

**MAYOR AND COUNCIL PUBLIC MEETING NOTICE
SPECIAL MEETING - JUNE 22, 2022 AT 5:30 PM**



Pursuant to A.R.S. Sec. §38-431.02, notice is hereby given to the members of the City Council and to the general public that the Mayor and Council will hold a **SPECIAL MEETING on WEDNESDAY, JUNE 22, 2022, at 5:30 p.m.**, at City Hall - Council Chamber, 425 Tenth Street, Douglas, AZ 85607.

If you would like to address the City Council regarding any item on the agenda, please contact the City Clerk at (520) 417-7301 or via email at alma.andrade@douglasaz.gov to complete your request to speak form.

Members of the City of Douglas Council will attend either in person or by telephone.

If authorized by a majority vote of the Council of the City of Douglas, the Council may adjourn the meeting at any time and move into Executive Session for legal advice on any agenda item, pursuant to A.R.S. § 38-431.03. The Executive Session will be held immediately after the vote to go into Executive Session and will not be open to the public.

Notice is hereby given that pursuant to A.R.S. §1-602. A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the City Council are audio and/or video recorded, and, as a result, proceedings in which children are present may be subject to such recording. Parents in order to exercise their rights may either file written consent with the City Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. §1-602. A.9 have been waived."

AGENDA - A copy of the agenda will be available at the office of the City Clerk at 425 Tenth Street, Douglas, Arizona at least twenty-four hours in advance of the meeting.

CONSENT AGENDA - ORDER, DEFERRAL AND ACCELERATION OF AGENDA ITEMS, MAY OCCUR, ALONG WITH VOTE WITHOUT DISCUSSION: Information concerning the consent items has been forwarded to each Council Member prior to this meeting for study and is on file at the City Clerk's Office in City Hall. Unless some other member of the audience or Council Member has a question concerning an item and asks that it be withdrawn from the consent list, the items OCCUR, ALONG WITH VOTE WITHOUT DISCUSSION: are approved at one time by the City Council. The action taken by the Council in approving consent items is set forth in the explanation of the individual items.

MEMBERS OF THE PUBLIC can submit their questions for the Call to the Public section by email to alma.andrade@douglasaz.gov by Tuesday, JUNE 21, 2022, by 5:00 p.m. in order to be read during meeting. If a Call to the Public has been sent to the City Clerk, please call (346) 248-7799 at 5:30 p.m. and enter Meeting ID: 794-497-8929, Passcode: 9371 when prompted, and wait to be called upon to participate. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.

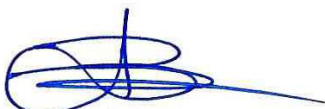
PUBLIC NOTICE - Live Stream and Audio/Video recording may be in progress during all public portions of Council meetings held in these Chambers. If you are in Council Chambers during the Council meeting you are consenting to be recorded and live-streamed.

Dated this 17th day of June, 2022.

AGENDA

1. CALL TO ORDER.
2. PLEDGE OF ALLEGIANCE.
3. ROLL CALL.
4. PERSONS WISHING TO ADDRESS THE COUNCIL IN WRITING OR VERBALLY ON ANY ITEM NOT ON THE AGENDA.
5. CERTIFICATE of RECOGNITION to ANDRES ESCOJIDO for his GALLANTRY ASSISTANCE during a structure fire in Bisbee, Arizona.
6. DISCUSSION/DECISION on APPROVALS.
 - A. **THIRD READING OF ORDINANCE NO. 22-1148**, an Ordinance of the Mayor and Council of the City of Douglas, Cochise County, Arizona, **AUTHORIZING** the **LEASE AGREEMENT** and **MEMORANDUM OF AGREEMENT** for **SUN STATE TOWERS** to establish a communications facility on a portion of parcel # 409-13-19008 located at 1st Street and E Avenue, Douglas, Arizona, and authorizing the City Manager to execute all necessary documents; establishing severability of components of Ordinances; and establishing an effective date thereof.
 - B. **SECOND READING OF ORDINANCE NO. 22-1150**, an Ordinance of the Mayor and Council of the City of Douglas, Cochise County, Arizona, **REZONING ONE PARCEL of LAND within the NORTHWEST CORNER OF THE INTERSECTION OF N. WASHINGTON AVE AND E. HIGHWAY 80** located in Douglas, Arizona, from **SINGLE-FAMILY RESIDENTIAL to GENERAL COMMERCIAL** and **AMENDING** the **OFFICIAL ZONING DISTRICT MAP**, established by Ordinance 691 and amended by Ordinances 858 and 22-1145; establishing severability of components of Ordinance; and establishing an effective date thereof.
 - C. **RESOLUTION NO. 22-1507**, a Resolution of the Mayor and Council of the City of Douglas, Cochise County, Arizona, **AUTHORIZING** the City of Douglas to **ENTER** into the **ARIZONA MUNICIPAL RISK RETENTION POOL FOURTH** amended and restated **MEMBERSHIP AGREEMENT** and **AUTHORIZING** the City Manager to sign the Agreement and any necessary documents related thereto.
 - D. **RESOLUTION NO. 22-1508**, a Resolution of the Mayor and Council of the City of Douglas, Cochise County, Arizona, **AUTHORIZING** the **EXECUTION** of a **CONTRACT RENEWAL** between the City of Douglas and **ALMA VILDOSOLA** to provide services as the **CITY MAGISTRATE** for the City of Douglas.
7. ADJOURNMENT.

Posted at City Hall on Friday, June 17, 2022, @ 3:00 p.m. by:



Alma Andrade, City Clerk



Cynthia J. Rebles
Deputy City Clerk

Members of the City of Douglas Council will attend either in person or by telephone.

PURSUANT TO THE AMERICANS WITH DISABILITIES ACT (ADA), THE CITY OF DOUGLAS DOES NOT, BY REASON OF A DISABILITY, EXCLUDE FROM PARTICIPATION IN OR DENY BENEFITS OF SERVICES, PROGRAMS OR ACTIVITIES OR DISCRIMINATE AGAINST ANY QUALIFIED PERSON WITH A

DISABILITY. INQUIRIES REGARDING COMPLIANCE WITH ADA PROVISION, ACCESSIBILITY OR ACCOMMODATION CAN BE DIRECTED TO MIGUEL GUTIERREZ WITHIN 72 HOURS AT TELEPHONE NO. (520) 417-7311, PHONE/TDD/TTY NO. (520) 364-1582, FAX (520) 417-7174, 425 TENTH STREET, DOUGLAS, ARIZONA 85607

**DOUGLAS, AZ
COUNCIL AGENDA ITEM**

Meeting Date: 06/22/2022

SUBMITTED BY: Xenia Gonzalez, Interim Neighborhoods Resources Director
MANAGEMENT TEAM REVIEW: Ana Urquijo, City Manager; Luis Pedroza, Deputy City Manager
FOCUS AREA: Collaboration
ORGANIZATIONAL IMPROVEMENTS: Provide for improved communications capabilities for City residents

SUBJECT: **THIRD READING OF ORDINANCE NO. 22-1148**, an Ordinance of the Mayor and Council of the City of Douglas, Cochise County, Arizona, **AUTHORIZING the LEASE AGREEMENT and MEMORANDUM OF AGREEMENT for SUN STATE TOWERS** to establish a communications facility on a portion of parcel # 409-13-19008 located at 1st Street and E Avenue, Douglas, Arizona, and authorizing the City Manager to execute all necessary documents; establishing severability of components of Ordinances; and establishing an effective date thereof.

EXECUTIVE SUMMARY:

Sun State Towers is requesting to enter into a lease agreement to place an antenna in City property located at 1st Street and E Avenue (parcel #409-13-19008). The initial lease term is for ten (10) years with renewal terms of four (4) successive periods of ten (10) years each at a monthly rent of \$1,250 with a 2% rent increase in year two (2) of the initial term and every year thereafter, including throughout any renewal terms exercised.

BACKGROUND:

Sun State Towers is requesting to install a telecommunications tower that supports multiple telecommunications antennae. The initial lease term is for ten (10) years with option to renew for four (4) successive periods of ten (10) years each. During the initial year of the first term, Sun State Towers will pay the City \$1,250 per month, with an increase amount of 2% (\$1,275) in year two (2) of the initial term, and every year thereafter, including any renewal terms exercised.

DISCUSSION & RECOMMENDATION:

City understands that this agreement will be up to fifty (50) years, including initial lease term and renewal terms; unless the tenant is in violation and fails to cure the violation in accordance with the agreement terms.

FISCAL IMPACT:

\$15,000 initial year revenue, with 2% annual increase including throughout any renewal terms thereafter.

“...I move that the Mayor and Council approve the third reading of Ordinance No. 22-1148 by number and title only.”

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ORDINANCE NO. 22-1148

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF DOUGLAS, COCHISE COUNTY, ARIZONA, AUTHORIZING THE LEASE AGREEMENT AND MEMORANDUM OF AGREEMENT FOR SUN STATE TOWERS TO ESTABLISH A COMMUNICATIONS FACILITY ON A PORTION OF PARCEL # 409-13-19008 LOCATED AT 1ST STREET AND E AVENUE, DOUGLAS, ARIZONA, AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; ESTABLISHING SEVERABILITY OF COMPONENTS OF ORDINANCE; AND ESTABLISHING AN EFFECTIVE DATE THEREOF.

