the local portion of the PROJECT COST will be $5,000,218 (approximately 30%).

18.1 The PROJECT COST will be allocated between MFCD and PCFCD equally on a 50/50 basis. For example, if a) NRCS grants for federal funding are awarded to the PROJECT as anticipated (estimated to be 70%), and b) the actual total PROJECT COST matches the current estimated costs, the PROJECT PARTNERS would be responsible to fund the amounts outlined within Table 1 below:

Table 1:

				Est. Local Portion of Project Cost (Allocated to Project Partners 50/50)		Anticipated Funding Schedule for Project Partners
	Est. NRCS Grants	Est. Local Portion	Project Cost	PCFCD 50%	MFCD 50%	
Budget:	$ 11,667,175	$5,000,218	$16,667,393	$ 2,500,109	$ 2,500,109	Aug. 2024 to Oct. 2025

18.2 The PROJECT COST is estimated based on the best information available at the time of this Agreement and is subject to change without amendment to this Agreement. Upon recognition of anticipated cost increases above the estimated PROJECT COST reflected in Table 1 above, PROJECT PARTNERS shall communicate these anticipated increases to all parties to this Agreement.

18.3 The MFCD and PCFCD shall be responsible for funding any portion of the PROJECT COST which is not federally funded. The PROJECT PARTNERS agree that, until established otherwise in a revised amendment to this Agreement, prior to the time period that a third grant from NRCS (to be used for construction of the PROJECT) has been finalized, the maximum funding obligation (Max. Funding Obligation) of the PROJECT COST for MFCD and PCFCD shall not exceed the amount outlined in Table 1 above (the Max. Funding Obligation for PCFCD is $2,500,109; and the Max. Funding Obligation for MFCD is $2,500,109). For purposes of interpretation of this Agreement this subsection shall control over any conflicting provision of this Agreement.

18.3.1 The PROJECT COST is a current estimate and is subject to change (up or down) which is beyond the control of the PROJECT PARTNERS and all PROJECT PARTNERS assume the risk of any change to the PROJECT COST; the anticipated federal funding from NRCS is a current estimate and is subject to change (up or down). All Parties expressly agree no revisions to these estimates will require an amendment to this Agreement so long as the anticipated Max. Funding Obligation from MFCD and PCFCD does not separately exceed $2,500,109.

19. MFCD funding for this Agreement shall be from its secondary flood control tax levy revenue and is contingent upon funding availability.

20. PCFCD funding for this Agreement shall be from its secondary flood control tax levy revenue and is contingent upon funding availability.

21. The target date for completion of the PROJECT is December 31, 2025. The PROJECT PARTNER assigned lead agency responsibility shall inform the non-lead agency PROJECT PARTNER of delays impacting this target completion date.

22. The PROJECT PARTNERS obligation to provide funds for the PROJECT are contingent on the availability of funds during any fiscal year the terms of the Agreement are in effect. PROJECT PARTNERS shall include the PROJECT COST in their respective annual and 5-year planning budgets and make a good faith effort to prioritize funding the PROJECT COST from within the tax levy revenue each receives during any fiscal year while the PROJECT is ongoing.

23. MFCD shall:

    23.1 Fund fifty percent (50%) of the PROJECT COST, not to exceed $2,500,109.

    23.2 Within thirty (30) calendar days of receipt, pending funding availability, pay all invoices related to the PROJECT in accordance with the terms of this Agreement.

    23.3 Invoice the PCFCD for its share of the PROJECT COST as it is incurred, no more frequently than monthly, and no less frequently than quarterly.

    23.4 Prepare and submit the required documentation to NRCS in order to be reimbursed from the grant funding for any reimbursable PROJECT COST incurred during the PROJECT.

        23.4.1 PROJECT PARTNERS agree that reimbursements received from NRCS shall NOT be immediately distributed back out to the PROJECT PARTNERS, but rather, the funds shall be used to cashflow (to the extent possible) the next month's invoiced costs, thereby deferring (or mitigating) additional funding contributions from PROJECT PARTNERS to later portions of the PROJECT.

    23.5 Serve as the lead agency for the PROJECT.

    23.6 Provide the COUNTY and PCFCD interim PROJECT design submittals and allow three (3) weeks for review and comment. Incorporate the COUNTY and PCFCD comments into the PROJECT design as appropriate.

    23.7 Serve as the lead agency for obtaining United States Army Corps of Engineers Section 404 Environmental Permits, and for completing mitigation efforts required by this permit process.

