

DESIGN & CONSTRUCTION AGREEMENT BETWEEN ELECTRICAL DISTRICT NO. 3 & CITY OF MARICOPA

WORK REQUEST# _____ **JOB#** _____
Internal Use Only Internal Use Only

This Agreement for Design and Construction of main electrical backbone infrastructure facilities (“the Project”) is entered into this _____ day of _____, _____, 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”).

The Project is described below:

Project Name:	
Project Location:	
Project Type:	
Delivery Voltage:	
Number & Size of Service Entrance Section (SES):	
Mailing Address:	
Telephone Number	

This Agreement includes the Terms and Conditions below, and describes the general obligation of ED3 and the MARICOPA. Construction drawings will be created by ED3 at the time MARICOPA receives final plat approval from Pinal County. Details of the Project will be provided on the construction drawings. ED3 has the right to terminate this Agreement if MARICOPA fails to satisfy all of the conditions within 120 days after ED3 provides the design drawings to MARICOPA.

1. **Design.** MARICOPA shall provide ED3 all drawings and data requested by ED3 that are pertinent to the design of the Project. ED3 shall review such drawings and data for compatibility with ED3 facilities and shall have sole discretion in determining whether MARICOPA facilities may be used with ED3's facilities. Per ED3 Electric Service Guidelines Design Deposits requirements, ED3 shall, design the electrical infrastructure facilities drawings. After acceptance of ED3 electrical infrastructure design by MARICOPA the cost of any revisions or changes made to the final design drawings shall be borne by MARICOPA. ED3 will provide one (1) full size set and AutoCAD file on CD format of ED3 Electrical design for said development.
2. **Electrical Infrastructure.** MARICOPA shall be responsible for Line Extension Fees and Costs in accordance with the ED3 Electric Service Guidelines, which from time to time may be amended, for installation of underground, primary and secondary electric cables along with all necessary appurtenances, including above-ground junction boxes, switch cabinets, underground vaults, connectors, transformers, etc., as ED3 determines necessary to provide electric service. ED3 will furnish service junction boxes, and junction cabinets and vaults for installation by Development in accordance with ED3 specifications.

ED3 shall construct all electric facilities up to the point(s) of delivery, including any connections to electric, in accordance with the ED3 Electric Service Guidelines and ED3 construction specifications and practices. Prior to ED3's installing any electric facility, MARICOPA shall install all water and sewer facilities and backfill. MARICOPA shall not install any curb, sidewalk, paving, or any conflicting foundation within the development boundaries until ED3 completes the installation of the electric facilities.

3. **Trenching and Conduit.** MARICOPA shall furnish all trenching and installation of UL Schedule 40 PVC 90° C conduit, backfill, compaction, 1-1/2 sack slurry 3/8" rock backfill over conduits as required by ED3's design, street light concrete bases, secondary service / junction boxes and underground vaults for the Development. Unless otherwise agreed in writing by ED3, MARICOPA shall perform, at MARICOPA's sole expense, all trenching, provision and installation of conduit, and backfilling material for ED3 Facilities ("MARICOPA Work"). All MARICOPA Work shall conform to National Electric Safety Code (NEC), OSHA regulations, and ED3 specifications per the Trenching and Conduit Requirements and Specifications Agreement.
4. **Surveying and Staking.** MARICOPA shall, at no cost to ED3, furnish all necessary surveying and staking of the Development's proposed features, including but not limited to the boundaries of the Public Utility Easement ("PUE"), all property corners and the location and grade elevation of the back of the curb, blue top elevation (final grade) surveying four (4) pins / corners location for ED3 Facilities. MARICOPA shall forward all results of survey to ED3 for review and approval.
5. **Easements.** MARICOPA shall provide ED3 all requested easements, including any easements required from third parties, at no cost to ED3, for ED3 to access and maintain the electric facilities installed under this Agreement. It is ED3's intent to place the greater part of the electrical facilities within the provided PUE. The parties recognize, however, that some facilities (including, but not limited to, switch cabinets and pulling vaults) likely cannot be accommodated within the PUE and will need to be placed within an easement outside the PUE. MARICOPA will be responsible for all legal fees associated with the preparation and recording of the 8ft. PUE. MARICOPA, at all times, shall permit ED3 to access and maintain any ED3 electric facility on MARICOPA property. MARICOPA understands and agrees that ED3 shall have no obligation to provide electric service to the Project unless and until MARICOPA has provided all such easements.
6. **Relocation Costs.** Cost of relocation of facilities found to be installed at the wrong location or grade due to MARICOPA requested changes in property lines, easement grade, and/or errors in staking, trenching, or survey, shall be borne by MARICOPA in the amount of the actual cost of relocation including administrative fees. The title to all facilities relocated by ED3, or relocated by MARICOPA at ED3's request and accepted by ED3, shall remain with ED3 at all times. MARICOPA, upon demand, shall reimburse ED3 for the costs of relocation of facilities made necessary by MARICOPA.
7. **Inspections.** MARICOPA shall permit ED3 to inspect, at any time, any MARICOPA provided facility. Any inspection by ED3 shall not be deemed an approval of any MARICOPA provided facility or a waiver by ED3 of any right to enforce strict compliance with the terms and conditions of this Agreement. MARICOPA shall meet with an ED3 inspector before construction begins. The meeting may be scheduled by calling (520) 424-9021 or the ED3 Project Leader.
8. **Indemnification and Governing Law.** ED3 shall not be responsible for, and MARICOPA shall indemnify, defend and hold harmless ED3 and members of its governing bodies, its officers, agents and employees, for, from and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses and liabilities ("Claims") arising out of or relating to MARICOPA's performance of MARICOPA Work, including without limitation Claims arising out of the performance of MARICOPA Work on property not owned by MARICOPA.

