

## **FIRE PROTECTION SERVICES AGREEMENT**

**THIS AGREEMENT** (“Agreement”) is made and entered into \_\_\_\_\_, 2022, by and between the **City of Maricopa**, an Arizona municipal corporation (the “City”) and **South Maricopa Fire Association**, an Arizona nonprofit corporation and its Declarants (the “Association”); the City and Association may be individually referred as a “Party”, and collectively referred to as the “Parties”).

### **RECITALS:**

A. The Association has subjected certain real property located in Pinal County, Arizona, as more particularly described on Exhibit A-1 and depicted on Exhibit A-2, attached hereto and incorporated herein (the “Service Area”), and there are certain other real properties located in Pinal County, Arizona, that may in the future be subject, if annexed into the Service Area, as more particularly described and designated as the “Annexable Area” on Exhibit A-3, attached hereto and incorporated herein (the “Annexable Service Area”) to that certain Declaration of Covenants, Conditions and Restrictions for South Maricopa Fire Association dated September 30, 2005 and recorded October 31, 2005, as Fee No. 2005-149010 in the official records of the Pinal County recorder’s office, as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions South Maricopa Fire Association dated March 3, 2006 and recorded on March 3, 2006, as Fee No. 2006-030998 in the official records of the Pinal County recorder’s office and that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions for South Maricopa Fire Association dated November 4, 2021 and recorded November 5, 2021, as Fee No. 2021-141252 in the official records of the Pinal County recorder’s office (collectively the “Declaration”, a copy of which may be found on file with the Associations managers office), for the purpose of, among other things, (i) arranging for the provision of fire and emergency services to the Service Area; (ii) enforcing the Declaration; and (iii) establishing, collecting and disbursing Association assessments and other Association fees and charges, as more particularly set forth in the Declaration. Properties within the Annexable Service Area that are annexed by the Association shall become part of the Service Area immediately upon annexation.

B. The City is willing to (i) provide Fire Protection Services, as hereinafter defined to the properties located in the Service Area that have a Pre-Annexation Agreement with the City, provided the City receives the Annual Assessment Dues (as defined below in Section 5), in accordance with the terms of this Agreement; (ii) enter into a Purchase Agreement for the acquisition of real property owned by the Association for the construction and use of a new fire station (the “Fire Station”) located at \_\_\_\_\_, as more particularly described on Exhibit B attached hereto (the “Fire Station Property”); (iii) construct the Fire Station on the Fire Station Property, provided the City receives the Association Impact Fees (as defined below in Section 8c), in accordance with the terms of this Agreement; and (iv) annex the properties within the Service Area into the City’s jurisdictional limits once the properties are contiguous to the City or otherwise legally eligible for annexation, upon the terms and conditions contained in this Agreement.

C. The Parties desire to enter into this Agreement for the provision of Fire Protection Services pursuant to the terms set forth below.

## AGREEMENTS:

**NOW THEREFORE**, in consideration of the mutual undertakings and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing Recitals are true and accurate statement of facts and the matters set forth therein are incorporated in their entirety into these Agreements as if fully restated.

2. Definitions.

a. “Building Permit Contribution Fee” means the fee levied against each Lot, and the Owner thereof, pursuant to Section 8c of this Agreement.

b. “Fire Protection Services” or “Services” means those services relating to fire suppression, fire prevention and fire inspection to be provided by the City to those properties within the Service Area that are subject to a Pre-Annexation Agreement and are current on their Annual Assessment Dues and Association Impact Fees in the manner set forth in this Agreement and the review and approval of water improvements plans, including, without limitation, fire hydrant placement, for the proper and adequate provision of such services. “Fire Protection Services” or “Services” does not include ambulance, emergency medical technician, or other emergency medical services as regulated by Title 36 of the Arizona Revised Statutes, medical services or Services to any property within the Service Area that does not have a Pre-Annexation Agreement with the City or is delinquent in any Annual Assessment Dues or Association Impact Fees owed to the Association.

c. “Fire Service Fee” means the fee levied against each Lot, and the owner thereof, pursuant to Section 8c of this Agreement.

d. “Lot” means any area within the Service Area or Annexable Service Area designed as either (i) a lot of any recorded subdivision plat, or (ii) a condominium unit established under the laws of the State of Arizona.

