

WHEN RECORDED RETURN TO:

CITY OF SCOTTSDALE
ONE STOP SHOP RECORDS
(Michael Clack)
7447 E Indian School Road
Scottsdale, AZ 85251

CONTRACT NO. 2018-204-COS

CONTRACT NO.: CON-19-049-CMD

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2018 (the "Effective Date") by and between the CITY OF SCOTTSDALE, a municipal corporation of the State of Arizona ("City") and the TOWN OF PARADISE VALLEY, a municipal corporation of the State of Arizona ("Town"). City and Town are sometimes referred to collectively in this Agreement as the "Parties", and each individually as a "Party".

RECITALS

A. City performs plan review, permitting and inspection services for construction and related services for development within the City.

B. Town performs plan review, permitting and inspection services for construction and related services for development within the Town.

C. Five Star Development Resort Communities LLC, ("Developer") is developing the Palmeraie mixed use development located generally west of Scottsdale Road and south of Indian Bend Road. The proposed mixed use development will lie both in the Town and in the City.

D. Developer requested that the Town and City cooperate to allow one municipality to perform certain plan review and inspection services in order to assist in the development of the Palmeraie mixed use development by Five Star Development Resort Communities LLC, ("Developer").

E. Therefore, the Town wishes to secure certain plan review and inspection services from the City.

F. The City is authorized to enter into this Agreement pursuant to A.R.S. Section 11-952 and the provisions of Article 1, Sections 3 and 3-1 of the City of Scottsdale Charter, and by City of Scottsdale Resolution No. 11336.

E. The Town is authorized to enter into this Agreement by Arizona Revised Statutes. Section 11-952 and the Town of Paradise Valley Resolution No. 2018-32.

AGREEMENT

In consideration of the foregoing recitals, which are hereby incorporated into this Agreement, the mutual promises of the Parties, and the benefits to be received by each of the Parties under this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Term of Agreement. The term of this Agreement shall commence on the date of this Agreement and continue in effect until all obligations and rights of the Parties under this Agreement have been performed, terminated or have expired.

2. City Plan Review and Inspection Services.

a. City will perform all construction plan review and inspections for the underground garage serving the Palmeraie mixed use development, which is generally located south of Indian Bend Road, west of Scottsdale Road, and within and east of Town limits, as legally described on **Exhibit "A"** hereto and as depicted on **Exhibit "B"**. The City will review the entirety of the proposed underground garage, the western portion of which is located west of the Town limits, in accordance with sub-section b. below.

b. The City will perform the following services as may be requested by Town: examination and review of plans and inspection for new construction, alteration, and repairs for compliance with the 2015 family of codes, as published by the International Code Council (ICC)). The Construction Code includes the Building, Plumbing, Mechanical, Fire, Energy Conservation, Fuel Gas, and the 2014 National Electrical Codes. Plan review by the City will include review of Developer's drainage and retention system in accordance with both the Town's Storm Drainage Design Manual and City drainage ordinance. Plan reviews and inspections will be conducted in a manner to determine compliance with the aforementioned codes. The existing City process will govern all interpretations of the codes.

3. Payments to City. The City's fees under this Agreement will be based on the following:

a. Plan reviews and permitting will be conducted by the City at 7447 E. Indian School Road: Applicable fees will be charged and paid in advance in accordance with the fee schedule as adopted by the City of Scottsdale which may change from time to time. These rates will be in effect for the duration of this Agreement.

b. Fees for plan review and permitting must be paid by the Developer directly to the City prior to work being commenced by the City.

4. Town Responsibilities. For work being performed by the City for areas of the underground garage located within the Town, the Town will furnish the City at no cost the following information.

a. Plans, specifications and other data as part of the permit requirements from the Developer.

b. All available data relative to policies, standards, and code interpretations.

c. Response to the City's request for decisions, if any, will be made on or before (7) calendar days from the request, unless otherwise agreed to by the Town and the City.

d. The name of the Town staff person who will serve as the designated point of contact during the term of the Agreement. The Town Building Official and the City Building Official have the authority to administer the Agreement on behalf of the Town. All requests for information or decisions by the Town on any aspect of the work will be directed to the Town Building Official.