WHEREAS, Article VII, Sec. 5(12), of the City Charter provides that the acquisition, sale, lease or exchange of real property shall be by ordinance; and

WHEREAS, Sun State Towers has requested the City to grant an Easement on a portion of parcel # 409-13-19008 located on 1st Street and E Avenue; and

WHEREAS, the proposed easement will allow the City of Douglas to consummate a transaction to enter into a Lease Agreement and Memorandum of Agreement for a communications facility and Option to Sun State Towers IV, LLC, a Delaware limited liability company; and

WHEREAS, a copy of the Lease Agreement and Memorandum of Agreement, inclusive of property description, and site are attached as Exhibits “A”, “B”, and “C” and incorporated into this ordinance by reference; and

WHEREAS, it is in the City’s best interest to enter into said Lease Agreement and Memorandum of Agreement.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the City of Douglas, Arizona, as follows:

Section 1. The approval of the Lease Agreement and Memorandum of Agreement, a copy of which is attached as Exhibits “A”, “B” and “C” and incorporated herein by reference, is found to be in the best interest of the City of Douglas.

Section 2. The City Manager and the City Clerk are hereby authorized to execute and deliver the Lease Agreement and Memorandum of Agreement and any related documents necessary to the consummation of the transactions contemplated by the Lease Agreement and Memorandum of Agreement.

Section 3. The officers of the City Council and the City of Douglas are hereby authorized and directed to fulfill all obligations under the terms of the Lease Agreement and Memorandum of Agreement.

Section 4. Severability: If any chapter, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance and this Ordinance shall continue in full force and effect after the deletion of the illegal or unconstitutional provision.

Section 5. Effective date. The provisions in this Ordinance shall be effective thirty (30) days after final approval and adoption by the Mayor and Council.

PASSED AND ADOPTED by the Mayor and Council of the City of Douglas, Arizona, this 22nd day of June, 2022.

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Donald C. Huish, Mayor

Attest:

Approved as to form:

Alma Andrade, City Clerk

Denis Fitzgibbons, City Attorney

Prepared by:
Xenia Gonzalez, Interim Neighborhood Resources Director.

EXECUTED PRIME LEASE INSTRUCTIONS TO LANDLORD

In order to ensure the prompt execution and processing of all Prime Leases, Sun State Towers respectfully requests that the instructions below are followed when preparing to return executed agreements.

1. Prior to returning to Sun State Towers, please sign and date the signature page of all copies of the Prime Lease and Memorandum of Lease.
2. Ensure that all necessary witness signatures have been obtained (if witnesses are required).
3. Ensure that all applicable notary fields are completed and stamped with the notary's stamp (only if required by law).
4. Please complete a W-9, Payment Authorization Form, and if applicable, a mortgage information form.
5. Sun State Towers will retain two (2) originals of each document. Please print as many copies as you plan to retain, along with two (2) originals for Sun State Towers.
6. Please print all signed documents on one-sided paper.
7. Send original documents to the following address:

Sun State Towers IV, LLC
Attn: Tower Development
1426 North Marvin Street #101
Gilbert, AZ 85233
8. Sun State Towers will return your fully executed originals to the notice address provided.

LEASE AGREEMENT

THIS LEASE AGREEMENT (“*Prime Lease*”) is made effective as of the date of the latter signature hereof (the “*Execution Date*”) and is by and between Landlord and Sun State Towers.

RECITALS

- A. WHEREAS, Landlord is the owner of that certain parcel of land (the “*Property*”) located in the County of Cochise, State of Arizona, as more particularly described on Exhibit A;
- B. WHEREAS, Landlord desires to grant to Sun State Towers an option to lease from Landlord a portion of the Property (the “*Compound*”), together with easements for ingress and egress and the installation and maintenance of utilities (the “*Easement*” and together with the Compound, the “*Site*”) both being approximately located as shown and/or described on Exhibit B; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of all of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Business and Defined Terms. For the purposes of this Prime Lease, the following capitalized terms have the meanings set forth in this paragraph 1.

- (a) ***Sun State Towers:*** Sun State Towers IV, LLC,
a Delaware limited liability company
- (b) ***Notice Address of Sun State Towers:*** Sun State Towers IV, LLC
1426 North Marvin Street #101
Gilbert, AZ 85233
Attn: Land Management
- (c) ***Landlord:*** City of Douglas,
an Arizona municipal corporation
- (d) ***Notice Address of Landlord:*** 425 E 10th Street
Douglas, AZ 85607
- (e) ***Option Period:*** Twelve (12) months
- (f) ***Option Consideration:*** \$1,500.00
- (g) ***Commencement Date:*** The date specified in the written notice by Sun State Towers to Landlord exercising the Option constitutes the Commencement Date of the Term.
- (h) ***Initial Term:*** Ten (10) years, commencing on the Commencement Date and continuing until midnight of the day immediately prior to the tenth (10th) anniversary of the Commencement Date.

Site Name: Fired
Site Number: AZ04-142

(i) **Renewal Terms:** Each of the four (4) successive periods of ten (10) years each, with the first Renewal Term commencing upon the expiration of the Initial Term and each subsequent Renewal Term commencing upon the expiration of the immediately preceding Renewal Term.

(j) **Term:** The Initial Term with any and all Renewal Terms.

(k) **Rent:** The monthly amount of \$1,250.00. In the event that Sun State Towers licenses or subleases all or a portion of the Site or Tower Facilities to multiple Collocators (as defined below) beyond the initial Collocator, the Rent shall increase by \$400.00 per month, for each Collocator, during the term of such license or sublease, subject to the Increase Amount.

(l) **Increase Amount:** In year two (2) of the Initial Term, and every year thereafter, including throughout any Renewal Terms exercised, the yearly Rent will increase by two percent (2%) over the Rent paid during the previous year.

2. Option to Lease.

(a) **Grant of Option.** Landlord hereby gives and grants to Sun State Towers and its assigns, an exclusive and irrevocable option to lease the Site during the Initial Option Period (the “**Option**”).

(b) **Consideration for Option.** Option Consideration is due and payable in full within thirty (30) days of the Execution Date.

(c) **Option Period Inspections and Investigations.**

(i) During the Option Period, Landlord will provide Sun State Towers with any keys or access codes necessary for access to the Property.

(ii) During the Option Period, Sun State Towers and its officers, agents, employees and independent contractors may enter upon the Property to perform or cause to be performed test borings of the soil, environmental audits, engineering studies and to conduct a metes and bounds survey of the Site and/or the Property (the “**Survey**”), provided that Sun State Towers will not unreasonably interfere with Landlord’s use of the Property in conducting these activities. Upon mutual agreement of the parties, the legal description of the Site as shown on the Survey may replace Exhibit B of this Prime Lease and be added as Exhibit B of the Memorandum of Lease.

(iii) Sun State Towers may not begin any construction activities on the Site during the Option Period other than those activities described in, or related to, this paragraph 2(c).

(d) **Exercise of Option.** Sun State Towers may, in its sole discretion, exercise the Option by delivery of written notice to Landlord at any time during the Option Period. If Sun State Towers exercises the Option, then Landlord will lease the Site to Sun State Towers subject to the terms and conditions of this Prime Lease. If Sun State Towers does not exercise the Option, this Prime Lease will terminate.

3. Term.

(a) Initial Term. The Initial Term is as provided in paragraph 1(h).

(b) Renewal Terms. Sun State Towers will have the right to extend this Prime Lease for each of the Renewal Terms. Each Renewal Term will be on the same terms and conditions provided in this Prime Lease except that Rent will escalate as provided in paragraph 4(b). This Prime Lease will automatically be renewed for each successive Renewal Term unless Sun State Towers notifies Landlord in writing of Sun State Towers' intention not to renew the Prime Lease at any time prior to the expiration of the Initial Term or the Renewal Term which is then in effect.

4. Consideration.

(a) Sun State Towers will pay its first installment of Rent within sixty (60) days of the Commencement Date. Thereafter, Rent is due and payable in advance on the first day of each calendar month to Landlord at Landlord's Notice Address. Rent will be prorated for any partial months, including, the month in which the Commencement Date occurs.

(b) On the anniversary of the Commencement date, the Rent will increase by the Increase Amount.

(c) In the event Sun State Towers makes an overpayment of Rent or any other fees or charges to Landlord during the Term of this Prime Lease, Sun State Towers may, but will not be required, to treat any such overpayment amount as prepaid Rent and apply such amount as a credit against future Rent due to Landlord.

(d) Sun State Towers will not be required to remit the payment of Rent to more than two (2) recipients at any given time.

5. Use.

(a) Sun State Towers will be permitted to use the Site for the purpose of constructing, maintaining, removing, replacing, securing, and operating a communications facility and uses incidental thereto, including, but not limited to, the construction or installation and maintenance of a telecommunications tower (the "***Tower***"), structural tower base(s), guy anchors, guy wires, communications equipment, one or more buildings or equipment cabinets, equipment, radio transmitting and receiving antennas, personal property and related improvements and facilities on the Compound (collectively, the "***Tower Facilities***"), to facilitate the use of the Site as a site for the transmission and receipt of communication signals including, but not limited to, voice, data and internet transmissions and for any other uses which are incidental to the transmission and receipt of communication signals of any kind and frequency (the "***Intended Use***"). The Intended Use shall include Sun State's ability to install utilities (including, but not limited to, electricity and electric power sources or creation of any kind, fiber optic lines, cable lines, and any cabling or transmission conduits of any kind or type) in, on, and to the Site. The Intended Use shall also include the Sun State's right to access, ingress, and egress the Site at its sole discretion 24 hours a day, seven (7) days a week.

