RESOLUTION NO. 2016-23

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE YAVAPAI COUNTY FLOOD CONTROL DISTRICT TO PROVIDE FUNDS TO THE CITY IN THE APPROXIMATE AMOUNT OF THREE HUNDRED TWENTY-FIVE THOUSAND DOLLARS ($325,000) TO BE USED BY THE CITY TO FUND THE COFFEE POT CROSSING DRAINAGE PROJECT; PROVIDING AUTHORIZATION FOR THE MAYOR TO EXECUTE SAID AGREEMENT.

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

WHEREAS, the District is authorized to expend funds for flood control projects pursuant to A.R.S. § 48-3603.C.7 and reimburse municipalities for such work, and has approved and budgeted such funds for the City in the approximate amount of $325,000 for fiscal year 2016-2017, to be used by the City to fund the Coffee Pot Crossing Drainage Project within the Yavapai County portion of the City; and

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

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

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

The City of Sedona, through its Mayor and Council, hereby approves the Intergovernmental Agreement with the Yavapai County Flood Control District to provide funds in the approximate amount of three hundred twenty-five thousand dollars ($325,000) for the Coffee Pot Crossing Drainage Project, and the Mayor is authorized to execute said Agreement on behalf of the City.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona this 12th day of July, 2016.

Sandra J. Moriarty, Mayor

ATTEST:

Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:

Robert L. Pickels, Jr., City Attorney

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE YAVAPAI COUNTY FLOOD CONTROL DISTRICT AND THE CITY OF SEDONA
FOR THE FISCAL YEAR 2016/2017 FINANCIAL CONTRIBUTION
FROM THE DISTRICT TO THE CITY FOR FLOOD CONTROL
IMPROVEMENTS

THIS INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE YAVAPAI COUNTY FLOOD CONTROL DISTRICT AND THE CITY OF SEDONA, FOR THE FISCAL YEAR 2016/2017 FINANCIAL CONTRIBUTION TO THE CITY FOR FLOOD CONTROL IMPROVEMENTS (the "Agreement") is entered into, effective this ___ day of ____, 2016, between the Yavapai County Flood Control District, a political subdivision of the State of Arizona (the "DISTRICT"), and the City of Sedona, Arizona, a municipal corporation of the State of Arizona (the "CITY"). The District and the City are sometimes collectively referred to as the "Parties" or individually as the "Party."

RECITALS

WHEREAS:

A. The DISTRICT is a special taxing district legally created in the State of Arizona and organized by Yavapai County to include and govern its jurisdiction.

B. The DISTRICT administers the Federal Emergency Management Agency ("FEMA") Regulations under the National Flood Insurance Program.

C. The Yavapai County Board of Supervisors is the Board of Directors of the DISTRICT.

D. A portion of the CITY lies within the legal boundaries of the DISTRICT.

E. The DISTRICT, the CITY, and the County are separate and distinct political subdivisions, but each can provide for the benefit of the other(s), for the benefit of public health, safety, and welfare, and other public purposes.

F. The DISTRICT and the CITY have authority to enter into Intergovernmental Agreements pursuant to Arizona Revised Statutes ("A.R.S.") §§11-952, 48-3603, and 9-240, and CITY's Code.

G. Among other things, the DISTRICT receives tax proceeds as general funding for the planning, construction, and maintenance of flood control improvements.

H. Under the budgeting process for the DISTRICT, a category of "Contributions" (hereinafter

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

I. The DISTRICT has approved and budgeted Funds to provide funding assistance for flood mitigation work and is authorized to expend such Funds for flood control projects (including storm water control) to political subdivisions for projects so long as the projects are flood or drainage related, cost-effective, a benefit to the County, the DISTRICT, and the political subdivision and are in accordance with FEMA regulations.

J. The CITY has experienced storm water control and flooding problems for a number of years in various locations and seeks to mitigate such problems to increase safety and protect public and private property and persons within the CITY.

K. The CITY seeks to improve its storm water control, make drainage improvements, and/or mitigate flooding problems by constructing the Coffee Pot Crossing Project (hereinafter the "Project").

L. The CITY desires to receive DISTRICT Funds for the 2016/2017 fiscal year to be used for its Project.

M. The DISTRICT has budgeted Funds to support the Project in an amount not to exceed Three Hundred Twenty-Five Thousand Dollars ($325,000) for fiscal year 2016/2017 which begins on July 1, 2016.

AGREEMENTS

NOW THEREFORE, for good and valuable consideration, including consideration of the mutual promises, terms, and conditions hereinafter set forth, including the mutual promises and obligations to be performed by the Parties hereto, IT IS AGREED BETWEEN THE CITY AND THE DISTRICT AS FOLLOWS:

I. PURPOSE

The purpose of this Agreement is to authorize the DISTRICT to pay and contribute to the CITY Funds in support of the CITY's Project. Such funding for fiscal year 2016/2017 shall not exceed Three Hundred Twenty-Five Thousand Dollars ($325,000).

