

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF MARICOPA AND
ELECTRICAL DISTRICT NO. 3 OF PINAL COUNTY, ARIZONA**

This Intergovernmental Agreement ("IGA") is entered into this ____ day of _____, 2022, between the CITY OF MARICOPA, a municipal corporation of the State of Arizona ("MARICOPA"), and ELECTRICAL DISTRICT NO. 3 OF PINAL COUNTY, ARIZONA, an electrical district and a political subdivision of the State of Arizona ("ED3"). Each of the Participants (as defined above) may sometimes be individually referred to herein as a "Party" and collectively as the "Parties".

RECITALS

- A. MARICOPA has recently undertaken a project to underground certain overhead electric lines in the Heritage District more specifically depicted on Exhibit A.
- B. The Parties entered into an Amended IGA on February 16, 2021 regarding the use of streets and Rights-of-Way ("Amended IGA").
- C. The Parties desire to address the overhead to underground conversion of certain ED3 Facilities in the Heritage District specifically instead of relying on the terms and conditions of the Amended IGA.
- D. MARICOPA is authorized to enter into the Agreement pursuant to ARS § 9-240 and ED3 is authorized to enter into this Agreement pursuant to ARS § 11-952, 48- 1747 and 48-1749.

NOW THEREFORE, in consideration of the mutual covenants, benefits, and premises here stated, the Parties hereto agree as follows:

AGREEMENT

- 1. **DEFINITIONS.** The following words and phrases when used in this Agreement shall have the meanings set forth in this section.
 - a. **"ED3 Facilities" or "Facilities"** means all Electrical Transmission and Distribution Facilities and Street Lighting Facilities as shown in Exhibit A.
 - b. **"Effective Date"** shall mean the last date of which this Agreement is approved by the governing bodies of the Parties and executed by the Parties.
 - c. **"Electric Transmission and Distribution Facilities"** means ED3's electric power lines, including poles, towers, substations, wires, cables, conduits, transmission and distribution lines, transformers, switches and signals, including all associated equipment, appurtenances and communications infrastructure.
 - d. **"Managers"** means the General Manager for ED3 and the City Manager for MARICOPA.
- 2. **RELOCATION OF ED3 FACILITIES.**
 - 2.1 **ED3 Obligation.** At the City's sole cost and expense, ED3 will underground certain ED3 overhead Facilities in the Heritage District, as more specifically depicted on Exhibit A
 - 2.2 **MARICOPA Obligation.** The City hereby acknowledges and agrees that any necessary relocation of these Facilities will be at the City's sole cost and expense until such relocation is required to be completed by a third party. If a third party is responsible for such relocation including, but not limited to, the requirement to underground the Facilities with development in the area, the Parties hereby

acknowledge and agree that MARICOPA shall be permitted to require such relocation by the third party. After the existing ED3 Facilities are required to be relocated by a third party, the terms of the Amended IGA shall apply for any future relocations

3. **INDEMNIFICATION.** To the fullest extent permitted by law, each Party to this Agreement shall indemnify, defend, save and hold harmless the other Parties, their officials, employees and agents from any and all suits, actions, claims, demands, and losses, costs, or damages of every kind and description, including reasonable attorney's fees, arbitration and litigation expenses which may be brought or made against or incurred by the other Parties due to injuries, death, or damages received or sustained by any person, persons, or property due to any negligent act, omission, neglect, or misconduct by the Party, its officials, employees, and agents arising under this Agreement.