5. Termination. The Town and City agree to full performance, except that the Town reserves the right, at its discretion and without cause, to terminate or abandon any plan review or inspection service provided for in this Agreement, or abandon any portion of the work for which services have been performed by City.

a. If Town abandons any part of the services, the Town will notify the City in writing and immediately after receiving notice, the City must discontinue advancing those services.

b. Upon termination or abandonment, the City will deliver to the Town all drawings, plans, specification, special provision, estimates and other work entirely or partially completed, together with all unused materials supplied by the Town.

c. The City will receive full compensation for services performed to the date of termination. Fees are prepaid as provided in Section 3b of this Agreement.

6. Indemnification.

Each Party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other Party (as "Indemnatee") from and against any and all claims, demands, losses, liability, costs, expenses or damages of any kind (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious or derivative liability to the Indemnatee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, subcontractors or volunteers.

Insurance provisions stated in the contract are separate and independent from the indemnity provisions of this paragraph and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph will not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

7. Survival of Indemnification. Each Party's obligation to indemnify shall survive the termination of this Agreement.

8. Insurance. City is required to carry insurance covering or affecting City's performance under this Agreement, as set forth in **Exhibit "C"**. The City's insurance requirement may be met through a combination of self-insured retention limits and insurance policies.

9. Disputes. The Town Engineer will make the final determination at the administrative level of any dispute arising out of an interpretation of the terms of this Intergovernmental Agreement that is not resolved by mutual agreement. All technical determinations under applicable codes will be made by City, as stated in paragraph 3 above.

10. Right of Cancellation. This Agreement is subject to cancellation by either Party as provided by Arizona Revised Statutes Section 38-511.

11. Non-Waiver Provision. The failure of either party to enforce, or to require performance of the other party, of any of the provisions of this Agreement may not be construed as a waiver of any provision, and that will not affect the validity of any part of this Agreement, or the right of either party to enforce every provision.

GENERAL PROVISIONS

12. Jurisdiction. This Agreement will be deemed to be made under, and will be construed in accordance with and governed by the laws of Arizona without regard to the conflicts or choice of law provisions. Any action to enforce any provision of the Agreement or to obtain any remedy must be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party expressly and irrevocably consents to the jurisdiction and venue of such Court.

13. Amendments. No modification or amendment of any term of this Agreement will be effective unless in writing and signed by the Parties.

14. Severability. If any provision of this Agreement or its application to any person or circumstance is determined to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will be enforceable to the fullest extent permitted by law.

15. Integration. This Agreement expresses the full agreement of the Parties, and it merges and supersedes any prior or contemporaneous written or oral agreement between the Parties regarding this Agreement.

16. Time is of the Essence. Time of each of the terms, covenants, and conditions of this Agreement is expressly made of the essence.

17. Date of Performance. If the date of performance of any obligation or the last day of any time period provided falls on a Saturday, Sunday or Town or City holiday, then the time period will extend to the next day that is not a Saturday, Sunday or Town or City holiday. Except as may

otherwise be provided, any performance will be timely made if completed no later than 5:00 p.m. Arizona time on the day of performance.

18. No Third Party Beneficiary. Nothing in this Agreement may be construed to give any rights or benefits in the Agreement to anyone other than the Town and the City, and all duties and responsibilities undertaken under this Agreement will be for the exclusive benefit of the Town and the City and not for the benefit of any other party.

19. Conflict in Language. All work performed within the jurisdiction of the Town must conform to all applicable Town codes, ordinances and requirements.

20. Notices. Whenever written notice is required or permitted to be given by any Party to the other such notice shall have been deemed to have been sufficiently given if personally delivered or delivered by overnight courier service or deposited in the United States Mail in a properly stamped envelope, certified or registered mail, return-receipt-requested, addressed to:

If to City of Scottsdale:

Michael Clack, Chief Development Officer
City of Scottsdale
7447 E Indian School, OCC100
Scottsdale, AZ 85251

Copy to:

City Attorney's Office
City of Scottsdale
3939 N Drinkwater Blvd.
Scottsdale, AZ 85251

If to Town of Paradise Valley:

Jeremy Knapp, Director of Community Development
Town of Paradise Valley
6401 E. Lincoln Dr.
Paradise Valley, AZ 85253

Copy to:

Andrew Miller, Town Attorney
Town of Paradise Valley
6401 E. Lincoln Dr.
Paradise Valley, AZ 85253

CITY OF SCOTTSDALE, an Arizona municipal
corporation

By: _____
W. J. "Jim" Lane, Mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Margaret Wilson

Bruce Washburn, City Attorney

By: Margaret Wilson, Senior Assistant City Attorney

Michael Clack, Chief Development Officer

Katie Callaway, Risk Management Director

STATE OF ARIZONA)

) ss.