    23.8 Upon completion of the PROJECT, prepare a final accounting including change orders and costs not previously paid, and invoice the PCFCD for the remainder of its share of all PROJECT COST incurred to date.

    23.9 Own, and be responsible for all operations and maintenance of the PROJECT.

        23.9.1 The maintenance activities to be performed include, but are not limited to, maintaining the flood control function of the PROJECT, including sediment and vegetation removal and any and all public use features, removal of trash and debris, and other operation costs for the facilities, vandalism repair and replacement, and structural repair and replacement of the flood control structures.

    23.10 Schedule, and invite the COUNTY and PCFCD to participate in, an annual inspection of the PROJECT. Any deficiencies relating to flood control for which the MFCD is responsible shall be

corrected by the MFCD within ninety (90) calendar days. If MFCD has not taken corrective action within this time, the COUNTY and PCFCD reserve the right to perform the corrective action and MFCD shall reimburse the COUNTY or PCFCD for the total costs incurred within sixty (60) calendar days of receipt of an invoice.

23.11 Accept all liability for any and all non-flood control use of the PROJECT, including any and all public use of the PROJECT.

24. The COUNTY shall:

24.1 Provide to MFCD the files, plans, data and other previously prepared information within its possession that is salient to the PROJECT.

24.2 Grant MFCD permits at no cost for the PROJECT construction and design investigations whether a) within COUNTY right-of-way or easements, or b) elsewhere within Pinal County.

24.3 Within three (3) weeks of receipt of interim PROJECT design submittals, provide review comments to MFCD.

24.4 Provide permanent access to all COUNTY owned and controlled rights-of-way or easements necessary for the PROJECT, at no cost to the PROJECT.

25. PCFCD shall:

25.1 Fund fifty percent (50%) of the PROJECT COST, not to exceed $2,500,109.

25.2 Within thirty (30) calendar days of receipt, pay all invoices issued by MFCD in accordance with the terms of this Agreement.

25.3 Be the joint lead with MFCD in all PROJECT public involvement and eminent domain activities and actions.

25.4 Provide all PCFCD owned and controlled rights-of-way or easements necessary for the PROJECT, and not specifically purchased for this PROJECT, at no cost to the PROJECT.

25.5 Within three (3) weeks of receipt of interim PROJECT design submittals, provide review comments to MFCD.

25.6 Convey ownership of any owned, acquired or controlled rights-of-way or easements necessary for the PROJECT, at no cost to MFCD.

26. Each PROJECT PARNTER, and the PROJECT PARTNERS collectively, shall:

26.1 Comply with A.R.S. Sections 41-4401 and 23-214, subsection A.

26.1.1 Each party to this Agreement retains the legal right to inspect the records of the other parties' and any contractors' or subcontractors' employees performing work under this Agreement to verify compliance with A.R.S. Sections 41-4401 and 23-214, subsection A.

26.1.2 Failure by any party to this Agreement to comply with A.R.S. Sections 41-4401 and 23-214, subsection A shall be deemed a breach of this Agreement and is subject to penalties up to and including termination of the Agreement.

26.2 Require that any contractor selected for the PROJECT:

26.2.1 Warrant its compliance with all federal immigration laws and regulations that relate to its employees and their compliance with A.R.S. Section 23-214(A);

26.2.2 Agree that a breach of the warranty under paragraph 26.2.1 shall be deemed a material breach of contract and is subject to penalties up to and including termination of the contract;

26.2.3 Agree that the other parties to this Agreement retains the legal right to inspect the papers of the contractor or subcontractor employee(s) who work(s) on this Agreement to ensure that contractor or subcontractor is complying with the warranty under paragraph 26.2.1;

26.2.4 Certify that it is not involved in a boycott of Israel, as defined in A.R.S. Sections 35-391, 35-391.01, 35-391.02 or uses goods or services acquired by the Forced Labor of Ethnic Uyghurs as defined in A.R.S. Section 35-393, or have scrutinized business operation in either Sudan or Iran as defined in A.R.S. Section 38-848.

26.3 Have the right, following mutual written agreement of all PROJECT PARTNERS, to delegate its responsibilities under this Agreement to another party. Any delegation, however, shall not relieve the delegating PROJECT PARTNER of its original responsibilities as defined herein.

26.4 In the case of any dispute over any items in this Agreement, agree to use their best efforts and enter into good faith negotiations or mediation to resolve the disputed matters. However, this shall not limit the rights of the PROJECT PARTNERS to seek any remedies provided by law.