Site Name: Fired
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(b) Sun State Towers, at its sole discretion, will have the right, with prior notice to but without the consent of Landlord, to license or sublease all or a portion of the Site or the Tower Facilities to other parties (each, a “*Collocator*” and collectively, the “*Collimators*”). The Collimators will be entitled to modify the Tower Facilities and to erect additional improvements on the Compound, including, but not limited to antennas, dishes, cabling, additional buildings or shelters ancillary to the Intended Use. The Collimators will be entitled to all rights of ingress and egress to the Site and the right to install utilities on, in, and to the Site that Sun State Towers has under this Prime Lease, and shall have all rights and inclusions of the Site’s Intended Use described herein including, but not limited to, the use of any easement described below and on the same terms as Sun State Towers, and to all other rights set forth herein.

6. Tower Facilities.

(a) Sun State Towers will have the right, at Sun State Towers sole cost and expense, to erect the Tower Facilities which will be the exclusive property of Sun State Towers throughout the Term as well as upon the expiration or termination of this Prime Lease, provided that Sun State Towers removes the Tower Facilities within one hundred eighty (180) days of the termination of this Prime Lease. In the event that Sun State Towers fails to remove the Tower Facilities one hundred eighty (180) days after the termination of this Prime Lease, the Tower Facilities shall become the property of the Landlord.

(b) Landlord grants Sun State a non-exclusive easement in, over, across and through the Property, as more particularly described and/or depicted on Exhibit B, for construction, installation, maintenance, and operation of the Tower Facilities including: (i) access to the Site for construction machinery and equipment, (ii) storage of construction materials and equipment during construction of the Tower Facilities, and (iii) use of a staging area for construction, installation and removal of equipment.

(c) Sun State Towers may, at its sole expense and with Landlord’s prior written approval, not to be unreasonably withheld, conditioned or delayed, use any and all appropriate means of restricting access to the Compound or the Tower Facilities, including, without limitation, construction of a fence and may install and maintain identifying signs or other signs required by any governmental authority on or about the Site, including any access road to the Site.

(d) Sun State Towers will maintain the Compound, including the Tower Facilities, in a reasonable condition throughout the Term. Sun State Towers is not responsible for reasonable wear and tear or damage from casualty and condemnation. With Landlord’s written consent, not to be unreasonably withheld, conditioned or delayed, Sun State may clear all trees, undergrowth, or other obstructions and trim, cut, and keep trimmed all tree limbs which may interfere with or fall upon the Tower Facilities or the Site.

(e) Sun State Towers (and any Collimators — which are collectively referred to herein as “*Sun State*”) may replace and augment Sun State’s equipment or portions thereof and add or modify the frequencies upon which such equipment operates as needed to meet Sun State’s business objectives, whether such equipment or frequencies are specified or not on any attachments to the applicable site lease supplement with a respective Collocator. Sun State shall be permitted to make “*Equipment Modifications*” (as defined below) without incurring any

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Site Number: AZ04-142

increase in the then current Rent, and without Landlord’s approval thereof conditioned upon any extension of the remaining Term or other change to the terms and conditions of any such supplement (including the terms and conditions of this Prime Lease). For purposes of this Prime Lease, “**Equipment Modifications**” means removal of Sun State’s equipment installed at the Site, (collectively, the “**Old Equipment**”), and replacing the same with new equipment (collectively, the “**Replacement Equipment**”).

(f) Sun State Towers agrees to install or cause the installation of equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards. In the event any of Sun State Towers’ installed equipment causes such interference, and after Landlord has notified Sun State Towers in writing of such interference, Sun State Towers will take all commercially reasonable steps necessary to correct and eliminate the interference including but not limited to, at Sun State Towers’ option, powering down such equipment and later powering up such equipment for intermittent testing. Landlord shall not be entitled to terminate this Agreement or relocate the equipment as long as Sun State Towers is making a good faith effort to remedy the interference issues, unless the Federal Communications Commission makes a determination which is final and non-appealable or which is affirmed and becomes final after the exhaustion of all available appeals concluding that the Sun State Towers’ use as set forth in this Agreement presents a material risk to the public health or safety, in which case, either Landlord or Sun State Towers may terminate this Agreement upon one (1) day notice to the other party. Landlord agrees that Landlord and/or any other tenant of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference that is measurable in accordance with then existing industry standards to the then existing equipment of Sun State Towers unless such installation is required by Landlord for public health, safety and welfare. The parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Section and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

(g) Sun State Towers will remove or cause to be removed all of the above-ground portions of the Tower Facilities within one hundred eighty (180) days following the expiration or termination of this Prime Lease.

7. Utilities.

(a) Sun State will have the right to install utilities, at Sun State Towers expense, and to improve present utilities on the Property and the Site, provided it does not impair or impede Landlord’s utility services. Sun State will have the right to permanently place utilities on (or to bring utilities across or under) the Site to service the Compound and the Tower Facilities.

(b) Sun State may install backup generator(s).

(c) Sun State shall be responsible for all utilities charges for electricity, or any other utility service used by Sun State on the Compound. Sun State shall install separate meters for Sun State’s utility usage.

8. Access.

(a) In the event that the Site loses access to a public right of way during the Term, Landlord and Sun State Towers will amend this Prime Lease, at no imposed cost to either Party, to provide access to a public way by: (i) amending the location of the Easement; or (ii) granting an additional easement to Sun State.

(b) To the extent damage (including wear and tear caused by normal usage) to the Easement or any other route contemplated hereunder intended to provide Sun State with access to the Site and the Tower Facilities is caused by Landlord or Landlord's tenants, licensees, invitees or agents, Landlord will repair the damage at its own expense.

(c) Landlord will maintain access to the Compound from a public way in a free and open condition so that no interference is caused to Sun State by Landlord or lessees, licensees, invitees or agents of Landlord. In the event that Sun State's access to the Compound is unreasonably impeded or denied by Landlord or Landlord's lessees, licensees, invitees or agents, in addition to any and all rights and remedies set forth in this Prime Lease, Sun State shall have the right to pursue any and all rights and remedies that it may have at law or in equity.

9. Representations and Warranties of Landlord. Landlord represents and warrants to Sun State and Sun State's successors and assigns:

(a) Landlord has the full right, power, and authority to execute this Prime Lease;

(b) There are no pending or threatened administrative actions, including bankruptcy or insolvency proceedings under state or federal law, suits, claims or causes of action against Landlord or which may otherwise affect the Property;

(c) The Property is not presently subject to an option, lease or other contract which may adversely affect Landlord's ability to fulfill its obligations under this Prime Lease, and the execution of this Prime Lease by Landlord will not cause a breach or an event of default of any other agreement to which Landlord is a Party. Landlord agrees that it will not grant an option or enter into any contract or agreement which will have any adverse effect on the Intended Use or Sun State's rights under this Prime Lease;

(d) No licenses, rights of use, covenants, restrictions, easements, servitudes, subdivision rules or regulations, or any other encumbrances relating to the Property prohibit or will interfere with the Intended Use;

(e) Landlord has good and marketable fee simple title to the Site, the Property and any other property across which Landlord may grant an easement to Sun State, free and clear of all liens and encumbrances. Landlord covenants that Sun State will have the quiet enjoyment of the Compound during the term of this Prime Lease. If Landlord fails to keep the Site free and clear of any liens and encumbrances, Sun State Towers will have the right, but not the obligation, to satisfy any such lien or encumbrance and to deduct the full amount paid by Sun State Towers on Landlord's behalf from future installments of Rent;

Site Name: Fired
Site Number: AZ04-142

(f) Sun State will at all times during this Prime Lease enjoy ingress, egress, and access from the Site twenty-four (24) hours a day, seven (7) days a week, to an open public road which is adequate to service the Site and the Tower Facilities; and

(g) These representations and warranties of Landlord survive the termination or expiration of this Prime Lease.

10. Quiet Enjoyment. Landlord warrants that Sun State’s use and quiet enjoyment of the Property will not be disturbed.

11. Termination. This Prime Lease may be terminated, without any penalty or further liability upon written notice as follows:

(a) By either Party upon a default of any covenant or term of this Prime Lease by the other Party which is not cured within sixty (60) days of receipt of written notice of default (without, however, limiting any other rights available to the parties in law or equity); provided, that if the defaulting Party commences efforts to cure the default within such period and diligently pursues such cure, the non-defaulting Party may not terminate this Prime Lease as a result of that default.

(b) Upon thirty (30) days’ written notice by Sun State Towers to Landlord if Sun State Towers is unable to obtain, maintain, renew or reinstate any agreement, easement, permit, certificates, license, variance, zoning approval, or any other approval which may be required from any federal, state or local authority necessary to the construction and operation of the Tower Facilities or to the Intended Use (collectively, the “*Approvals*”); or

(c) Upon thirty (30) days’ written notice from Sun State Towers to Landlord if the Site is or becomes unsuitable, in Sun State Towers’ sole, but reasonable judgment for use as a wireless communications facility by Sun State or by Sun State’s licensee(s) or sublessee(s).

(d) In the event of termination by Sun State Towers or Landlord pursuant to this provision, Sun State shall be relieved of all further liability hereunder.

12. Taxes.

(a) Sun State Towers will pay any personal property taxes, real estate assessments, privilege taxes or charges owed on the Property which Landlord demonstrates is the direct result of Sun State’s use of the Property and/or the installation, maintenance, and operation of the Tower Facilities. Sun State Towers shall have no obligation to reimburse Landlord for any taxes paid by Landlord unless Landlord requests reimbursement within twelve (12) months of the date said taxes were originally due. Sun State Towers shall have the right to appeal any assessment or reassessment relating to the Site or Tower Facilities and Landlord shall either (i) join Sun State Towers in its appeal, or (ii) provide Sun State Towers with the requisite authority as may be reasonably necessary to effect standing with the taxing authority.

