

PUBLIC ROADWAY PARTICIPATION AGREEMENT

This **PUBLIC ROADWAY PARTICIPATION AGREEMENT** (this “**Agreement**”) is made as of this 18th day of January, 2022 (the “**Effective Date**”), by and between PARAGON DEVELOPMENT GROUP, L.L.C., an Arizona limited liability company, and/or its successors or assigns (“**Paragon**”) and the CITY OF MARICOPA, an Arizona municipal corporation (“**City**”). Paragon and the City are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

A. Paragon is developing that certain real property, comprised of 11.91 acres. The property is located in sections 21, township 4 south, range 3 east of the Gila and Salt River Meridian, Pinal County, Arizona. It is bounded by Edison Road on the north and by the Lexington Avenue on the south, legally described in Exhibit A attached hereto (the “**Property**”). The Property is located within the municipal boundaries of the City.

B. Paragon will be improving portions of the Property on the north boundary along Edison Road, which would leave unimproved land immediately to the east of Paragon’s property.

C. The City desires that as part of Paragon’s development of the Property, it construct the half-street improvements on the parcel immediately to the east of Paragon’s Property to ensure proper flow of traffic and alleviate any public safety concerns.

D. The execution, delivery and performance by Paragon of this Agreement has been duly authorized by all necessary actions. The Agreement does not and will not violate any provisions of any existing law, rule, regulation, writ, judgment, injunction, decree, determination or award of any court or governmental body, any articles of incorporation, bylaws or similar organizational documents by which Paragon is bound.

E. Paragon and City recognize the impact the Property will have on the City’s road network regionally, and especially the need for the Roadway Improvements as described herein.

F. The Parties desire to enter into this Agreement to specify Paragon’s obligations relating to the Roadway Improvements.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements of the Parties contained herein, together with other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **INCORPORATION OF RECITALS.** The Parties acknowledge the accuracy of the foregoing Recitals. Each of the foregoing recitals is hereby incorporated into this Agreement by this reference and is made a part hereof.

2. **TERM.** This Agreement will remain in effect from the Effective Date until Paragon has performed its obligations under this Agreement.

3. **ROADWAY IMPROVEMENTS.** Paragon and the City agree to the following roadway improvements as part of developing the Property (the "**Roadway Improvements**"):

3.1 Edison Road. Prior to any certificate of occupancy being granted for the Property, Paragon will provide half-street improvements consisting of pavement, curb, gutter, streetlights, sidewalk and landscaping on Edison Road between the Property and Wilson Road, as shown on Exhibit B.

3.2 Public Bidding of Work. The Roadway Improvements are subject to Title 34 of Arizona Revised Statutes and must comply with City of Maricopa Purchasing Code, as found in Title 3, Chapter 3.65. Within thirty (30) days of receiving public bids for the construction of the Roadway Improvements, Paragon will provide certified bid tabulations comparing all bids and notifying City of the apparent low bidder for construction of the Roadway Improvements for City approval (the "**Agreed Cost**").

3.3 Review of Design and Construction Plans. The City shall have the right and authority to review and approve the plans and specifications for the Roadway Improvements prior to the work being commenced and, if there are any revisions to those plans and specifications after the work is commenced, to review and approve any revisions to the plans and specifications to ensure such plans and specifications are in accordance with applicable City standards. In addition, the City shall have the right and authority to inspect the ongoing construction of the Roadway Improvements to ensure that such construction is performed in accordance with the final approved plans and specifications therefor and the City standards applicable to such construction.

3.4 Construction. Paragon shall construct or cause to be constructed the Roadway Improvements and shall bear all the costs and expenses associated with the construction of the Roadway Improvements. The Roadway Improvements shall be constructed in compliance all applicable City standards in effect at the time of the Roadway Improvements. Paragon shall obtain all necessary governmental permits needed to plan and construct such Roadway Improvements. The installation and construction of the Roadway Improvements shall be according to specifications, standards and engineering practices regularly applied by the City to such improvements within the City. Paragon shall construct and install the Roadway Improvements in a good and workmanlike manner in conformity with specifications, standards and engineering regularly applied by the City.

3.5 Funding Obligation. Within sixty (60) days of the issuance of a notice to proceed to Contractor, City will pay to Paragon the Agreed Cost for the completion of the Roadway Improvements. In no event shall the City's funding obligation exceed \$85,059.