County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by W. J. "Jim" Lane, Mayor of the City of Scottsdale, an Arizona municipal corporation.

Notary Public

My Commission Expires:

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Exhibit "A"

Legal Description of Scottsdale Property

**LEGAL DESCRIPTION FOR
SCOTTSDALE PALMERAIE**

The East Half of the Northeast Quarter of the Northeast Quarter of Section 10, Township 2 North, Range 4 East of the Gila and Salt River Meridian, more particularly described as follows:

Beginning at the Maricopa County Brass Cap in hand hole marking the Northeast Corner of said Section 10, from which the City of Scottsdale Brass Cap in hand hole marking the East Quarter Corner of said Section 10 bears South 00°28'15" East, a distance of 2,640.53 feet;

Thence South 00°28'15" East, along the East line of the Northeast Quarter of said Section 10, a distance of 1,320.26 feet to the Southeast Comer of the Northeast Quarter of the Northeast Quarter of said Section 10;

Thence South 88°31'30" West, along the South line of the Northeast Quarter of the Northeast Quarter of said Section 10, a distance of 666.60 feet to the Southwest Comer of the East Half of the Northeast Quarter of the Northeast Quarter of said Section 10;

Thence North 00°16'37" West, along the West line of the East Half of the Northeast Quarter of the Northeast Quarter of said Section 10, a distance of 1,319.28 feet to the Northwest Comer thereof;

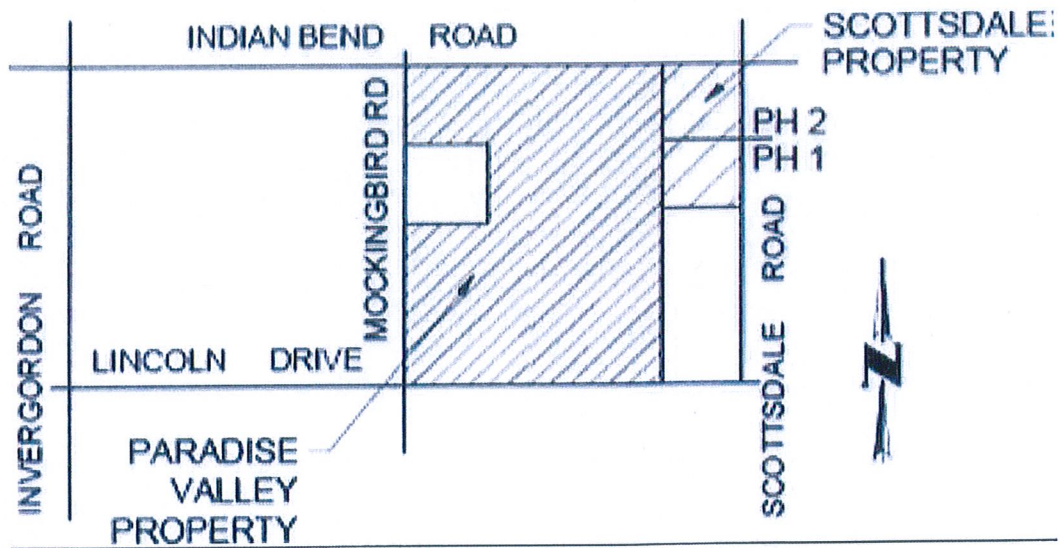
Thence North 88°25'57" East, along the North line of the Northeast Quarter of said Section 10, a distance of 662.16 feet to the True Point of Beginning.

Containing 876,651 Square Feet or 20.125 Acres, more or less.