3. Term of Agreement.

a. The Parties hereby acknowledge and agree that this Agreement shall become effective once the properties depicted as 1 through 10, 11, 13, 16, 17 and 18 within the Service Area as shown in Exhibit A-2 have executed and by City Council approval are bound by a pre-annexation development agreement with the City, (a “Pre-Annexation Agreement”), and this Agreement has been executed by both the City and the Association (the “Effective Date”). Once the Effective Date has occurred, the City shall deliver written notice to the Association advising of same. The “Term” of this Agreement shall commence on the Effective Date and shall terminate on the date that is ten (10) years following the Effective Date unless the Parties mutually agree to extend the Term; provided, however, that any termination of this Agreement without achieving City Annexation requires at least two (2) years prior written notice of such termination (a “Termination Notice”) to the other Party. If no Termination Notice is delivered at least two (2) years prior to the expiration of the ten (10) year Term or any extension Term period granted herein and those properties expressly identified in Section 3b below have not been annexed by the City,

this Agreement shall automatically be extended for successive five (5) year Term periods until the two (2) year Termination Notice is delivered. Notwithstanding the foregoing, this Agreement shall automatically terminate as to any property within the Service Area upon the effective date of such property being formally annexed into the City.

b. Provided neither Party is in default on its obligations under this Agreement, once the City annexes the properties depicted as 1 through 10, 11 and 17 within the Service Area as depicted on Exhibit A-2 (the “City Annexation”), the Development Amount as herein defined, has been released to the City, and the Parties mutually agree that the Association no longer serves a purpose and the Association may cease doing business, at which time the Association shall record a termination of the Declaration on all Service Area property but only as such termination is permitted under the Declaration; and the Association’s affairs shall be wound up and the Association shall be dissolved. Upon termination of the Association, (i) all monies in the Development Account shall be immediately transferred to the City’s general fund and used for the construction and operation of the Fire Station or for any other City uses as determined in the City’s sole and absolute discretion; (ii) the Reversionary Interest set forth in Section 8e of this Agreement shall automatically terminate; (iii) any properties in the Service Area which have not been annexed into the City, but that have Pre-Annexation Agreements with the City and that are then receiving Services from the City pursuant to this Agreement, shall continue to receive Services from the City on the same terms and conditions as they have received under this Agreement including, but not limited to, the ability of the City to terminate Services as provided herein and this Agreement shall continue in full force and effect as to those properties without entering into a new Service Agreement.

4. Provision of Fire Protection Services. Immediately upon the Effective Date of this Agreement the City shall begin providing Fire Protection Services to the properties within the Service Area which have a Pre-Annexation Agreement with the City and have a current payment status with all their Annual Assessment Dues and Association Impact Fees owing. Prior to the construction and completion of the Fire Station on the Fire Station Property, the City’s Services shall be dispatched from the City fire station on Alterra Parkway, and any other City fire station with available resources closest in proximity to the Service Area. The City agrees to furnish and provide continuing Services to all properties within the Service Area and any Annexable Service Area properties that have been annexed into the Association prior to the termination of this Agreement which have a Pre-Annexation Agreement with the City, in a form substantially similar to Exhibit C or as otherwise approved by the City, and have paid all their Annual Assessment Dues and Association Impact Fees owing, including, without limitation, promptly dispatching firefighting and rescue equipment and adequate certified and qualified personnel to operate the same, and then making diligent efforts to provide the Fire Protection Services. Any Annexable Service Areas to be annexed into the Service Area and subjected to the Declaration, shall first be approved by the City prior to their annexation into the Association, which approval shall not be unreasonably withheld, conditioned or delayed, and the property owners within the Annexable Service Area to be annexed into the Association shall enter into a Pre-Annexation Agreement with the City. The City shall use reasonable efforts to provide Services to the Service Area as set forth in this Agreement in a manner that is consistent with Arizona Revised Statutes, any applicable adopted City ordinances and policies, as may be amended and/or modified by the City from time to time in the City’s discretion or as may be required by applicable law, and in the same manner as it provides services within the City’s jurisdictional limits. The Association understands and acknowledges the City shall use its own means and methods of performance, which shall not be