MARICOPA shall indemnify, defend, and hold harmless ED3, the members of its governing bodies, and its directors, officers, employees, agents and contractors for, from and against any loss, damage, liability, cost, or expense incurred by ED3, members of its governing bodies, directors, officers, employees, agents or contractors arising out of any act or omission of MARICOPA, or its directors, officers, employees, agents, contractors, or subcontractors. MARICOPA's obligation under this section shall not extend to any liability caused by the sole negligence of ED3.

MARICOPA shall release ED3 from any loss, damage, liability, cost, or expense incurred by MARICOPA arising out of (i) any delay by ED3 in performing, completing, or inspecting any work or (ii) any loss or damage to any installation prohibited by Section 8 caused by the negligent act or omission of ED3.

This Agreement shall be interpreted, governed by and construed in accordance with the substantive and procedural laws of the State of Arizona, without regard to conflicts of law principles. ED3 and MARICOPA agree that any action, suit, or proceeding arising out of or relating to this Agreement shall be initiated and prosecuted in a state or federal court of competent jurisdiction located in Pinal County, Arizona, and the parties irrevocably submit to the jurisdiction and venue of such court. To the fullest extent permitted by Law, ED3 and MARICOPA hereby irrevocably waive any and all rights to a trial by jury and covenant and agree that neither will request a trial by jury, with respect to any legal proceeding arising out of or relating to this Agreement.

9. **Permits.** MARICOPA shall secure all required State, County, and local permits and approvals to receive electric service.
10. **Compliance.** The existing applicable ED3 Electric Service Guidelines, as they may be amended or revised from time to time by ED3, and all terms and conditions thereof, are adopted and incorporated herein by reference as part of this Agreement except as specifically modified herein. The Electric Service Guidelines are on file at the principal offices of ED3.

MARICOPA shall require that any construction work performed by MARICOPA or its contractor or subcontractor shall be in accordance with national and local building and safety codes, the ED3 Electric Service Specifications and construction drawings, and the Electric Utility Service Entrance Requirements Committee.

11. **Miscellaneous.**
 - A.) The title to all work performed by ED3, or performed by MARICOPA at ED3's request and accepted by ED3, shall remain with ED3 at all times. Fees for electrical service also may be required. Please call (520) 424-9021 at least 60 days prior to the meter-set need date.
 - B.) The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Agreement.
 - C.) In signing this Agreement, ED3 certifies pursuant to ARS §35-391 that they do not have scrutinized business operations in the Sudan and pursuant to ARS §35-393 that they do not have scrutinized business operations in Iran.
 - D.) This Agreement and any attachments represent the entire agreement between MARICOPA and ED3 and 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 Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the Agreement, 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.

- E.) In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by ED3 and MARICOPA. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, MARICOPA and ED3 shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between MARICOPA and ED3. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.
- F.) ED3 warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of MARICOPA has an interest, financially or otherwise, in ED3. For breach or violation of this warranty, MARICOPA shall have the right to annul this Agreement without liability, or at its discretion to deduct from the compensation to be paid ED3 hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

12. **Termination.** This Agreement shall automatically terminate after **two (2) years** if MARICOPA has not performed all its obligations under **Paragraph 2**.

Any subsequent Agreement between ED3 and MARICOPA shall be subject to ED3's Electric Service Guidelines in effect at the time the subsequent Agreement is entered into by ED3 and the MARICOPA or its successor.

AGREEMENT REGARDING ELECTRICAL INFRASTRUCTURE AND SERVICE BETWEEN:

CITY OF MARICOPA		ELECTRICAL DISTRICT NO. 3 OF PINAL COUNTY ARIZONA	
Signature:		Signature:	
Signed By: <i>Please Print:</i>		Signed By: <i>Please Print:</i>	William H. Stacy
Title: <i>Please Print:</i>		Title: <i>Please Print:</i>	General Manager
Date:		Date:	