

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

cc: 10C
Amend No. _____

Date prepared: August 25, 2009

Council Meeting Date: September 15, 2009

TO: Mayor and City Council
THROUGH: Stephen M. Kemp, City Attorney
FROM: Stephen J. Burg, Chief Assistant City Attorney *Stephen Burg*
PREPARED BY: Ellen M. Van Riper, Assistant City Attorney *EWK*

SUBJECT: Enter into the attached First Amended and Restated Intergovernmental Agreement between Maricopa County and the City of Peoria for Shared Responsibilities at Lake Pleasant Regional Park.

RECOMMENDATION: Discussion and possible action to enter into a First Amended and Restated Intergovernmental Agreement with Maricopa County for Shared Responsibilities at Lake Pleasant Regional Park for a period of fourteen (14) years with the ability to extend for two (2) additional periods of ten (10) years, which services include land development, building codes and development guidelines, law enforcement services, fire prevention services, fire restrictions on campgrounds, Emergency Medical Services, and notice of special events

SUMMARY: In December 2006, the City entered into the current Intergovernmental Agreement with Maricopa County for Shared Responsibilities at Lake Pleasant Regional Park. Recent experience (most notably Scorpion Bay Marina) has shown a need to revise this IGA to have the City assume complete control for regulating all commercial development that occurs at Lake Pleasant in accordance with all City Codes. City staff and County staff have negotiated a proposed First Amended and Restated Intergovernmental Agreement that would vest this authority in the City and also clarify the City's duties in regard to providing Fire and Emergency Medical Response Services ("EMS") at Lake Pleasant. Primary law enforcement responsibility would remain with the Maricopa County Sheriff's Office.

ATTACHMENT: First Amended and Restated Intergovernmental Agreement between Maricopa County and the City of Peoria for Shared Responsibilities at Lake Pleasant Regional Park.
PM87362

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# 1900A LIC. # _____
Action Date: _____

When Recorded Return To:

Wayne J. Peck, Esq.
Deputy County Attorney
Maricopa County Attorney's Office Civil Division
222 North Central Avenue, Suite 1100
Phoenix, Arizona 85004

**FIRST AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT
BETWEEN MARICOPA COUNTY
AND THE CITY OF PEORIA
FOR SHARED RESPONSIBILITIES AT
LAKE PLEASANT REGIONAL PARK**

THIS FIRST AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into as of September ____, 2009 pursuant to Arizona Revised Statutes §§ 11-952 through 11-954, as amended, by and between MARICOPA COUNTY, ARIZONA, a political subdivision of the State of Arizona ("County"), and the CITY OF PEORIA, ARIZONA, an Arizona charter municipal corporation ("Peoria").

WHEREAS, the County operates LAKE PLEASANT REGIONAL PARK ("LPRP") pursuant to a RECREATIONAL MANAGEMENT AGREEMENT ("Management Agreement") between the County and the United States Department of the Interior dated June 29, 1990; and

WHEREAS, Peoria annexed all of the property within LPRP by Ordinance #99-29, on July 15, 1999; and

WHEREAS, effective December 20, 2006, the County and Peoria entered into the original INTERGOVERNMENTAL AGREEMENT FOR SHARED RESPONSIBILITIES AT LAKE PLEASANT REGIONAL PARK ("2006 Agreement") to

LCON11906A

work cooperatively for the coordination of the exercise of powers and the provision of services within the LPRP; and

WHEREAS, the County and Peoria now desire and agree to amend and restate the 2006 Agreement in its entirety for the purpose of reassigning to Peoria responsibility for the administration and enforcement of development requirements for private or commercial development by the County's lessees, concessionaires, licensees, and agents that occurs within the LPRP and to further detail Peoria's responsibilities in regard to the provision of Fire Protect and Emergency Medical Service ("EMS") services.

NOW THEREFORE, the parties to this Agreement, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

I. PLANNING AND ZONING

1. Land Development.

a. Peoria agrees that all development undertaken by the County necessary to operate park facilities, such as roads, buildings, campgrounds, park utilities, maintenance and operation facilities and other facilities of a governmental nature are permitted within the zoning adopted by Peoria. Site plan, design review and all other plan approvals shall be by the County and no approval by Peoria shall be required.

b. The County and Peoria agree that development contracted for by the County to lessees, concessionaires, licensees, and agents of a private or commercial nature shall conform to the Master Plan for LPRP. All such

development shall be subject to the same ordinances, rules, regulations, codes, approvals, fees, permits, inspections, enforcement, and other terms and conditions as any other development within the jurisdiction of Peoria.

c. The County agrees that it will provide Peoria notice and an opportunity to comment on major amendments to the Master Plan for LPRP involving significant increases in commercial and retail uses. For purposes of this subparagraph a significant increase is defined as permitting additional commercial and retail uses with a value exceeding Five Million Dollars. Should Peoria fail to comment within thirty (30) days following receipt of such major amendments, Peoria is deemed to have waived any right to comment.

2. Building Codes and Development Guidelines.

a. The County and Peoria agree that development undertaken by the County within LPRP will be done in accordance with Maricopa County building codes. Building permits and plan approvals shall be issued by the Maricopa County Planning and Development Department.

b. The County and Peoria agree that development contracted for by the County to lessees, concessionaires, licensees, and agents of a private or commercial nature shall be done in accordance with City of Peoria Building, Fire, Zoning (as applicable), Design Review, and Engineering Codes. All permitting, plan review, approvals, inspections, and

enforcement shall be administered in the same manner as administered in regard to any other development occurring within the jurisdiction of Peoria.