subject to control, direction, or supervision of the Association. Subject to the provisions of this Agreement, all equipment and personnel necessary and proper for the performance of this Agreement shall be provided by the City, and all persons engaged in providing the Services pursuant to the provisions of the Agreement shall be subject to the exclusive control, direction, education, training, employment and supervision of the City. The Association shall not have any right or power with respect to the employment, control, direction, education, training, supervision, suspension, or discharge of any person who may engage in the Services or activities in the City's performance of its obligations under this Agreement. Upon completion of construction of the Fire Station, the City shall be solely responsible for the use, maintenance, repairs, operation and staffing of the Fire Station incidental to providing the Services.

5. Payment for Fire Protection Services. In consideration for the City providing Services to the Service Area in accordance with Section 3 above, within thirty (30) days of the Effective Date, the City shall assume from the Association the responsibility for the collection of Annual Assessment Dues, as set forth herein, from the Service Area properties. The City shall collect from the Service Area properties, quarterly, the monthly equivalent of each homeowners Annual Assessment payment of Four Hundred Dollars (\$400) per home, which shall be the fee for any Lot which has received a building permit, and each homebuilder's reduced Annual Assessment payment of One Hundred Dollars (\$100) per Lot, which shall be the fee for each recorded platted Lot not having received a building permit, as are received and collected by the Association (collectively these Association fees referred to herein as the "Annual Assessment Dues"), less One Hundred Dollars (\$100) per Lot to be retained by the Association (the "Retained Funds") to fund the Association's annual operating budget. The Annual Assessment Dues may be deposited into the City's General Fund for immediate use and may be increased by the City based on a nationally recognized index so long as those increase amounts are allowed by the Declaration. The Association hereby agrees to use all legal means necessary to collect any fees due and owing to the Association or to pay for such collection services in the event the City incurs costs in collecting such fees. The Association's annual operating budget shall be subject to the City's approval, such approval not being unreasonably withheld, conditioned or delayed, within thirty (30) days preceding the start of each Fiscal Year. "Fiscal Year" means the period of twelve consecutive calendar months commencing on the Effective Date and each twelve-month calendar period thereafter for such given year. In any given Fiscal Year, once the amount of the Retained Funds collected equals the approved annual operating budget total, the full Annual Assessment Dues amounts shall thereafter be paid to the City by the Association and the Association shall not be entitled to Retained Funds until the next Fiscal Year budget period. The current approved Annual Operating Budget for the initial Fiscal Year commencing upon the Effective Date is attached hereto as Exhibit D.

6. Purchase and Sale Agreement. Within ten (10) days following the Effective Date, the Parties shall confer and mutually agree upon and execute a Purchase Agreement for the sale by the Association, and purchase by the City, of the Fire Station Property to be used solely as the location for the Fire Station to be constructed by the City (the "Purchase Agreement"). The Parties hereby acknowledge and agree that the following terms shall be incorporated into the Purchase Agreement: (i) the purchase price shall be the City's Initial Deposit, as defined below; (ii) the closing of the purchase ("Closing") shall occur within ninety (90) days following the execution of the Purchase Agreement; (iii) the City shall be required to start construction of the Fire Station within six (6) months following the Triggering Notice, as defined below; (iv) the Association shall have no encumbering deeds or liens on the Fire Station Property as of the Effective Date and shall

not permit any encumbering deeds or liens to be placed upon the Fire Station Property after the Effective Date and prior to the Closing without the City's prior written consent; (v) the Fire Station Property shall be conveyed to the City at Closing via Special Warranty Deed.