3.6 Acceptance. Upon completion of the installation and construction of the Roadway Improvements, Paragon shall convey the completed Roadway Improvements to the City, lien and debt free. Paragon shall give the City written notice ("Notice to Confirm") promptly following completion of the Roadway Improvements. Within twenty (20) business days after its receipt of the Notice to Confirm, the City shall inspect the Roadway Improvements identified therein as to whether it has been constructed in accordance with the City-approved plans and specifications. Upon completion of the inspection, the City shall deliver written notice to Paragon within thirty (30) business days of the inspection either: (1) approving construction of such Roadway Improvements ("Final Acceptance"); or (2) completely identifying, through a punch list, all specific items that are not in accordance with the City-approved plans and specifications that are to be corrected by Paragon. After acceptance of any Roadway Improvements, the City thereafter shall maintain, repair and operate such Roadway Improvements at its own cost, except as provided in Section 3.7. Paragon, at no cost to City, shall dedicate, convey or obtain as applicable all rights-of-way, rights of entry, easements and/or other use rights, wherever located on the Property, as useful or necessary for the construction, installation, operation and maintenance of the Roadway Improvements as required by the City.

3.7 Warranty. Paragon shall warrant to the City the construction of the Roadway Improvements against defective workmanship and/or materials for one (1) year from the date of the Final Acceptance (the "Paragon's Warranty"). This warranty shall survive the termination of this Agreement.

3.8 City's Obligation. The City shall own and maintain the Roadway Improvements following completion and acceptance thereof, subject to Paragon's Warranty obligations as provided in this Agreement. The City shall give written notice to Paragon of any warranty claims within thirty (30) days after the expiration of the applicable one (1) year warranty period; any claims received after such date shall not be effective and Paragon shall have no obligation with respect thereto.

3.9 Encroachment Permits. Paragon, its agents, and employees, shall have the additional right, upon receipt from the City of an appropriate encroachment permit, to enter and remain upon and cross over any City easements or rights-of-way to the extent reasonably necessary to facilitate such construction, or to perform necessary maintenance or repairs of such Roadway Improvements. Paragon's use of such easements and rights-of-way, pursuant to the encroachment permit, shall not impede or adversely affect the City's use and enjoyment thereof.

3.10 Restoration of Property. Paragon shall restore such City easements and rights-of-way, used pursuant to the encroachment permit, to their condition prior to Paragon's entry upon completion of such construction, repair, or maintenance. Paragon, its agents, and employees, also shall have the right, upon receipt from the City of an appropriate encroachment permit, to enter and remain upon and cross over any City easements or rights-of-way to the extent reasonably necessary to install and maintain landscaping material within the portion of the City right-of-way not used for vehicular travel.

3.11 Necessary Easements, Rights of Entry, or Other Use. It shall be a condition precedent to the obligation of Paragon to construct the Roadway Improvements herein specified

or otherwise required, that City shall have obtained any and all easements, rights of entry, and/or other use rights on or about all real property other than the Property upon, through or under which will be installed all or any portion of said Roadway Improvements, as useful or necessary for Paragon to enter and to properly perform all activities incident to Paragon's construction obligations hereunder (collectively, the "Easements"). Such costs of obtaining the Easements (including, without limitation, the costs of condemnation including legal fees and court costs) shall be paid by City.

3.12 No Obligation to Develop. If Paragon does not develop its interest in the Property, nothing contained herein shall be deemed to obligate Paragon to perform any act herein or complete any part or all of the Roadway Improvements in accordance with this Agreement. Paragon acknowledges that the obligations of Paragon contained herein are obligations that must be complied with in connection with the development of the Property, by Paragon or any successors or assigns thereof.

4. COOPERATION AND ALTERNATIVE DISPUTE RESOLUTION.

4.1 Appointment of Representatives. To further the cooperation of the parties in implementing this Agreement, the City and Paragon shall each designate and appoint a representative to act as a liaison between the City and its various departments and Paragon. The initial representative for the City (the "City Representative") shall be the City Engineer and the initial representative for Paragon shall be the project manager, as identified by Paragon from time to time (the "Paragon Representative"). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Roadway Improvements.

4.2 Default. Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within thirty (30) days after written notice thereof from the other party (the "Cure Period"), shall constitute a default under this Agreement; provided, however, that if the failure is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then the party shall have such additional time as may be necessary to perform or comply so long as the party commences performance or compliance within said thirty (30)-day period and diligently proceeds to complete such performance or fulfill such obligation. Any notice of a breach shall specify the nature of the alleged breach in the manner in which said breach may be satisfactorily cured, if possible.