(b) Except as provided in Section 12(a), Landlord will pay when due all real property taxes, rental taxes and all other fees and assessments attributable to the Property, the Compound, the Easement and the anticipated use thereof. If Landlord fails to pay when due any such taxes affecting the Property or the Site, Sun State Towers will have the right, but not the obligation, to

pay such taxes and either: (i) deduct the full amount of the taxes paid by Sun State Towers on Landlord's behalf from future installments of Rent, or (ii) collect such taxes by any lawful means.

13. Environmental Compliance.

(a) Landlord represents and warrants that:

(i) No Hazardous Materials have been used, generated, stored or disposed of, on, under or about the Property in violation of any applicable law, regulation or administrative order (collectively, "*Environmental Laws*") by either Landlord or to Landlord's knowledge, any third party; and

(ii) To Landlord's knowledge, no third party been permitted to use, generate, store or dispose of any Hazardous Materials on, under, about or within the Property in violation of any Environmental Laws.

(b) Landlord will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Materials on, under, about or within the Property in violation of any Environmental Laws.

(c) Sun State Towers agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Site in violation of any applicable laws, regulations or administrative orders.

(d) The term "*Hazardous Material(s)*" means any: material, substance, chemical or waste, including, but not limited to, contaminants, oils, asbestos, PCBs, or any other hazardous substances or wastes, as defined by federal, state or local environmental laws, regulations or administrative orders or other materials the removal of which is required or the maintenance of which is prohibited or regulated by any federal, state or local government authority having jurisdiction over the Property.

(e) For purposes of this Section, Landlord's knowledge shall mean the actual, present knowledge of the current City Manager of the City at the time of signing this Agreement, Ana Urquijo, without making any independent investigations or inquiries and without the duties to do so, and specifically negating the doctrines of constructive or imputed notice or knowledge.

14. Indemnification.

(a) General.

(i) To the extent permissible by law, Landlord shall indemnify, defend and hold harmless Sun State, its employees and agents from all third-party suits, actions, demands, losses, costs or damages of every kind and description, including any actual and reasonable attorneys' fees and other actual and reasonable costs and expenses of litigation which may be brought or made against or incurred by Sun State on account of injuries, death or damages received or sustained by any person, persons or property on account of any negligent or willful act, omission, neglect or misconduct of Landlord, its employees, agents or anyone acting on Landlord's behalf or under its direction, or arising under this

Agreement. The provisions of this Section, however, shall not apply to loss or damage or claims to the extent they are attributable to acts or omissions of Sun State, its employees, agents, representatives, contractors, or sublessees. Such indemnity shall not be limited by reasons of remuneration of any insurance.

(ii) To the extent permissible by law, Sun State shall indemnify, defend and hold harmless Landlord, its employees and agents from all third-party suits, actions, demands, losses, costs or damages of every kind and description, including any actual and reasonable attorneys' fees and other actual and reasonable costs and expenses of litigation which may be brought or made against or incurred by Landlord on account of injuries, death or damages received or sustained by any person, persons or property on account of any negligent or willful act, omission, neglect or misconduct of Sun State, its employees, agents or anyone acting on Sun State's behalf or under its direction, or arising under this Agreement. The provisions of this Section, however, shall not apply to loss or damage or claims to the extent they are attributable to acts or omissions of Landlord, its employees, agents, representatives, contractors, or sublessees. Such indemnity shall not be limited by reasons of remuneration of any insurance.

(b) Environmental Matters.

(i) Landlord, its grantees, successors, and assigns will indemnify, defend, reimburse and hold harmless Sun State from and against any and all environmental damages caused by the presence of Hazardous Materials on the Property in violation of any Environmental Laws which presence exists or existed prior to or at the time of the execution of this Prime Lease or which may occur at any time in the future through no fault of Sun State Towers.

(ii) Sun State Towers, its grantees, successors, and assigns will indemnify, defend, reimburse and hold harmless Landlord from and against environmental damages caused by the presence of Hazardous Materials on the Compound in violation of any Environmental Laws and arising solely as the result of Sun State Towers' activities after the execution of this Prime Lease.

15. Casualty.

In the event of damage by fire or other casualty to the Site or Property that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Sun State's operations at the Site for more than forty-five (45) days, then Sun State may, at any time following such fire or other casualty, provided Landlord has not completed the restoration required to permit Sun State to resume its operation at the Site, terminate this Prime Lease upon fifteen (15) days prior written notice to Landlord. Any such notice of termination shall cause this Prime Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Prime Lease and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Prime Lease. Notwithstanding the foregoing, the rent shall abate during the period of

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repair following such fire or other casualty in proportion to the degree to which Sun State’s use of the Site is impaired.

16. Sale of Property.

(a) During the Term, prior to selling the Site or any portion of or interest in the Site, including but not limited to a leasehold interest or easement, Landlord shall notify Sun State Towers in writing of the sale price and terms offered by a third party (the “Offer”), together with a copy of the Offer. Sun State Towers will have the right of first refusal to purchase the real property interest in the Site being sold by Landlord to such third party on the same financial terms of the Offer. Sun State Towers will exercise its right of first refusal within sixty (60) days of receipt of Landlord’s notice and if Sun State Towers does not provide notice within sixty (60) days, Sun State Towers will be deemed to have not exercised its right of first refusal. If Sun State Towers does not exercise its right of first refusal, paragraph 16(b) of this Prime Lease will control the terms of the sale.

(b) Landlord may sell the Property or a portion thereof to a third party, provided: (i) the sale is made subject to the terms of this Prime Lease; and (ii) if the sale does not include the assignment of Landlord’s full interest in this Prime Lease the purchaser must agree to perform, without requiring compensation from Sun State, any obligation of the Landlord under this Prime Lease, including Landlord’s obligation to cooperate with Sun State as provided hereunder, which obligation Landlord would no longer have the legal right or ability to perform following the sale without requiring compensation from Sun State to be paid to such purchaser.

17. Assignment.

(a) Any sublease, license or assignment of this Prime Lease that is entered into by Landlord or Sun State Towers is subject to the provisions of this Prime Lease.

(b) Landlord may assign this Prime Lease in its entirety to any third party in conjunction with a sale of the Property in accordance with paragraph 16 of this Prime Lease. Landlord will not otherwise assign less than Landlord’s full interest in this Prime Lease without the prior written consent of Sun State Towers, which consent may not be unreasonably withheld, conditioned or delayed.

(c) Sun State Towers shall have the right to assign, or otherwise transfer this Agreement without any approval or consent of the Landlord to the Sun State Tower’s principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Sun State Tower’s assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of Landlord, which such consent will not be unreasonably withheld, delayed or conditioned.

18. Condemnation. In the event of any condemnation of all or any portion of the Property, and as a result of such condemnation, Sun State Towers, in Sun State Towers’ sole discretion, is unable to use the Site for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt Sun State Towers’ operations at the Site for more than forty-five (45) days, Sun State Towers may, at Sun State Towers’ option, to be exercised in writing within fifteen (15)

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days after Landlord shall have given Sun State Towers written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession), terminate this Prime Lease effective as of the date the condemning authority takes such possession. Sun State Towers shall be entitled to and shall receive and retain that part of the award or price paid by the condemning authority which is attributable to the improvements, fixtures, conduits, antennas, equipment; and all other things of Sun State Towers situated on the Site or the Property which cannot be removed, as well as Sun State Towers' relocation costs, damages and losses, and the loss of its leasehold interest (collectively, "**Losses**"). In addition, Sun State Towers may on its own behalf make a claim for its Losses in any condemnation proceeding involving the Site. Any such notice of termination shall cause this Prime Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Prime Lease and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to each other under this Prime Lease. If Sun State Towers does not terminate this Prime Lease in accordance with the foregoing, this Prime Lease shall remain in full force and effect as to the portion of the Site remaining, except that the rent shall be reduced in the same proportion as the rentable area of the Site taken bears to the total rentable area of the Site. In the event that this Prime Lease is not terminated by reason of such condemnation, Landlord shall promptly repair any damage to the Site caused by such condemning authority. In the event this Prime Lease is not terminated, Sun State Towers shall also be entitled to an award for its Losses.

19. Insurance.

(a) Sun State Towers will purchase and maintain in full force and effect throughout the Option Period and the Term such general liability and property damage policies as Sun State Towers may deem necessary. Said policy of general liability insurance will at a minimum provide a combined single limit of \$1,000,000.00.

(b) Landlord has and will maintain in full force and effect throughout the Term such general liability and property damage policies as Landlord may deem necessary. Said policy of general liability insurance will at a minimum provide a combined single limit of \$1,000,000.00.

20. Waiver of Damages.

(a) In the event that Sun State Towers does not exercise its Option, Landlord's sole compensation and damages will be fixed and liquidated to the sums paid by Sun State Towers to Landlord as consideration for the Option.

(b) Neither Landlord nor Sun State will be responsible or liable to the other Party for any loss or damage arising from any claim to the extent attributable to any acts of omissions of other licensees or tower users occupying the Tower Facilities or vandalism or for any structural or power failures or destruction or damage to the Tower Facilities except to the extent caused by the negligence or willful misconduct of such Party.

(c) EXCEPT WITH RESPECT TO INDEMNIFICATION OF THIRD PARTY CLAIMS UNDER THIS PRIME LEASE OR A VIOLATION OF LAW, IN NO EVENT SHALL EITHER LANDLORD OR SUN STATE BE LIABLE TO THE OTHER, THE OTHER'S

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EMPLOYEES, SUBCONTRACTORS, AND/OR AGENTS, OR ANY THIRD PARTY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, RELIANCE, PUNITIVE/EXEMPLARY OR TREBLE DAMAGES, LOSS OF FINANCING, LOSS OF REVENUE, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR LOST PROFITS, OR INTERRUPTION OR LOSS OF USE OF SERVICE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR ANY CLAIM OR DEMAND OF ANY NATURE OR KIND, AND WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THIS PRIME LEASE INCLUDING ANY SUPPLEMENT HEREUNDER OR THE PERFORMANCE OR BREACH HEREOF OR THEREOF.