7. Escrow. Within ten (10) business days after the Effective Date, the Parties shall deposit a fully executed copy of the Purchase Agreement and the City's Initial Deposit with Title Security Agency of Pinal County, LLC, 421 E. Cottonwood Lane, Casa Grande, Arizona, 85122, Attn: LaTisha Sopha ("Escrow Agent"). Escrow Agent shall then establish a Purchase Agreement escrow account funded by the City's Initial Deposit ("Purchase Agreement Escrow Account"). Escrow Agent shall execute the Purchase Agreement in the space provided following the parties' signatures, fill in the Opening of Escrow with the date on which the Purchase Agreement Escrow Account is established, give prompt notice to the parties that the Purchase Agreement Escrow Account has been opened, and return a copy of the fully executed Agreement to the Parties. The date that Escrow Agent has performed all of the actions in the preceding sentence shall be the "Opening of Escrow".

8. Deposits.

a. City's Initial Deposit. Within ten (10) business days after the Effective Date, City shall deposit with Escrow Agent One Hundred Thirty-Seven Thousand Five Hundred Dollars (\$137,500) by wire transfer or other immediately available funds (together with all interest earned thereon while in Escrow, the "City's Initial Deposit") to be deposited into the Purchase Agreement Escrow Account, which City's Initial Deposit will be disbursed to the Association upon the Closing of the Fire Station Property with the City in accordance with the Purchase Agreement.

b. Association's Initial Deposit. Within ten (10) business days after the Effective Date, Association shall deposit with the City no less than Three Hundred Twelve Thousand Five Hundred Dollars (\$312,500) by wire transfer or other immediately available funds (the "Association's Initial Deposit"). Upon receipt of the Association's Initial Deposit, City will establish a bank account (the "Development Account") separate and independent from the City bank account to deposit the Association Initial Deposit into. All future Association Impact Fees, collected as set forth in Section 8c of this Agreement, shall also be deposited into the Development Account.

c. Collection and Deposit of Association Impact Fees. Within thirty (30) days of the Effective Date, the City shall assume from the Association the responsibility for the collection of Association Impact Fees from the Service Area properties. Promptly upon receipt of Association Impact Fees, the City shall deposit the Association Impact Fees into the Development Account. "Association Impact Fees" consist of all the residential Fire Services Fees of Four Hundred Dollars (\$400) per recorded final platted Lot and all residential Building Permit Contribution Fees of One Thousand Forty Dollars (\$1,040) per building permit on final platted Lots (collectively these Association fees are referred to herein as the "Association Impact Fees"). All commercial Fire Services Fees and commercial Building Permit Contribution Fees shall be mutually agreed upon in writing by the Parties and shall be considered Association Impact Fees to be deposited in the Development Account. The City will provide the Association with a quarterly accounting of the Development Account. The Association hereby acknowledges and agrees that until termination of this Agreement or default by either Party under this Agreement, it shall not change the Association Impact Fees without the express written consent of the City. Unless otherwise stated

herein, the Association Impact Fees collected by the City shall continue to be deposited into the Development Account for use by the City for its construction of the Fire Station on the Fire Station Property under the terms of this Agreement until such time that the construction of the Fire Station has been completed by the City or the City Annexation occurs. Once construction of the Fire Station has been completed by the City, the balance remaining in the Development Account shall be disbursed to the City's general fund, the Development Account shall be closed, and Association Impact Fees collected by the City shall be deposited directly to the City's general fund, which fees may be used for the operation of the Fire Station or for any other City uses as determined in the City's sole and absolute discretion, until the Association is terminated. The Association hereby agrees to deposit any Association Impact Fees it receives directly with the City within ten (10) days of receipt provided no default has occurred under this Agreement. The Association also agrees to use all legal means necessary to collect any Association Impact Fees due and owing to the Association or to pay for collection services in the event the City incurs costs in collecting such Association Impact Fees. The Association's obligations under this Section 8c shall cease upon the termination of the Association.