5. NOTICES AND FILINGS.

5.1 Manner of Serving. Any notice or other communication required or permitted to be given under this agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

The City:

City Manager
City of Maricopa
Attn: Rick Horst
39700 West Civic Center Plaza
Maricopa, Arizona 85138
Telephone: 520-316-6811
Facsimile Number: 520-316-6803
Rick.Horst@maricopa-az.gov

City Attorney
City of Maricopa
Attn: Denis Fitzgibbons
1115 E. Cottonwood Lane, Suite 150
Casa Grande, AZ 85122
Facsimile Number: 520-426-9355
denis@fitzgibbonslaw.com

Paragon:

Paragon Development Group, LLC
Attn: Bruce Dunn
2241 East Pecos Road, Suite 1
Chandler, AZ 85225
(480) 726-7575 (office)
Facsimile Number:
bruce.dunn@paragonarizona.com

with a copy to:

or to such other addresses as either party hereto may from time to time designate in writing and delivery in a like manner.

5.2 Mailing Effective. Any notice or other communication directed to a party to this Agreement shall become effective upon the earliest of the following:

- (a) actual receipt by the party;
- (b) delivery to the addressed of the party; or

(c) if given by certified or registered U.S. Mail, return receipt requested, 72 hours after deposit with the United States Postal Service, addressed to the party.

6. GENERAL.

6.1 Waiver. No delay in exercising any right or remedy shall constitute a waiver. No waiver by the City or Paragon of any breach of a covenant or condition of this Agreement shall be construed as a waiver of any proceeding or succeeding breach of the same or any other covenant or condition of this Agreement. No waiver shall be effective unless in writing and signed by the granting party.

6.2 Further Acts. Each party agrees in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement. However, Paragon acknowledges that City is limited in its actions by law and ordinances.

6.3 Successors and Assigns. This Agreement cannot be assigned by either party without written consent of the other party. Such consent shall not be unreasonably withheld. Paragon's rights and obligations hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof and only by a written instrument, recorded in the Official Records of Pinal County, Arizona, expressly assigning such rights and obligations, except as otherwise provided. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns for the parties hereto.

6.4 No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between Paragon and the City. No term or provision of this Agreement shall be for the benefit of any person or entity not a party hereto and no such other person or entity shall have any right or cause of action hereunder.

6.5 Indemnification. Paragon shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the exercise of this Agreement by Paragon.

6.6 Amendment. No change or addition is to be made this Agreement except by written amendment executed by the parties hereto. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Pinal County, Arizona.

6.7 Assignment.

The rights and obligations of Paragon under this Agreement may be transferred or assigned, in whole or in part, by a written instrument, to any subsequent owner or

person (each, a "**Transferee**") having an interest in all or any portion of the Property ("**Transferred Property**"), pursuant to which the Transferee expressly accepts and assumes the rights and obligations of Paragon which are assigned by Paragon to such Transferee with respect to such Transferred Property. Upon the conveyance or other disposition (other than in trust pursuant to the granting of a deed of trust related solely to financing of the Property) (a "**Transfer**") of any portion of the Transferred Property, the Transferee shall be deemed to be a party to this Agreement with respect to such Transferred Property, and the prior owner shall have no further obligations under this Agreement regarding the Transferred Property arising from and after the date of Transfer of such Transferred Property. An assignment of rights may be on a non-exclusive basis. Such transfer or assignment does not relieve Paragon of its obligations unless the City approves a termination of Paragon's obligations in a written Agreement.

6.8 Authority. Each of the parties represents and warrants to the other that the persons executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

6.9 Arbitration. 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 Contractor and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and Paragon 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 the City and Paragon. 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.

6.10 Israel Boycott Provision. Each Party to this Agreement certifies to the other Parties that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393.

6.11 Conflicts of Interest. The Parties acknowledge that this Agreement is subject to cancellation pursuant to § 38-511, Arizona Revised Statutes, as amended.

6.12 Severability. If a court of competent jurisdiction declares any provision of this Agreement void or unenforceable such provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect.

6.13 Governing Law. The terms and conditions of this Agreement 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 Agreement, 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. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall

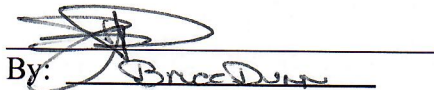
recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action

6.14 Construction of Agreement. This Agreement has been arrived at by negotiation and shall not be construed against either Party or against the Party who prepared the last draft.

6.15 Survival and Expiration. All agreements, representations, indemnities and warranties made in the Agreement shall survive the termination of this Agreement only as expressly set forth in this Agreement. Otherwise, the Agreement shall expire upon completion.

IN WITNESS WHEREOF, the parties have executed this Agreement.

PARAGON DEVELOPMENT GROUP,
LLC, an Arizona limited liability company

By: 

Its: Mansuro

By: _____

Its: _____

Dated: _____

CITY OF MARICOPA, an Arizona municipal
corporation

By: _____
Its: _____

Dated: _____

ATTEST:

Vanessa Bueras, CMC
City Clerk

APPROVED AS TO FORM:

Denis M. Fitzgibbons
City Attorney