4. **MISCELLANEOUS PROVISIONS.**

- 4.1 This IGA is subject to the cancellation provisions of ARS § 38-511.
- 4.2 This IGA and any attachments represent the entire agreement between the Parties and shall supersede all prior negotiations, representations or agreements; either express or implied, written, or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this IGA shall be valid unless made in writing and signed by the Parties hereto. Written and signed amendments shall automatically become part of the IGA, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary. Notwithstanding anything to the contrary set forth herein, the Parties hereby acknowledge and agree that this IGA does not impact or alter the terms of the Amended IGA or apply to any ED3 Facilities unless specifically set forth herein.
- 4.3 Whenever approvals are required, they shall not be unreasonably withheld. Should any dispute arising between the Parties concerning the terms or conditions of this IGA or the implementation or interpretation of this IGA remain unresolved for a period of one (1) month, such dispute shall be forwarded to the Managers, who shall meet within fifteen (15) days (or such shorter or longer time as agreed upon between the Managers) to discuss and attempt to reach a resolution of the dispute. Any resolution mutually agreed upon by the Managers shall be binding upon the Parties. If the respective Managers cannot resolve the dispute within thirty (30) days of its submission to them (or within such longer time as shall be mutually agreed upon by the Managers), the Parties may pursue any remedies available to them at law, in equity, or under this IGA to resolve the dispute.
- 4.4 All notices or demands upon any Party to the Agreement shall be in writing and shall be delivered in person, by facsimile, or sent by First Class Certified Mail, postage prepaid, return receipt requested, addressed as follows:

CITY OF MARICOPA

Attn.: City Manager
39700 W Civic Center Plaza
Maricopa, AZ 85138

ELECTRICAL DISTRICT NO. 3 OF PINAL COUNTY

Attn.: General Manager
41630 W. Louis Johnson Drive
Maricopa, AZ 85138-5402


- 4.5 This IGA shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns.
- 4.6 By executing this IGA or amendment thereof, each Party represents and covenants that this IGA, its execution and fulfillment of its terms, conditions, responsibilities and obligations have been duly authorized by the respective governing bodies of each Party.
- 4.7 The failure of any Party to insist in any one (1) or more instances on performance of the terms or conditions of this IGA or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.
- 4.8 The terms and conditions of this IGA 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 either Party for the purpose of enforcing a right or rights provided for in this IGA shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county.
- 4.9 In the event either Party shall bring suit to enforce any term of this IGA or to recover any damages for and on account of the breach of any term or condition in this IGA, it is mutually agreed that the prevailing Party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.
- 4.10 No Party to this IGA shall assign its interest in the IGA, either in whole or in part without the prior written consent of the other Parties.
- 4.11 If any part, term or provision of this IGA shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.
- 4.12 Any undertaking by one (1) Party to the other Party under any provision of this IGA shall not constitute the dedication of the system or any portion thereof by either Party to the public or to the other Party, and it is understood and agreed that any such undertaking under any provision of this IGA by a Party shall cease upon the termination of its obligations hereunder.
- 4.13 The Parties do not intend to create rights in or to grant remedies to any third Party as a beneficiary of this IGA or of any duty, covenant, obligation, or undertaking established hereunder.
- 4.14 No provision of this IGA shall be construed so as to subject the District to regulation or review in any form by any governmental entity or agency that does not presently exercise competent jurisdiction over the District.
- 4.15 The undersigned representative(s) of each Party certifies that he or she is fully authorized by the Party whom he or she represents to execute this IGA and to legally

bind the Party to it. Each Party represents that it has full legal authority to enter into this IGA.

- 4.16 This IGA may be executed in multiple counterparts and when a counterpart has been executed by the Parties, such counterparts, taken together, shall constitute a single agreement.

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

ELECTRICAL DISTRICT NO. 3 OF PINAL COUNTY

By: 
Title: **Kelly Anderson**
Chairman
Date: _____

ATTEST:


James P. Whitehurst, Secretary
CITY OF MARICOPA

By: _____
Nancy Smith, Mayor
Date: _____

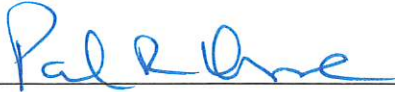
ATTEST:

Vanessa Bueras, MMC
City Clerk

ATTORNEY DETERMINATION

The foregoing Intergovernmental Agreement between Electrical District No. 3, Pinal County, Arizona and the City of Maricopa, Arizona has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who have determined that it is in proper form and within the powers and authority granted under the laws of the State of Arizona to the Parties to the Agreement.

DATED this _____ day of _____, 2022.

A handwritten signature in blue ink, appearing to read "Paul R. Dine", is written over a horizontal line.