21. Recording. Landlord agrees to execute a Memorandum of this Prime Lease which Sun State Towers may record with the appropriate officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term of rent payments.

22. Notices. All notices or demands by or from Sun State Towers to Landlord, or Landlord to Sun State Towers, required under this Prime Lease will be in writing and sent (United States mail postage pre-paid, certified with return receipt requested or by reputable national overnight carrier service, transmit prepaid) to the other Party at the addresses set forth in paragraph 1 of this Prime Lease or to such other addresses as the parties may, from time to time, designate consistent with this paragraph 24, with such new notice address being effective thirty (30) days after receipt by the other Party. Notices will be deemed to have been given upon either receipt or rejection.

23. Further Acts.

(a) Within fifteen (15) days after receipt of a written request from Sun State Towers, Landlord will execute any document necessary or useful to protect Sun State's rights under this Prime Lease or to facilitate the Intended Use including documents related to title, zoning and other Approvals, and will otherwise cooperate with Sun State in its exercise of its rights under this Prime Lease.

(b) In the event that Landlord fails to execute any such document(s), as required by paragraph 25(a) above, within fifteen (15) days following receipt of a written request from Sun State Towers, such document(s) will be deemed consented to and approved by Landlord, and, in addition to any and all rights and remedies set forth in this Prime Lease, Sun State shall additionally have the right to pursue any and all rights and remedies that it may have at law or in equity.

24. Memorandum of Lease. Simultaneously with the execution of this Prime Lease, the parties will enter into the Memorandum of Lease attached to this Prime Lease as Exhibit C which Sun State Towers may record in the public records of the county of the Property. Landlord acknowledges and agrees that after Landlord signs the Memorandum of Lease but before Sun State Towers records the Memorandum of Lease, Sun State Towers may add both: (a) a reference to the recording granting Landlord its interest in the Property; (b) a legal description of the Property as Exhibit A to the Memorandum of Lease, and (c) a legal description of the Site as Exhibit B to the Memorandum of Lease. Landlord agrees to execute and return to Sun State Towers a recordable amendment to the Memorandum of Lease in form supplied by Sun State Towers if: (i) the

information included in the Memorandum of Lease changes, or (ii) if it becomes clear that such information is incorrect or incomplete or if this Prime Lease is otherwise amended.

25. Miscellaneous.

(a) This Prime Lease runs with the Property and is binding upon and will inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns.

(b) Sun State Towers may, at Sun State Towers' sole cost and expense, procure an abstract of title, a commitment to issue a policy of title insurance, or an owner's policy of title insurance with respect to Sun State Towers' leasehold interest in the Property (collectively "***Title Coverage***"). Landlord agrees to furnish to Sun State Towers, within ten (10) days after request, such customary title affidavits and other documentation as reasonably requested or required by the title company in connection with Sun State Towers' Title Coverage.

(c) Except in the event that Sun State Towers fails to remove the Tower Facilities one hundred eighty (180) days after the termination of this Prime Lease in accordance with paragraph 6(a) above, Landlord hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Tower Facilities or any portion thereof, regardless of whether or not same is deemed real or personal property under applicable laws.

(d) The substantially prevailing Party in any litigation arising hereunder is entitled to its reasonable attorney's fees and court costs, including appeals, if any.

(e) Each Party agrees to furnish to the other, within thirty (30) days after request, such estoppel information as the other may reasonably request.

(f) This Prime Lease constitutes the entire agreement and understanding of Landlord and Sun State Towers with respect to the subject matter of this Prime Lease, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not stated in this Prime Lease. Any amendments to this Prime Lease must be in writing and executed and delivered by Landlord and Sun State Towers.

(g) If either Landlord or Sun State Towers is represented by a real estate broker in this transaction, that Party is fully responsible for any fees due such broker and will hold the other Party harmless from any claims for commission by such broker.

(h) Landlord recognizes that this Prime Lease is a lease of real property under which Sun State, in addition to all rights and privileges it receives herein, is entitled to all rights and protections under 11 U.S.C. § 365(h), as amended from time to time.

(i) If any term of the Prime Lease is found to be void or invalid, the remainder of this Prime Lease will continue in full force and effect.

(j) With respect to Sun State Towers' acquisition of Title Coverage, Landlord will cooperate by promptly executing any documentation required by the title insurance company.

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(k) This Prime Lease may be executed in two (2) or more counterparts, all of which are considered one and the same agreement and become effective when one or more counterparts have been signed by each of the parties, it being understood that all parties need not sign the same counterpart.

(l) Failure or delay on the part of either Party to exercise any right, power or privilege hereunder will not operate as a waiver thereof and waiver of breach of any provision hereof under any circumstances will not constitute a waiver of any subsequent breach.

(m) The parties agree that irreparable damage would occur if any of the provisions of this Prime Lease were not performed in accordance with their specified terms or were otherwise breached. Therefore, the parties agree the parties will be entitled to an injunction(s) in any court in the state in which the Site is located to prevent breaches of the provisions of this Prime Lease and to enforce specifically the terms and provisions of the Prime Lease, this being in addition to any other remedy to which the parties are entitled at law or in equity.

(n) Each Party executing this Prime Lease acknowledges that it has full power and authority to do so and that the person executing on its behalf has the authority to bind the Party.

(o) The parties agree that a scanned or electronically reproduced copy or image of this Prime Lease will be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Prime Lease and without the requirement that the unavailability of such original, executed counterpart of this Prime Lease first be proven.

(p) This Agreement shall be construed 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 Cochise 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.

(q) 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 Landlord and Sun State. In the event the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the parties shall request the presiding judge of the Superior Court in and for the County of Cochise, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the Landlord and Sun State. 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.

(r) The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Agreement.

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(s) Sun State 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. For breach or violation of this warranty, the Landlord shall have the right to annul this Agreement without liability.

(t) Sun State shall not participate in, and agrees not to participate in during the term of this Agreement a boycott of Israel in accordance with A.R.S. §35-393.01.

[SIGNATURES APPEAR ON NEXT PAGE]

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IN WITNESS WHEREOF, Landlord and Sun State Towers have each executed this Prime Lease as of the respective dates written below.

LANDLORD:

CITY OF DOUGLAS,
an Arizona municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

STATE OF _____

COUNTY OF _____

Before me, _____ the undersigned, a Notary Public for the State, personally appeared _____, who is the _____ of CITY OF DOUGLAS, an Arizona municipal corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official stamp or seal, this ____ day of _____, 2022.

[Affix Notary Seal]

Notary Public
My commission expires:

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SUN STATE TOWERS:

SUN STATE TOWERS IV, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

STATE OF _____

COUNTY OF _____

Before me, _____ the undersigned, a Notary Public for the State, personally appeared _____, who is the _____ of SUN STATE TOWERS IV, LLC, a Delaware limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official stamp or seal, this ____ day of _____, 2022.

[Affix Notary Seal]

Notary Public
My commission expires:

Site Name: Fired
Site Number: AZ04-142

EXHIBITS

The following exhibits are attached to this Prime Lease and incorporated into this Prime Lease:

- Exhibit A Description of Property
- Exhibit B Description of Site
- Exhibit C Memorandum of Lease

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EXHIBIT A

DESCRIPTION OF PROPERTY

LANDLORD'S LEGAL DESCRIPTION

LOTS 23 THROUGH 32 INCLUSIVE, BLOCK #5. ORIGINAL TOWNSITE OF DOUGLAS, COCHISE COUNTY, ARIZONA.

AND BEING THE SAME PROPERTY CONVEYED TO DOUGLAS READY MIX & MATERIALS, INC., AN ARIZONA CORPORATION FROM RONALD J. BORANE AND RONA BORANE BY WARRANTY DEED DATED JANUARY 5, 1989 AND RECORDED JANUARY 30, 1989 IN INSTRUMENT NO. 890101956; AND FURTHER CONVEYED TO THE UNITED STATES OF AMERICA BY CERTIFICATE OF FORFEITURE RECORDED ON DECEMBER 15, 1992 IN INSTRUMENT NO. 921229708; AND FURTHER CONVEYED TO CITY OF DOUGLAS POLICE DEPARTMENT FROM THE UNITED STATES OF AMERICA BY QUITCLAIM DEED DATED DECEMBER 12, 1995 AND RECORDED JANUARY 11, 1995 IN INSTRUMENT NO. 960100927; AND FURTHER CONVEYED TO CITY OF DOUGLAS, AN ARIZONA MUNICIPAL CORPORATION FROM CITY OF DOUGLAS POLICE DEPARTMENT BY QUIT CLAIM DEED DATED DECEMBER 27, 1995 AND RECORDED JANUARY 11, 1996 IN INSTRUMENT NO. 960100929.