II. COMMENCEMENT, DURATION, AND TERMINATION

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

A. The completion of the Project as determined by the CITY;
B. The exhaustion of the Funds allocated to the CITY for the Project;
C. The end of the fiscal year 2016/2017; or
D. The mutual agreement of the Parties.

III. RESPONSIBILITIES OF PARTIES

A. The CITY shall:

1. Be solely responsible for the design, engineering, bidding, right-of-way acquisition, supervision, construction, inspection, administration. and project management of the Project and for contracting directly for all Project work.
2. If plans are used to bid, provide the DISTRICT a copy of the final Project plans.
3. Use the Funds for the Project in fiscal year 2016/2017.
4. Use the Funds exclusively for costs associated with the Project described above.
5. When requesting Funds from the DISTRICT, provide detailed invoices with supporting documentation for the request(s).
6. Request Funds from the DISTRICT on or before July 31, 2017 (for work completed in fiscal year 2016/2017).
7. Be responsible for the proper disbursement of the Funds provided by the DISTRICT.
8. Be responsible for maintaining the Project and the resulting improvements.

B. The DISTRICT shall:

1. Make Funds available to the CITY for the Project as approved by the Board of Directors.
2. Provide funding as available and appropriate upon proper request(s) by the CITY.
3. Pay properly invoiced requests monthly or on an alternate schedule as agreed to by the CITY and DISTRICT.
4. Pay properly invoiced requests for work completed by the CITY in fiscal year 2016/2017 so long as CITY's requests are received by the DISTRICT on or before July 31, 2017.

C. The DISTRICT and CITY mutually agree:

1. That they recognize the Funds to be used by Parties pursuant to this Agreement are tax funds. The agreements herein for funding are based upon projected tax funds to be received. In the event the projected income is not received, there is the possibility that some or all of the Funds anticipated by this Agreement and set forth herein will not be available. All monetary obligations under this agreement shall be subject to annual budget approval of the respective governing bodies of the parties. A failure of either party's governing body to approve funding for payment of any obligation hereunder shall constitute grounds for termination of this agreement.

2. The Project is the sole responsibility of the CITY, and not of the DISTRICT or the County. All real property upon which the Project work will occur is within the CITY limits and not owned or under the control of the DISTRICT or County.

VII. INDEMNIFICATION

The CITY agrees to defend, indemnify, and hold harmless the DISTRICT, its Board of Directors,

the County, its Board of Supervisors, officers, employees, agents, or other representatives from any and all claims for damages or otherwise arising under this Agreement and from any negligent acts of the City, its officers, employees, agents, or other representatives. This Indemnification provision shall survive the termination of this Agreement.

VIII. OTHER PROVISIONS

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

CITY OF SEDONA	DISTRICT
City Manager	Yavapai County Flood Control District Director
102 Roadrunner Drive	1120 Commerce Drive
Sedona, AZ 86336	Prescott, AZ 86305

B. ENTIRE AGREEMENT. This Agreement represents the entire understanding between the parties with respect to the subject matters herein, and may be amended, modified, or waived only by written instrument signed by both Parties.

C. CONFLICT OF INTEREST. This contract is subject to the cancellation provisions of A.R.S. §38-511.

D. SEVERABILITY. In case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained therein.

E. NON-DISCRIMINATION. The Parties shall comply with Executive Order 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules and regulations, including the Americans with Disabilities Act. The Parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

F. EMPLOYMENT VERIFICATION. The Parties are required to comply with A.R.S. §41-4401, and hereby warrants that they will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to the employment of their respective employees, the requirements of A.R.S. §41-4401, and with the e-verification requirements of A.R.S. §23-214(A) (together the "state and federal immigration laws"). The Parties further agree to ensure that each subcontractor that performs any work under this Agreement likewise complies with the state and federal immigration laws. A breach of a warranty regarding compliance with the state and federal immigration laws shall be deemed a material breach of the Agreement and the party who breaches may be subject

to penalties up to and including termination of the Agreement. The Parties retain the legal right to inspect the papers of any contractor or subcontract employee working under the terms of the Agreement to ensure that the other party is complying with the warranties regarding compliance with the state and federal immigration laws.

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

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

YAVAPAI COUNTY
FLOOD CONTROL DISTRICT

_____

Jack R. Smith, Chairman Date
Board of Directors
Yavapai County Flood Control District

CITY OF SEDONA

Sandra J. Moriarty 7/14/16

Sandra J. Moriarty, Mayor Date
City of Sedona

ATTEST:

_____

Kim Kapin Date
Clerk of the Board of Directors

Susan L. Irvine 7/14/16

Susan L. Irvine, CMC Date
Sedona City Clerk

DETERMINATIONS OF COUNSEL

FOR THE
INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE YAVAPAI COUNTY FLOOD CONTROL DISTRICT AND THE CITY OF SEDONA

FOR THE FISCAL YEAR 2016/2017 FINANCIAL CONTRIBUTION
FROM THE DISTRICT TO THE CITY FOR FLOOD CONTROL IMPROVEMENT

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

7/14/16

Robert L. Pickels, Jr., City Attorney — Date
City of Sedona

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

Deputy County Attorney — Date
Flood Control District