d. Fire Station Construction Trigger Event. City shall deliver written notice to the Association once the Development Account reaches the Development Amount (the "Triggering Notice"). For purposes of this Agreement, the Development Amount is Two Million Five Hundred Thousand Dollars (\$2,500,000). The City shall be required to begin construction of the Fire Station within six (6) months after the date of the Triggering Notice.

e. Reversionary Interest. If the City terminates this Agreement by providing a Termination Notice, or the City ceases providing the Services or does not undertake or complete the construction of the Fire Station pursuant to the terms of this Agreement and the Purchase Agreement prior to the City Annexation, the Association shall have the option and the right, at its sole and absolute discretion, to take title to the Fire Station Property, and take ownership of all useable Fire Station real property constructed improvements on the Fire Station Property and all funds remaining in the Development Account shall be refunded to the Association by the City within ten (10) days after Association's request. If such Reversionary Option is exercised by the Association, the Association shall refund to the City the sum paid to the Association by City for the Fire Station Property in accordance with the Purchase Agreement and any documented sum spent by City on all useable Fire Station real property constructed improvements not paid for from the funds in the Development Account, after which any equipment paid for by the City from its general fund shall be the property of the City. A Notice of Reversion Option, as set forth in Exhibit E, shall be recorded against the Fire Station Property upon Close of Escrow. In the event the Association exercises this option, the City agrees to immediately (i) sign any and all documents necessary to provide Association with clear and unencumbered title to the Fire Station Property, and (ii) deliver to the Association a written assignment (the "Assignment") of all documents, plans, specifications, and drawings related to construction of the Fire Station and all related improvements (the "Construction Documents"), including without limitation, all building and engineering plans, inspection and soils reports, and construction contract, which assignment shall be signed and accepted by each architect, engineer, and other professional that prepared the documents and drawings, upon the receipt of the funds owed the City from Association as stated in this Section 8e and the City's repayment to the Association of any funds remaining in the Development Account. The Assignment shall limit the Association's liability to any party to the Construction Documents to the period from and after the date of the Assignment and the City shall remain liable for all amounts owing and all responsibility for any claims arising from the City's

actions or failure to act prior to the date of the Assignment. This provision shall survive termination of this Agreement. Prior to exercising the Reversionary Option and only in the event the City ceases providing the Services or constructing the Fire Station pursuant to this Agreement, Association will give the City thirty (30) business days written notice.

9. Post-Closing Obligations. Upon issuance of the Triggering Notice, the amount on deposit in the Development Account shall be made available for the City's use in fulfilling its obligation to construct a Fire Station and shall continue to be made available for that purpose until such time as this Agreement terminates in accordance with the terms herein. If the Fire Station construction is completed and the City Annexation has not occurred, then all Association Impact Fees shall be paid directly to the City on a quarterly basis as set forth in Section 8c.

10. Representations and Warranties of the City. City hereby warrants and represents that as of the Effective Date and during the Term of this Agreement that:

a. City is a municipal corporation duly formed and validly existing under the laws of the State of Arizona. The person signing this Agreement and any documents in connection herewith on behalf of City has full power and authority to do so. This Agreement has been duly authorized and executed by City, and upon delivery to and execution by Association, shall be a valid and binding agreement of City.

b. This Agreement, and the terms contained herein, do not violate any duly promulgated applicable federal, state, and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any governmental authority having jurisdiction over the Parties.

c. The execution, delivery and performance by City of this Agreement and such other instruments and documents to be executed and delivered in connection herewith by City do not, and shall not, result in any violation of, or conflict with, or constitute a default under, any provisions of any agreement of City.

d. The representations and warranties of City set forth in this Section 11, shall survive this Agreement for a period of one (1) year from its termination.