TAX PARCEL NO. 409-13-19008

EXHIBIT B

DESCRIPTION OF SITE

LEASE AREA LEGAL DESCRIPTION

A PORTION OF LAND BEING A PORTION OF LOTS 23 THROUGH 32 INCLUSIVE, BLOCK #5. ORIGINAL TOWNSITE OF DOUGLAS, COCHISE COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND PK NAIL AT THE INTERSECTION OF E AVENUE AND FIRST AVENUE, FROM WHICH THE INTERSECTION OF F AVENUE AND FIRST STREET BEARS S 89° 45' 39" W 485.06 FEET; THENCE SOUTH 89°45'39" WEST ALONG THE CENTERLINE OF FIRST STREET, A DISTANCE OF 35.00 FEET; THENCE SOUTH 00°11'34" EAST, A DISTANCE OF 35.00 FEET TO THE NORTHEAST CORNER OF LOT 32, THENCE SOUTH 89° 45' 39" WEST ALONG THE NORTH LINE OF SAID PARCEL 235.00 FEET; THENCE SOUTH 00°11'34" EAST, 35.00 TO THE POINT OF BEGINNING; THENCE NORTH 89°48'26" EAST, 15.00 FEET; THENCE SOUTH 00°11'34" EAST, 30.00 FEET; THENCE SOUTH 89°48'26" WEST, 30.00 FEET; THENCE NORTH 00°11'34" WEST, 30.00 FEET; THENCE NORTH 89°48'26" EAST, 15.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 900 SQUARE FEET OR 0.021 ACRES, MORE OR LESS.

ACCESS AND UTILITY EASEMENT LEGAL DESCRIPTION

A PORTION OF LAND BEING A PORTION OF LOTS 23 THROUGH 32 INCLUSIVE, BLOCK #5. ORIGINAL TOWNSITE OF DOUGLAS, COCHISE COUNTY, ARIZONA.

A 30.00 FOOT STRIP OF LAND LYING 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT A FOUND PK NAIL AT THE INTERSECTION OF E AVENUE AND FIRST AVENUE, FROM WHICH THE INTERSECTION OF F AVENUE AND FIRST STREET BEARS S 89° 45' 39" W 485.06 FEET; THENCE SOUTH 89°45'39" WEST ALONG THE CENTERLINE OF FIRST STREET, A DISTANCE OF 35.00 FEET; THENCE SOUTH 00°11'34" EAST, A DISTANCE OF 35.00 FEET TO THE NORTHEAST CORNER OF LOT 32, THENCE SOUTH 89° 45' 39" WEST ALONG THE NORTH LINE OF SAID PARCEL 235.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 00°11'34" EAST, 35.00 FEET TO THE POINT OF TERMINUS.

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EXHIBIT C

MEMORANDUM OF LEASE

[see following pages]

Prepared by and Return To:
 Sun State Towers IV, LLC
 1426 North Marvin Street #101
 Gilbert, AZ 85233
 Site # AZ04-142
 Site Name: Fired
 Tax Parcel No.: 409-13-19008

Memorandum of Lease Agreement

THIS MEMORANDUM OF LEASE AGREEMENT (“*Memorandum*”) is executed this ____ day of _____, 2022, by and between CITY OF DOUGLAS, an Arizona municipal corporation, with a mailing address of 425 E 10th Street, Douglas, AZ 85607 (“***Landlord***”) and SUN STATE TOWERS IV, LLC, a Delaware limited liability company, with a mailing address of 1426 North Marvin Street #101, Gilbert, AZ 85233 (“***Sun State Towers***”) and evidences that on the _____ day of _____, 2022, a Lease Agreement (“***Agreement***”) was entered into by and between Landlord and Sun State Towers.

1. **Option.** The initial term of the Option twelve (12) months from the date of the Agreement. This Option can be extended as the Landlord and Sun State Towers mutually agree.

2. **Property.** Landlord owns certain real property described in Exhibit A (“***Property***”). Subject to the terms of the Agreement, Landlord has granted to Sun State Towers an option to lease a portion of the Property (“***Compound***”) and to acquire certain easements for ingress, egress and utilities for the benefit of Sun State Towers and Sun State Towers’ sublessees and invitees (“***Easements***”) and collectively with the Compound, the “***Site***”, as shown on Exhibit B), a license to use certain other portions of the Property.

3. **Lease.** Should Sun State Towers exercise its Option, the Agreement will constitute a lease of the Site. The initial term of the lease will be for ten (10) years commencing upon the date Sun State Towers specifies in a written notice to Landlord. The Agreement will automatically renew for four (4) additional periods of ten (10) years each, unless Sun State Towers notifies Landlord of its decision not to renew the Agreement.

4. **Notices.** All notices, requests, demands, and other communications to Landlord or Sun State Towers will be made at the following addresses:

Landlord: City of Douglas

Sun State Towers: Sun State Towers IV, LLC
1426 North Marvin Street #101
Gilbert, AZ 85233
Attn: Land Management

5. **Construction of Memorandum.** This Memorandum is not a complete summary of the terms and conditions contained in the Agreement. Provisions in the Memorandum will not be used in interpreting the Agreement provisions. In the event of a conflict between this Memorandum and the Agreement, the Agreement will control.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first set forth above.

LANDLORD:

CITY OF DOUGLAS,
an Arizona municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

STATE OF _____

COUNTY OF _____

Before me, _____ the undersigned, a Notary Public for the State, personally appeared _____, who is the _____ of CITY OF DOUGLAS, an Arizona municipal corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official stamp or seal, this _____ day of _____, 2022.

[Affix Notary Seal]

Notary Public

My commission expires:

SUN STATE TOWERS:

SUN STATE TOWERS IV, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

Before me, _____ the undersigned, a Notary Public for the State, personally appeared _____, who is the _____ of SUN STATE TOWERS IV, LLC, a Delaware limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official stamp or seal, this _____ day of _____, 2022.

[Affix Notary Seal]

Notary Public

My commission expires:

EXHIBIT A

DESCRIPTION OF PROPERTY

LANDLORD'S LEGAL DESCRIPTION

LOTS 23 THROUGH 32 INCLUSIVE, BLOCK #5. ORIGINAL TOWNSITE OF DOUGLAS, COCHISE COUNTY, ARIZONA.

AND BEING THE SAME PROPERTY CONVEYED TO DOUGLAS READY MIX & MATERIALS, INC., AN ARIZONA CORPORATION FROM RONALD J. BORANE AND RONA BORANE BY WARRANTY DEED DATED JANUARY 5, 1989 AND RECORDED JANUARY 30, 1989 IN INSTRUMENT NO. 890101956; AND FURTHER CONVEYED TO THE UNITED STATES OF AMERICA BY CERTIFICATE OF FORFEITURE RECORDED ON DECEMBER 15, 1992 IN INSTRUMENT NO. 921229708; AND FURTHER CONVEYED TO CITY OF DOUGLAS POLICE DEPARTMENT FROM THE UNITED STATES OF AMERICA BY QUITCLAIM DEED DATED DECEMBER 12, 1995 AND RECORDED JANUARY 11, 1995 IN INSTRUMENT NO. 960100927; AND FURTHER CONVEYED TO CITY OF DOUGLAS, AN ARIZONA MUNICIPAL CORPORATION FROM CITY OF DOUGLAS POLICE DEPARTMENT BY QUIT CLAIM DEED DATED DECEMBER 27, 1995 AND RECORDED JANUARY 11, 1996 IN INSTRUMENT NO. 960100929.

TAX PARCEL NO. 409-13-19008

EXHIBIT B

DESCRIPTION OF SITE

LEASE AREA LEGAL DESCRIPTION

A PORTION OF LAND BEING A PORTION OF LOTS 23 THROUGH 32 INCLUSIVE, BLOCK #5. ORIGINAL TOWNSITE OF DOUGLAS, COCHISE COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND PK NAIL AT THE INTERSECTION OF E AVENUE AND FIRST AVENUE, FROM WHICH THE INTERSECTION OF F AVENUE AND FIRST STREET BEARS S 89° 45' 39" W 485.06 FEET; THENCE SOUTH 89°45'39" WEST ALONG THE CENTERLINE OF FIRST STREET, A DISTANCE OF 35.00 FEET; THENCE SOUTH 00°11'34" EAST, A DISTANCE OF 35.00 FEET TO THE NORTHEAST CORNER OF LOT 32, THENCE SOUTH 89° 45' 39" WEST ALONG THE NORTH LINE OF SAID PARCEL 235.00 FEET; THENCE SOUTH 00°11'34" EAST, 35.00 TO THE POINT OF BEGINNING; THENCE NORTH 89°48'26" EAST, 15.00 FEET; THENCE SOUTH 00°11'34" EAST, 30.00 FEET; THENCE SOUTH 89°48'26" WEST, 30.00 FEET; THENCE NORTH 00°11'34" WEST, 30.00 FEET; THENCE NORTH 89°48'26" EAST, 15.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 900 SQUARE FEET OR 0.021 ACRES, MORE OR LESS.

ACCESS AND UTILITY EASEMENT LEGAL DESCRIPTION

A PORTION OF LAND BEING A PORTION OF LOTS 23 THROUGH 32 INCLUSIVE, BLOCK #5. ORIGINAL TOWNSITE OF DOUGLAS, COCHISE COUNTY, ARIZONA.

A 30.00 FOOT STRIP OF LAND LYING 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT A FOUND PK NAIL AT THE INTERSECTION OF E AVENUE AND FIRST AVENUE, FROM WHICH THE INTERSECTION OF F AVENUE AND FIRST STREET BEARS S 89° 45' 39" W 485.06 FEET; THENCE SOUTH 89°45'39" WEST ALONG THE CENTERLINE OF FIRST STREET, A DISTANCE OF 35.00 FEET; THENCE SOUTH 00°11'34" EAST, A DISTANCE OF 35.00 FEET TO THE NORTHEAST CORNER OF LOT 32, THENCE SOUTH 89° 45' 39" WEST ALONG THE NORTH LINE OF SAID PARCEL 235.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 00°11'34" EAST, 35.00 FEET TO THE POINT OF TERMINUS.