II. PUBLIC SAFETY AND EMERGENCY RESPONSE

1. **Law Enforcement.** The County and Peoria agree that the County will continue to be responsible for providing law enforcement services within the boundaries of LPRP. The County shall be exclusively responsible for enforcing its adopted park rules and regulations. Peoria shall provide back-up for the Maricopa County Sheriff's Office when requested. The Maricopa County Sheriff's Office shall provide primary law enforcement on the water within LPRP.

2. **Fire Prevention and Protection.**

a. The County and Peoria agree that Peoria shall provide fire protection services within LPRP consistent with the services provided in the City of Peoria.

b. The County and Peoria agree that Peoria shall provide fire prevention services, including inspections to ensure compliance with the Peoria Fire Code, to the operations of the County's lessees, concessionaires, and licensees, within LPRP, including non-County programs and events conducted pursuant to a Special Event permit issued by the County Parks and Recreation Department.. The City may charge, collect, and retain its standard fees for annual fire inspections and other of its standard fees imposed for the provision of these services. The foregoing does not apply to operations or programs sponsored or

conducted by the County. Peoria shall provide technical assistance to the County relating to fire prevention for all programs, events, or activities permitted or conducted at LPRP, subject to payment by the County's lessees, concessionaires, and licenses of the City's customary fees, as applicable. The City will not charge the County for providing technical assistance for County sponsored or conducted programs, events, or activities.

c. Peoria delegates to the County the responsibility for deciding when to impose fire restrictions on campgrounds and other LPRP facilities or operations of a governmental nature. When making these decisions the County will cooperate with Peoria and provide notice to Peoria of all fire restrictions imposed.

3. **Emergency Medical Service ("EMS") Response.**

a. The City of Peoria Fire Department shall provide Emergency Medical Service ("EMS") response within LPRP consistent with the services provided within the City of Peoria, which includes basic and advanced life support, command on EMS incidents, and coordination of air medical transport response, standby, and staging. The parties agree that the primary responsibility for on water rescue shall be with the Maricopa County Sheriff's Office, with supplemental services provided by the City of Peoria Fire Department upon request. The City of Peoria Fire Department and the Maricopa County Sheriff's Office will work cooperatively to provide training and knowledge of LPRP facilities and conditions.

b. The County shall provide Peoria with written notice of any County permitted Special Event at least seven (7) business days after the County receives the application for or otherwise becomes aware of the event so as to allow Peoria an opportunity to adequately assess and plan for any extraordinary fire and/or EMS response services that may be required. Special event or enhanced EMS response services will be provided when deemed necessary by Peoria in its sole discretion. Peoria will notify the County Parks and Recreation Department of the level of EMS response services deemed necessary for the Special Event. The County and Peoria will work cooperatively together to ensure that proper levels of fire protection and EMS response services are provided for the event.

III. GENERAL PROVISIONS

1. **Term.** The term of this Agreement shall be for a period of fourteen (14) years with the ability to extend the Agreement for two (2) additional periods of ten (10) years upon mutual agreement of the parties.
2. **Effective date.** This Agreement shall be effective upon the approval of both the City Council of the City of Peoria and the Board of Supervisors of Maricopa County.
3. **Indemnification.** The parties agree that, to the extent permitted by law, each party will indemnify and save the other party harmless, including any of the parties' departments, agencies, officers, employees, elected officials, or agents, from and against all loss, expense, damage or claim of any kind whatsoever which is caused by any activity condition or event

arising out of the performance or non-performance by the indemnifying party of any of the provisions of this Agreement. Each party hereby indemnifies the other against all liability, losses, damages and claims of any nature for any injuries or death of any person or damages to or destruction of any property arising out of or in any way connected with the performance or non-performance of activities under this Agreement except to the extent that such injury or damage was caused by the negligence or willful misconduct of that other party.

4. **Assignability.** This Agreement is nonassignable in whole or in part by either party hereto without the written consent of all the Parties.
5. **Notices.** All written communication concerning this Agreement shall be delivered in person or sent by registered, certified, or first class mail, postage prepaid, to the persons specified as follows:

City of Peoria
Attn: City Manager
8401 West Monroe Street
Peoria, Arizona 85345

With a copy to:

Office of the City Attorney
City of Peoria, Arizona
8401 West Monroe Street, Room 280
Peoria, AZ 85345

Maricopa County
Jennifer Waller, West Side Superintendent
234 N. Central Ave. Suite 640
Phoenix, Arizona 85004

With a copy to:

Maricopa County Attorney
Civil Division
222 N. Central Ave., Suite 1100
Phoenix, AZ 85004

6. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and correctly sets forth the rights, duties and obligations of each to the other as of its date. All prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. The provisions hereof may be abrogated, modified, rescinded or amended in whole or in part only by written instrument executed by the parties and recorded with the Arizona Secretary of State.
7. **Severability.** In the event that any provision, or any portion of any provision, of this Agreement, or the application thereof, is held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall have no effect on the remaining portion of any provision or any other provision, or their application, which can be given effect without the invalid provision or application and to this end the provisions of this Agreement shall be deemed to be severable.
8. **No Third Party Beneficiaries.** It is the intent of the parties that no third persons are intended to be beneficiaries of this Agreement.
9. **A.R.S. § 38-511.** This Agreement is subject to the provisions of A.R.S. § 38-511.

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

CITY OF PEORIA

MARICOPA COUNTY, ARIZONA

By: _____
Bob Barrett, Mayor
City of Peoria

By: _____
Max Wilson, Chairman
Maricopa County Board of
Supervisors

ATTEST:

ATTEST:

By: _____
Mary Jo Kief, City Clerk

By: _____
Fran McCarroll, Clerk of the Board

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Stephen M. Kemp
City Attorney, City of Peoria

Wayne J. Peck
Deputy County Attorney