11. Association's Representations and Warranties. Association hereby warrants and represents that as of the Effective Date and during the Term of this Agreement that:

a. Association is a nonprofit corporation duly organized and validly existing under the laws of the State of Arizona and is in good standing in the State of Arizona.

b. Association has the company power and authority to execute and deliver this Agreement and to perform all of its obligations under this Agreement as evinced by the Association's Declarants' and President's signatures below.

c. Association and its Declarants are duly authorized to enter into and perform this Agreement and this Agreement has been duly executed and delivered on behalf of Association and its Declarants. The individuals executing this Agreement on behalf of Association are duly authorized and empowered to enter into this Agreement. This Agreement constitutes the legal,

valid and binding obligations of Association, enforceable against Association in accordance with its terms.

d. The execution, delivery, and performance by Association of this Agreement and any other instruments and documents to be executed and delivered in connection with this Agreement by Association do not, and will not, result in any violation of, or conflict with, or constitute a default under, the provisions of any agreement, or other instrument or any law, regulation, rule, requirement, agreement, restriction, order, writ, decree, or judgment to which Association or by which Association is bound or to which Association is subject.

e. The representations and warranties of the Association set forth in this Section 12, shall survive this Agreement for a period of one (1) year from its termination.

12. Association's Board of Directors and Authorization. The Association hereby acknowledges and agrees that as of the Effective Date and throughout the Term of this Agreement, a City representative shall serve as a Director of the Association pursuant to the terms of the Declaration; provided, that the City representative acting as a Director shall not be subject to removal as a Director except for his or her gross negligence or willful misconduct in his or her capacity as a Director. Each Declarant hereby irrevocably appoints and authorizes the Association's Board of Directors as its nominee and agent, in the Association's name and on its behalf, to take all actions it deems necessary or appropriate in order to (a) enforce any of the terms of this Agreement or the Purchase Agreement; and (b) collect, receive and distribute any and all amounts received or payable in respect of the Association's obligations. The Board shall have the authority to perform all acts in furtherance hereof.

13. Time is of the Essence. Except as expressly provided in this Agreement, time is of the essence of the Agreement provided for herein. Notwithstanding the foregoing, in the event a Party fails to take any or all the actions required to be taken pursuant to this Agreement (the "Non-Performing Party"), such Non-Performing Party shall not be in default under this Agreement unless and until such time that Non-Performing Party has received a Notice of Default from the other Party and the Non-Performing Party fails to take the required action within ten (10) business days after receipt of written Notice of Default from the other Party regarding any monetary default and thirty (30) days after receipt of written Notice of Default from the other Party regarding any non-monetary default.

14. Assignment. This Agreement and all rights and obligations hereunder may not be assigned without the express written consent of the Parties. In no event shall the Parties be relieved of their obligations herein, unless assumed by the assigned party.

15. Waiver. A waiver by one Party of the performance of any covenant, condition or promise of the other Party shall not invalidate this Agreement, nor shall it be considered to be a waiver by such Party of any other covenant, condition or promise contained herein. The waiver of either or both Parties of the time for performing any act shall not be construed as a waiver of any other act required to be performed at a later date.

16. Notices. All notices given pursuant to this Agreement shall be in writing, shall clearly identify the purpose of the notice and the Section reference pursuant to which such notice is provided. Furthermore, any notice of default shall also clearly describe the nature of the default,



the applicable cure period applicable to such default, the date on which such cure period expires and the requested action to cure such default. Any notice sent by personal service shall be deemed received on the actual delivery thereof. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, then notice shall not be deemed given. Notices delivered by the United States Express Mail or overnight courier that provides next business day delivery shall be deemed given on the next business day after delivery of the same to the United States Postal Service or such courier with a signed acknowledgement of receipt. If any notice is transmitted by electronic transmission (email), the same shall be deemed served or delivered upon transmission thereof (as evidenced by the recipient's reply to such notice or other competent evidence of actual receipt), provided that a copy of such notice is concurrently sent by first-class mail postage prepaid. For purposes of all notices, if notice is received or deemed received on a Saturday, Sunday or legal holiday, or on a business day after 5:00 P.M., it shall be deemed received on the next business day. For purposes of all notices (including a notice of a change of address), the addresses of the Parties are as follows, which may be changed by five (5) days prior written notice:

To City: City of Maricopa  
39700 West Civic Center Plaza  
Maricopa, AZ 85138  
Attn: City Manager  
Telephone: (520) 316-6811  
Email: Rick.Horst@maricopa-az.gov

With a Copy To: City of Maricopa  
39700 West Civic Center Plaza  
Maricopa, AZ 85138  
Attn: City Attorney  
Telephone: (520) 426-3824  
Email: denis@fitzgibbonslaw.com

To Association: South Maricopa Fire Association  
c/o AAM, LLC  
1600 West Broadway Road, Ste 200  
Tempe, AZ 85282  
Attn: Vicki Sears  
Telephone: (602)957-9191  
Email: VSears@AssociatedAsset.com

17. Exhibits; Entire Agreement. All exhibits attached to this Agreement are hereby incorporated into and made a part of this Agreement. This Agreement and the exhibits contain the entire agreement between the Parties and supersede all prior written and/or oral representations and/or agreements.

18. Construction. The Parties acknowledge that each Party and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits to this Agreement. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, any remaining portion of this Agreement shall remain in effect.

19. Limitation of Remedies. Except for fraud or the willful misconduct of a defaulting Party, in no event shall any party be liable for any speculative, consequential or punitive damages, or lost profits. Upon the default of a Party under this Agreement, each Party shall have all of its legal and equitable rights and remedies.

20. Attorneys' Fees. If either party brings an action or other proceeding to enforce any of the terms, covenants or conditions of this Agreement, or for declaratory judgment with respect to any of the terms, covenants or conditions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and expenses incurred in such action from the other party, including, without limitation, reasonable attorneys' fees, and if any decision, order or judgment is obtained by the prevailing party, then payment of all such costs, expenses and fees shall be included in the decision, order or judgment, as applicable. Notwithstanding any provision of this Agreement to the contrary, the rights and obligations set forth in this Section 21 shall survive the termination of this Agreement.

21. Days: Business Days. Any unqualified reference to "day" or "days" in this agreement shall mean and refer to calendar days. References to "business" day or days shall mean and refer to a day of the week Monday through Friday but excluding state and/or federal holidays. If performance of a Party is specified pursuant to this Agreement to occur on a day which is not a business day, then such performance shall be extended to the next business day, and all future performance shall be counted from such extended dates.

22. Relationship of the Parties. The relationship of the Parties is solely that of an independent contractor relationship. Nothing is intended to create a partnership, joint venture, or a fiduciary relationship between the Parties or make one Party the agent of the other.

23. Headings. Any headings or captions used herein are inserted only as a matter of convenience and for reference only and in no way define, limit or describe the scope of this Agreement nor the intent of any of the provisions hereof.

24. Counterparts. This Agreement may be signed by the Parties in different counterparts and the signature pages combined shall create a document binding on all Parties. Each such executed copy shall have the full force and effect of any original executed instrument. Electronic signatures shall be as effective as original signatures.

25. Severability and Waiver. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision hereof. Any waivers must be in writing signed by the Party sought to be charged.

26. Governing Law; Venue. This Agreement and any documents executed in connection with or pursuant to this Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. The Parties agree that the proper venue for any legal proceedings arising out of this Agreement shall be Pinal County, Arizona.

27. WAIVER OF JURY TRIAL. AS A MATERIAL PART OF THE CONSIDERATION UNDER THIS AGREEMENT, CITY AND ASSOCIATION EACH WAIVE ALL RIGHTS TO A TRIAL BY JURY IF ANY LITIGATION ARISES IN CONNECTION WITH THIS AGREEMENT.

28. Exhibit List.

<u>Exhibit A-1</u>	-	Service Area Legal Description
<u>Exhibit A-2</u>	-	Service Area Property Depiction
<u>Exhibit A-3</u>		Annexable Service Area Property Depiction
<u>Exhibit B</u>	-	Fire Station Property Legal Description
<u>Exhibit C</u>	-	Pre-Annexation Agreement
<u>Exhibit D</u>	-	Initial Proposed Annual Operating Budget
<u>Exhibit E</u>	-	Notice of Reversion Option

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date set forth above.