26.5 Agree to equally share the cost of a PROJECT compliance and cost audit to be initiated within 60 days of PROJECT completion, if requested by any PROJECT PARTNER. An independent auditing firm agreed to by the PROJECT PARTNERS will perform the audit. Any payments or reimbursements necessary to bring the PROJECT into compliance with the audit findings shall be made within 45 days of acceptance by the PROJECT PARTNERS.

27. The PROJECT may be phased for design and/or construction due to funding or other coordination issues. Responsibilities of MFCD, PCFCD and the COUNTY shall be phased accordingly, including, but not limited to, invoicing, reimbursements, transfer of land rights and accepting of operation and maintenance.

28. If mutually acceptable to the PROJECT PARTNERS, PROJECT invoicing may be conducted periodically based on actual PROJECT COST incurred, no more frequently than monthly, in lieu of invoicing timelines otherwise established in this Agreement.

29. 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.

30. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

    Magma Flood Control District
    C/O Stephen Cooper, Attorney for MFCD
    221 North Florence St.
    Casa Grande, AZ 85122-4420

    With a copy to:
    Magma Flood Control District
    C/O Kent Pace, General Manager
    3850 E. Baseline Rd. Suite #114
    Mesa, AZ 85206

    Pinal County
    County Manager
    140 N. Florence St.
    Florence, AZ 85132

    Pinal County
    Development Services-Flood Control District
    Development Services Managing Director
    85 N. Florence St.
    Florence, AZ 85132

31. This Agreement shall expire ten (10) years from the date of recording with the Pinal County Recorder or upon completion of the PROJECT and after all funding obligations and reimbursements have been satisfied in accordance with this Agreement, whichever is the first to occur. However, by mutual written agreement of all parties, this Agreement may be amended or terminated. The indemnification provisions of this Agreement shall survive the expiration of this Agreement

32. This Agreement is subject to cancellation by any party pursuant to the provisions of Arizona Revised Statutes Section 38-511.

33. Attached to this Agreement or contained herein are the written determinations by the appropriate attorneys for the parties to this Agreement, that these agencies are authorized under the laws of the State of Arizona to enter into this Agreement and that it is in proper form.

34. PCFCD and COUNTY specifically acknowledge that they have been advised of and are aware that the Pinal County Attorney's Office represents both Pinal County and the Pinal County Flood Control District and have been advised to seek outside counsel. The COUNTY and PCFCD expressly and mutually waive any adverse interest that may exist and also waive any allegations of conflict of interest by the Pinal County Attorney's Office and expressly approve the Pinal County Attorney's Office dual representation.

35. If legislation is enacted after the effective date of this Agreement that changes the relationship or structure of one or more parties to this Agreement, the parties agree that this Agreement shall be renegotiated at the written request of any party.

MAGMA FLOOD CONTROL DISTRICT
A Political Subdivision Approved and Accepted:

By: _____ 10/4/2024
Chairman, Board of Directors Date

Attest:

By: _____ 10/14/2024
Secretary of the Board Date

The foregoing Intergovernmental Agreement MFCD 2024-01 has been reviewed pursuant to Arizona Revised Statutes 48-2811, as amended, by the undersigned General Counsel, who has determined that it is in proper form and within the powers and authority granted to the Magma Flood Control District of Pinal County under the laws of the State of Arizona.

_____ 10-1-2024
Counsel for MFCD Date

COUNTY OF PINAL
A Political Subdivision,

By: _____
Mike Goodman, Chairman of the Board of Supervisors Date

Attest:

By: _____
Clerk of the Board of Supervisors Date

The foregoing Intergovernmental Agreement IGA MFCD 2024-01 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 County of Pinal under the laws of the State of Arizona.

By: _____
County Attorney Date

PINAL COUNTY FLOOD CONTROL DISTRICT
A Municipal Corporation,

By: _____
Mike Goodman, Chairman of the Board of Directors Date

Attest:

By: _____
Clerk of the Board of Directors Date

The foregoing Intergovernmental Agreement IGA MFCD 2024-01 has been reviewed pursuant to Arizona Revised Statutes 48-3603 as amended, by the undersigned attorney who has determined that it is in proper form and within the power and authority granted to the County of Pinal under the laws of the State of Arizona.

By: _____
Counsel for the Pinal County FCD Date

IGA MFCD 2024-01
EXHIBIT "A"