EXHIBIT "B"

Depiction of Property



INSURANCE TERMS for PV IGA

1. Liability Insurance Required. City insurance ("Insurance") or comparable self-insurance in the case of the City only and shall comply with the following:

1.1 General Liability. "Occurrence" form Commercial General Liability insurance with a limit of not less than Two Million Dollars (\$2,000,000) for each occurrence, Two Million Dollars (\$2,000,000) Products and Completed Operations Annual Aggregate, and a limit of Two Million Dollars (\$2,000,000) General Aggregate Limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy shall not exclude liabilities arising out of explosion, collapse or underground hazard and will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any excess insurance is utilized to fulfill the requirements of this paragraph, such excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

1.2 Automobile Liability. If a commercial vehicle is needed to perform the scope of work set out in this Agreement, then the City shall maintain Business Automobile Liability insurance with a limit of One Million Dollars (\$1,000,000) for each accident for Insured's owned, hired, and non-owned vehicles assigned to or used in the performance of the work or services at issue. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof. If any excess insurance is utilized to fulfill the requirements of this paragraph, such excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

1.3 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of Five Hundred Thousand Dollars (\$500,000) for each accident, Five Hundred Thousand Dollars (\$500,000) disease for each employee, One Million Dollars (\$1,000,000) policy limit for disease. If Insured has no employees and otherwise qualifies, Insured shall provide a "sole proprietor waiver" signed by Insured in form and content acceptable to Town. All contractors and subcontractors must provide like insurance.

2. Form of Insurance. All insurance policies shall meet the following requirements:

2.1 "Occurrence" coverage is required. "Claims made" insurance is not permitted.

2.2 Policies or comparable self-insurance must also cover and insure Insured's activities relating to the business operations and activities.

2.3 Insured must clearly show by providing copies of self-insurance documents, insurance policies, certificates, formal endorsements or other documentation acceptable to Town that all insurance coverage required is provided.

2.4 The City's retentions or "self-insured" amounts shall not exceed Two Million Dollars (\$2,000,000) in the aggregate per year. Insured shall be solely responsible for any self-insurance amount or deductible.

2.5 No retention or "self-insured" amount shall be applicable to coverage provided to Town.

2.6 All liability policies must name Town and Town's employees, officials, representatives, officers, directors, and agents (collectively "Additional Insureds") as additional insureds. City shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement.

2.7 The City or their insurer must provide Town with at least thirty (30) days prior notice of any cancellation, reduction or other change in any insurance coverage required under this agreement. Written notice shall be sent to the Town Clerk (with a copy to the Town Attorney), Town of Paradise Valley, 6401 East Lincoln Drive, Paradise Valley, AZ 85253.

2.8 All policies providing coverage required for this agreement shall require that notices be given to Town in the manner specified for notices to Town under the Intergovernmental Agreement.

2.9 All insurance policies required to provide coverage for this Agreement shall contain a waiver of any transfer rights of recovery (subrogation) against Town and all other Additional Insureds.

3. Insurance Certificates. Insured shall evidence all insurance by furnishing to Town certificates of insurance annually and with each change in insurance coverage as follows:

3.1 Certificates must evidence that the policy referenced by the certificate is in full force and effect and that the policy satisfies each requirement of these terms applicable to the policy. For example, certificates must evidence that Town and the other Additional Insureds are additional Insureds..

3.2 All certificates are in addition to the actual policies endorsements or self-insurance. Renewal certificates shall be issued within 10 days of the annual insurance renewal date.

4. Acceptable Insurers. All insurance policies issued by insurers acceptable to Town. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++6.

5. Primary Insurance. City and its subcontractors' insurance shall be primary insurance. Any insurance or self-insurance maintained by Town shall not contribute to Insured's insurance.

5.1 Risk of Loss. Town is not required to carry any insurance related to the applicable insurance subject to these terms. Insured assumes the risk of any and all loss or damage related to Insured's use or activity throughout the term of the use or activity. City expressly disclaims any representation that required insurance is adequate to protect any person or land against any risks related to any activities, uses or improvements related to the activity or use for which these terms apply. Insured's obligations to indemnify do not diminish in any way Insured's obligations to insure as set forth in these terms; and Insured's obligations to insure do not diminish in any way Insured's obligations to indemnify or may otherwise be required. Insured's obligations to indemnify and provide insurance as set forth in the Agreement are in addition to, and do not limit, any and all other liabilities or obligations of Insured. In the event Insured secures additional liability insurance, Insured shall effect an endorsement under such policy waiving any and all insurer's rights of subrogation against Town and the other Additional Insureds.

5.2 Subcontractor's and Consultant's Insurance. If services are subcontracted in any way, City shall execute a written agreement with its subcontractor or consultant that includes an indemnification and insurance clauses protecting the Town to the same extent as set forth above and in the Intergovernmental Agreement.