**CITY:**

**THE CITY OF MARICOPA,**  
an Arizona municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Vanessa Bueras, MMC  
City Clerk

\_\_\_\_\_  
Denis M. Fitzgibbons  
City Attorney

**ASSOCIATION:**

**SOUTH MARICOPA FIRE ASSOCIATION,**  
An Arizona nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DECLARANTS:**

JHC AMARILLO 3 LP,  
an Arizona limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, as authorized agent for JHC Amarillo 3, LP, an Arizona limited partnership.

Notary Public  
My Commission Expires:

AMARILLO CREEK SOUTH, LLC,  
an Arizona limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, as authorized agent for Amarillo Creek South, LLC, an Arizona limited liability company.

Notary Public  
My Commission Expires:

PICACHO LANDING EQUITIES, LLC,  
an Arizona limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of Arizona                    )  
  ) ss.  
County of \_\_\_\_\_            )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, as authorized agent for Picacho Landing Equities, LLC, an Arizona limited liability company.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

PECAN WOODS, LLC,  
an Arizona limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

CVE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of Arizona                    )  
  ) ss.  
County of \_\_\_\_\_            )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, as authorized agent for Pecan Woods, LLC, an Arizona limited liability company.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

State of Arizona                    )  
  ) ss.  
County of \_\_\_\_\_            )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, as authorized agent for CVE, Inc., an Arizona corporation.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

HAM SIENA, L.L.C.  
an Arizona limited liability company

HAM-MESA, L.L.C.,  
an Arizona limited liability company

By: \_\_\_\_\_  
Name: Harry Zeitlin  
Its: Manager

By: \_\_\_\_\_  
Name: Harry Zeitlin  
Its: Manager

HAM PAPAGO, L.L.C.  
an Arizona limited liability company

By: \_\_\_\_\_  
Name: Harry Zeitlin  
Its: Manager

STATE OF ARIZONA )  
County of Maricopa ) ss.

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_ 2022, by Harry Zeitlin, the manager of HAM SIENA, L.L.C., an Arizona limited liability company for and on behalf thereof.

Notary Seal:

Notary Public

STATE OF ARIZONA )  
County of Maricopa ) ss.  
)

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_ 2022, by Harry Zeitlin, the manager of HAM-MESA, L.L.C., an Arizona limited liability company for and on behalf thereof.

Notary Seal:

Notary Public



STATE OF ARIZONA )

) ss.

County of Maricopa )

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_ 2022, by Harry Zeitlin, the manager of HAM PAPAGO, L.L.C., an Arizona limited liability company for and on behalf thereof.

Notary Seal:

\_\_\_\_\_  
Notary Public

AMARILLO & PAPAGO INVESTMENTS, LLP  
an Arizona limited liability partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of Arizona                    )  
  ) ss.  
County of \_\_\_\_\_            )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, as authorized agent for Amarillo & Papago Investments, LLP, an Arizona limited liability partnership.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

PALOMINO RANCH PARTNERS, LLC  
an Arizona limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of Arizona                    )  
  ) ss.  
County of \_\_\_\_\_            )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, as authorized agent for Palomino Ranch Partners, LLC, an Arizona limited liability company.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

PRP 350, LLC  
a Washington limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of Arizona                    )  
  ) ss.  
County of \_\_\_\_\_            )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, as authorized agent for PRP 350, LLC, a Washington limited liability company.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

EXHIBIT A-1

SERVICE AREA LEGAL DESCRIPTION

EXHIBIT A-2

SERVICE AREA PROPERTY DEPICTION

EXHIBIT A-3

ANNEXABLE SERVICE AREA PROPERTY DEPICTION

## EXHIBIT B

### FIRE STATION PROPERTY LEGAL DESCRIPTION



## EXHIBIT C

### PRE-ANNEXATION DEVELOPMENT AGREEMENT

EXHIBIT D

INITIAL PROPOSED ANNUAL OPERATING BUDGET

EXHIBIT E

NOTICE OF REVERSION OPTION