ED3 General Counsel

City Attorney

EXHIBIT A

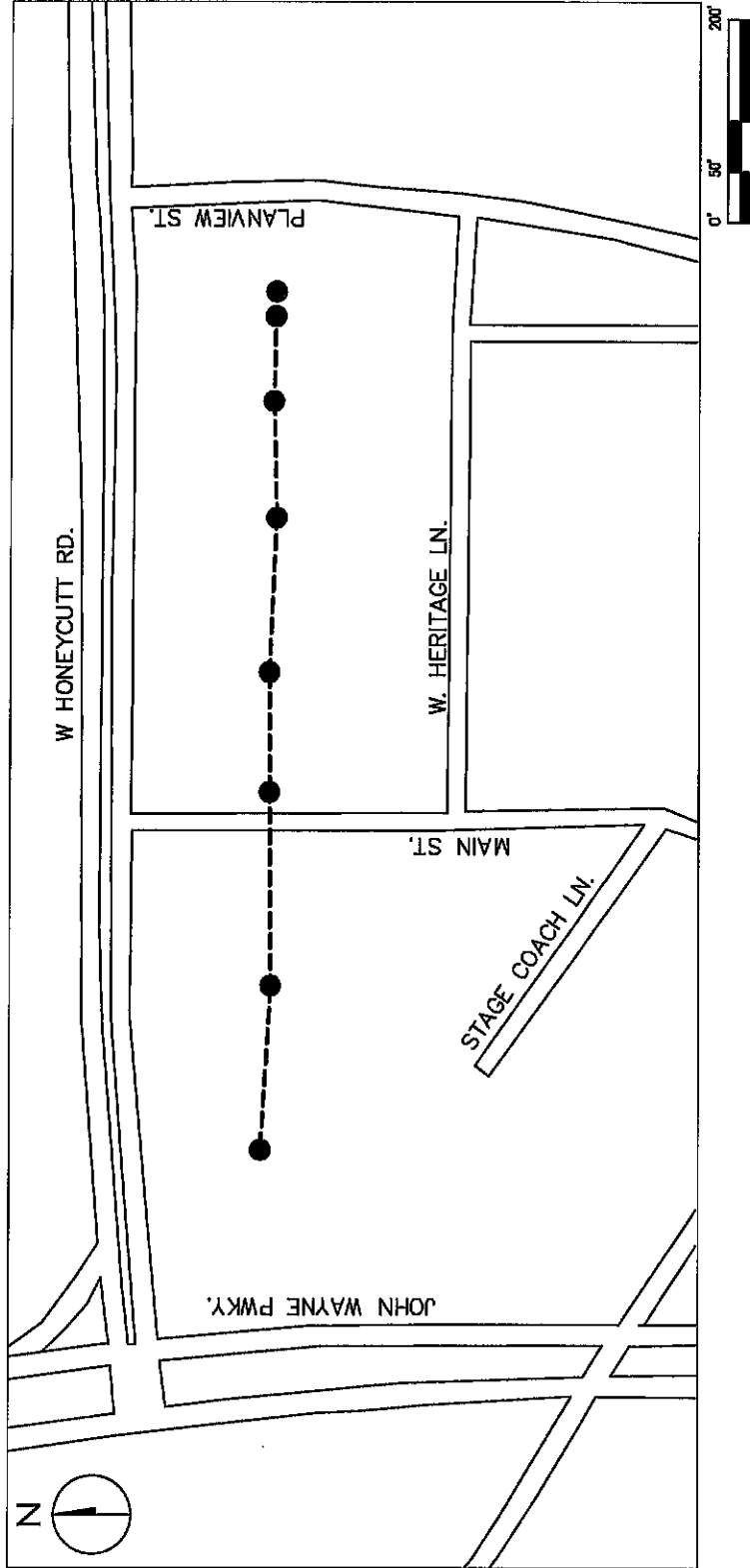


EXHIBIT "A" - OVERHEAD UTILITIES
AT HERITAGE DISTRICT
CITY OF MARICOPA, AZ.

DATE: 4/14/22
DRAWN: E.R.

SHEET:
1 OF 1

EXHIBIT "A"



LEGEND

● EXISTING POWER POLE TO BE REMOVED (8)

--- POWER LINES TO UNDERGROUND