**DOUGLAS, AZ
COUNCIL AGENDA ITEM**

Meeting Date: 6/22/2022

SUBMITTED BY: William D. Osborne, AICP, City Planner

MANAGEMENT TEAM REVIEW: Xenia Gonzalez, Neighborhood Services Director, Luis Pedroza, Deputy City Manager

FOCUS AREA: Strengthen Trade and Commerce

ORGANIZATIONAL IMPROVEMENTS: Provides opportunity for job creation on long-vacant property

SUBJECT: **SECOND READING OF ORDINANCE NO. 22-1150**, an Ordinance of the Mayor and Council of the City of Douglas, Cochise County, Arizona, **REZONING ONE PARCEL of LAND within the NORTHWEST CORNER OF THE INTERSECTION OF N. WASHINGTON AVE AND E. HIGHWAY 80** located in Douglas, Arizona, from **SINGLE-FAMILY RESIDENTIAL to GENERAL COMMERCIAL** and AMENDING the OFFICIAL ZONING DISTRICT MAP, established by Ordinance 691 and amended by Ordinances 858 and 22-1145; establishing severability of components of Ordinance; and establishing an effective date thereof.

EXECUTIVE SUMMARY:

The Planning and Zoning Commission met on May 17, 2022, and recommended to the City Council to approve the proposed rezoning of the one (1) parcel (numbered as Cochise County parcel number 41010008) situated within the Southeast ¼ of the Northeast ¼ Section 6, Township 24 South, Range 28 East at the northwest corner of the intersection of N. Washington Avenue and E. Highway 80.

BACKGROUND:

By Amending the Zoning Districts Map from Single-Family Residential 32 (SFR32) to General Commercial (GC) for one (1) parcel situated within the Southeast ¼ of the Northeast ¼ Section 6, Township 24 South, Range 28 East at the northwest corner of the intersection of N. Washington Avenue and E. Highway 80, totaling approximately 3.72 acres is consistent with General Plan policies.

DISCUSSION & RECOMMENDATION:

The proposed Zoning Districts Map amendment is consistent with General Plan goals, objectives and policies. Staff recommends approval of Ordinance 22-1150.

FISCAL IMPACT:

N/A

Fiscal Year: 2021/2022

Amount Requested: \$

Budgeted: Y / N

Account (s):

“...I move that the Mayor and Council approve the second reading of Ordinance No. 22-1150 and to place it on third reading by number and title only.”

ORDINANCE NO. 22-1150

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AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF DOUGLAS, COCHISE COUNTY, ARIZONA, REZONING ONE PARCEL OF LAND WITHIN THE NORTHWEST CORNER OF THE INTERSECTION OF N. WASHINGTON AVE AND E. HIGHWAY 80 LOCATED IN DOUGLAS, ARIZONA FROM SINGLE-FAMILY RESIDENTIAL TO GENERAL COMMERCIAL AND AMENDING THE OFFICIAL ZONING DISTRICT MAP, ESTABLISHED BY ORDINANCE 691 AND AMENDED BY ORDINANCES 858 AND 22-1145, ESTABLISHING SEVERABILITY OF COMPONENTS OF ORDINANCE; AND ESTABLISHING AN EFFECTIVE DATE THEREOF.

WHEREAS, Ruth S. Daily has proposed a Zoning Districts Map Amendment from Single-Family Residential 32 (SFR32) to General Commercial (GC) for one (1) parcel situated within the Southeast ¼ of the Northeast ¼ Section 6, Township 24 South, Range 28 East at the northwest corner of the intersection of N. Washington Avenue and E. Highway 80, totaling approximately 3.72 acres (APN 41010008) and amending the zoning map accordingly to encourage development of a long-vacant former railroad right-of-way parcel; and

WHEREAS, the General Plan contains policies encouraging commercial development with close access to state highways, with controls for impacts on neighboring properties; and

WHEREAS, after due notice, a public hearing was held on May 17, 2022, the City of Douglas Planning and Zoning Commission recommended to Mayor and Council that the proposed amendment of the Zoning Districts Map per file number ZMA-2022-03 be approved; and

NOW, THEREFORE, be it ordained by the Mayor and Council of the City of Douglas, Arizona, as follows:

SECTION 1. The property, which is more specifically described in the legal description herein is hereby rezoned from Single-Family Residential 32000 (SFR32) to General Commercial (GC).

WITHIN THE SOUTHEAST ¼ OF THE NORTHEAST ¼ SECTION 6, TOWNSHIP 24 SOUTH, RANGE 28 EAST AT THE NORTHWEST CORNER OF THE INTERSECTION OF N. WASHINGTON AVE AND E. HIGHWAY 80 (IN SE NE BY M&B BEG AT SW COR OF NE4 THN E1777.79FT & N53DEG 40MIN E1040218FT TO POB THN N24.82FT S53DEG 40MIN W739.50FT S273.10FT N53DEG 40MIN E739.50FT N203.28FT TO POB SEC 6 24 28 3.72 AC), located in Douglas, Arizona.

SECTION 2. The Development Services Department shall amend the Zoning Districts Map to reflect this amendment and a copy shall remain on file in the office of the City Clerk of the City of Douglas for examination by the public. Further, those conditions of approval imposed by the City of Douglas Council, as part of ZMA 2022-03 are hereby expressly incorporated into and adopted as part of this Ordinance by this reference.

SECTION 3. If any chapter, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid of unconstitutional by the decisional of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

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SECTION 4. Severability: If any chapter, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance and shall continue in full force and effect after the deletion of the illegal or unconstitutional provision.

SECTION 5. To the extent of any conflict between other City Ordinances and this Ordinance, this Ordinance shall be deemed to be controlling; provided, however, that this Ordinance is not intended to amend or repeal any existing City Ordinance, Resolution or regulation except as expressly set forth herein.

SECTION 6. Effective date. The provisions in this Ordinance shall be effective thirty (30) days after final approval and adoption by the Mayor and Council.

PASSED AND ADOPTED by the Mayor and council of the City of Douglas, Arizona, this 10th day of August 2022.

Donald C. Huish, Mayor

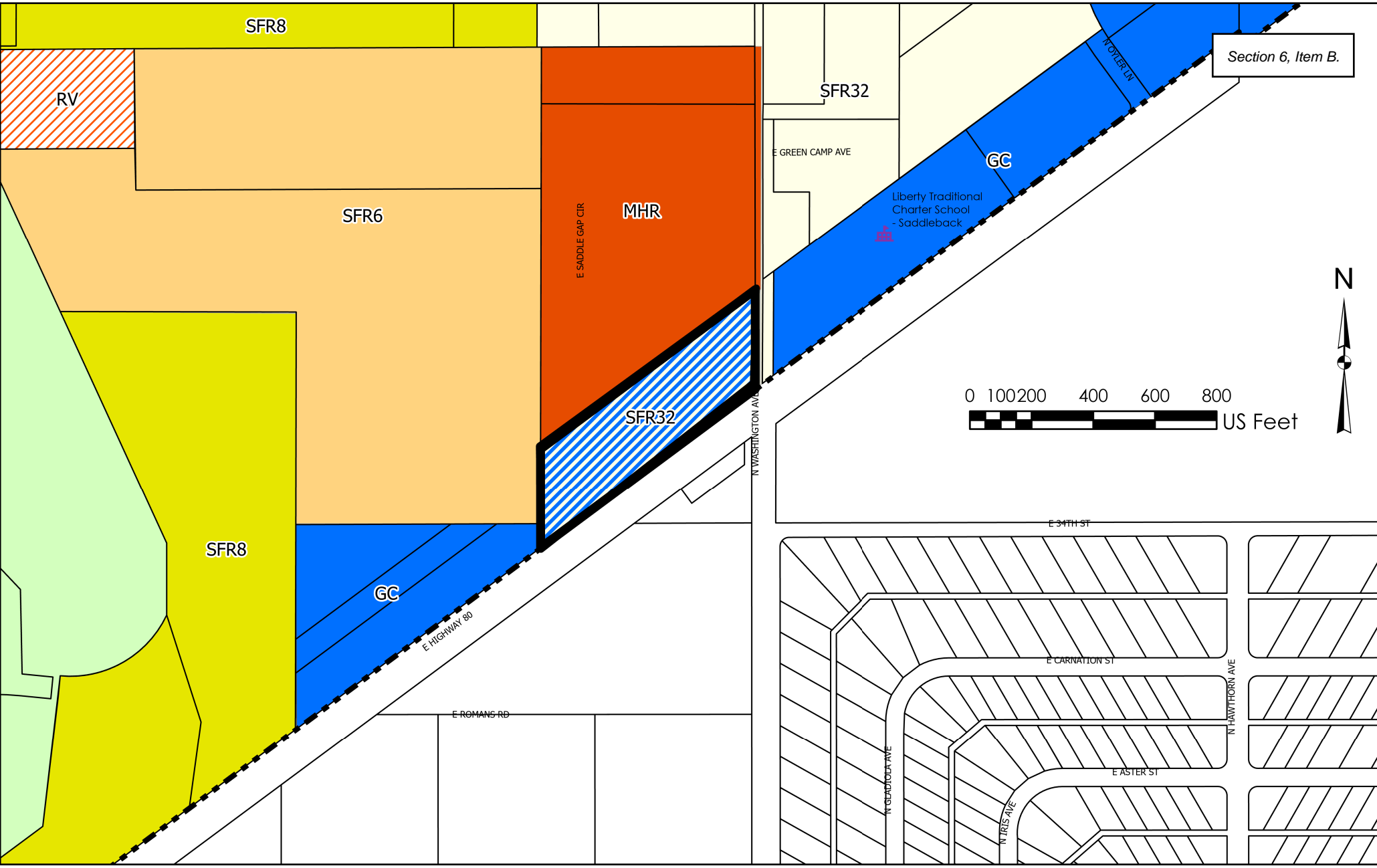
Attest:

Approved as to Form:

Alma Andrade, City Clerk

Denis Fitzgibbons, City Attorney

Prepared by:
William D. Osborne, AICP, City Planner



Legend

- | | | | | |
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| <ul style="list-style-type: none"> Street Centerlines Douglas Municipal Limits Daily Subject Site Douglas Parcels | <p>Overlay Zoning Districts</p> <ul style="list-style-type: none"> H-P Historic Preservation Overlay MUI Mixed Use Infill Development Overlay | <p>Douglas Zoning Districts</p> <p>ZONING</p> <ul style="list-style-type: none"> SFR32 Single-Family Residential 32000 SFR16 Single-Family Residential 16000 | <ul style="list-style-type: none"> SFR12 Single-Family Residential 12000 SFR8 Single-Family Residential 8000 SFR6 Single-Family Residential 6000 MHR Mobile Home Residential | <ul style="list-style-type: none"> RV Recreational Vehicle Park MFR Multifamily Residential NC Neighborhood Commercial LC Limited Commercial |
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ZMA-2022-03

Daily Rezone Request

SFR32 to GC

Date Exported: 6/6/2022 1:04 PM

**DOUGLAS, AZ
COUNCIL AGENDA ITEM**

Meeting Date: 06/22/22

SUBMITTED BY: Rocio Garcia-Pedroza, HR Manager

MANAGEMENT TEAM REVIEW: Ana Urquijo, City Manager

FOCUS AREA: Other / NA

**ORGANIZATIONAL
IMPROVEMENTS:**

Subject: **RESOLUTION NO. 22-1507**, a Resolution of the Mayor and Council of the City of Douglas, Cochise County, Arizona, **AUTHORIZING** the City of Douglas to **ENTER** into the **ARIZONA MUNICIPAL RISK RETENTION POOL FOURTH** amended and restated **MEMBERSHIP AGREEMENT** and **AUTHORIZING** the City Manager to sign the Agreement and any necessary documents related thereto.

EXECUTIVE SUMMARY:

The City's current contract with Travelers for Workers' Compensation Insurance and Liability Insurance will end June 30, 2022. At this point staff is recommending for the City to become a member of the Arizona Municipal Risk Retention Pool (AMRRP) and obtain the coverage for Workers' Compensation and Liability Insurance through them.

BACKGROUND:

The City's insurance for Workers' Compensation and Liability (auto, property, general) are currently through Travelers with an annual premium of \$175,932 for Workers' Comp and \$312,164 for Liability Insurance.

Crest Insurance Group, the City's representative/broker for workers' compensation and liability insurance received a renewal proposal from Travelers in the amount of \$175,497 for Workers Compensation and \$285,892 for liability insurance; \$461,389 total. Considering the coverages that are bought separately (bonds and cyber liability) from Travelers and the brokers fee, the total annual premium that must be paid if we remain with Travelers will be \$484,536.

Staff also worked with Crest Insurance Group to analyze a quote received from AMRRP. The quote came in at \$175,000 for Workers Compensation and \$276,960 for liability insurance; \$451,960 total. This amount includes bonds for two officials and cyber liability, which are not included in the Traveler's quote and must be bought separately.

AMRRP is a member owned and operated risk sharing pool for Arizona cities and towns. Currently 76 of the 91 cities and towns in Arizona are members of the pool.

DISCUSSION:

Staff recommends joining AMRRP.

FISCAL IMPACT:

\$451,960 for workers' compensation and liability. Funds have been allocated for all proposed premiums in the new operating budget for FY 22-23.

“...I move that the Mayor and Council approve Resolution No. 22-1507.”

RESOLUTION NO. 22-1507

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF DOUGLAS, COCHISE COUNTY, ARIZONA AUTHORIZING THE CITY OF DOUGLAS TO ENTER INTO THE ARIZONA MUNICIPAL RISK RETENTION POOL FOURTH AMENDED AND RESTATED MEMBERSHIP AGREEMENT AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT AND ANY NECESSARY DOCUMENTS RELATED THERETO.

WHEREAS, the Douglas City Council determined that, in order to facilitate the efficient operations of the City, the City of Douglas needs to maintain property, liability and worker’s compensation insurance; and

WHEREAS, after working with Crest Insurance Group, the City’s insurance broker, the City has determined that joining the Arizona Municipal Risk Retention Pool for the City’s property, liability and worker’s compensation insurance is in the best interest of the City; and

NOW, THEREFORE BE IT RESOLVED that the Douglas City Council hereby authorizes the City of Douglas to enter into the Arizona Municipal Risk Retention Pool Fourth Amended and Restated Membership Agreement for property, liability and worker’s compensation insurance. The Douglas City Council hereby further authorizes the City Manager to execute the Arizona Municipal Risk Retention Pool Fourth Amended and Restated Membership Agreement in substantially the same form as attached hereto and any necessary documents related thereto.

PASSED AND ADOPTED by the Mayor and Council of the City of Douglas, Arizona, this 22nd day of June 2022.

Donald C. Huish, Mayor

Attest:

Approved as to Form:

Alma Andrade, City Clerk

Denis Fitzgibbons, City Attorney

Prepared by:
Rocio G Pedroza, HR Manager

**ARIZONA MUNICIPAL RISK RETENTION POOL
FOURTH AMENDED AND RESTATED MEMBERSHIP AGREEMENT**

1. Parties. The parties to this Fourth Amended and Restated Membership Agreement (the “**Agreement**”) are the Arizona Municipal Risk Retention Pool, an Arizona nonprofit corporation (the “**Pool**”), and _____ (the “**Member**”), a political subdivision of the State of Arizona.

2. Recitals. This Agreement is based upon certain understandings and in furtherance of certain objectives:

2.1. WHEREAS, A.R.S. § 11-952.01 permits two or more public agencies (as defined in A.R.S. § 11-951) to enter into contracts or agreements to purchase insurance jointly or to pool retention of such public agencies' property, liability and workers' compensation risks, and to jointly form a nonprofit corporation to carry out such purposes on behalf of the public agency members of the nonprofit corporation directly or by contract with a private party; and

2.2. WHEREAS, the Pool is administered by an administrator (the “**Administrator**”) designated by the Board of Trustees of the Pool (the “**Board**”); and

2.3. WHEREAS, the Member desires to enter into this agreement to:

2.3.1 pool retention of the Member's risk for property, liability and casualty losses with that of other cities, towns or other political subdivisions of the State of Arizona that are members of the Pool and to provide for the payment of such losses or claims; and/or

2.3.2 provide for the payment of workers' compensation claims made against other cities, towns or other public agencies of the State of Arizona that are members of the Pool and to provide for the payment of such claims;

NOW, THEREFORE, the Pool and Member agree as follows:

3. Coverage and Participation.

3.1. The Pool shall offer coverages for property, liability and workers' compensation. The procedure for making claims for such losses against the Pool, the means and procedures for defending against such claims, the persons or entities to be indemnified by the Pool, the limitations and exclusions on coverage, and various other matters necessary or appropriate to the functioning of the Pool in connection with property and liability losses are more particularly described in a coverage agreement to be negotiated between the Member and the Pool and attached hereto as Appendix A, and incorporated by this reference (the “**Property and Liability Coverage Agreement**”). The effective date of the Property and Liability Coverage Agreement (the “**Property and Liability Coverage Effective Date**”) shall be set forth in the Property and Liability Coverage Agreement. The procedure for making claims in connection with coverage for employees of the Member as required for a self-insured employer pursuant to A.R.S. § 23-961 (as may be amended), the means and procedures for defending

against such claims, the persons or entities to be compensated by the Pool, the limitations and exclusions on coverage, and various other matters necessary or appropriate to the functioning of the Pool are more particularly described in the coverage agreement to be negotiated between the Member and the Pool and attached hereto as Appendix B and incorporated by this reference (the “**Workers’ Compensation Coverage Agreement**”). The effective date of the Workers’ Compensation Coverage Agreement (the “**Workers’ Compensation Coverage Effective Date**”) shall be set forth in the Workers’ Compensation Coverage Agreement. The Property and Liability Coverage Agreement and the Workers’ Compensation Coverage Agreement shall be referred to collectively as the “**Coverage Agreements.**” The Property and Liability Coverage Effective Date and the Workers’ Compensation Coverage Effective Date shall be referred to collectively as the “**Coverage Effective Dates.**”

3.2. The terms of this Agreement, the Property and Liability Coverage Agreement and the Workers’ Compensation Coverage Agreement may be amended by majority vote of the Board, provided that any amendment to this Agreement, the Property and Liability Coverage Agreement and the Workers’ Compensation Coverage Agreement shall become effective upon a date designated by the Board after first giving the Member at least thirty (30) days’ prior written notice thereof. Notwithstanding the foregoing, the Board may, without prior notice to the Member, amend the Property and Liability Coverage Agreement and the Workers’ Compensation Coverage Agreement if the amendment does not decrease or materially change the insurance coverage available to the Member including, but not limited to, incidental or grammatical amendments that do not decrease insurance coverage available to the Member.

4. Term and Renewal. Insurance coverage under this Agreement shall be effective as set forth in each Coverage Agreement and shall be automatically renewed (for each Coverage Agreement) unless terminated pursuant to Section 5 of this Agreement.

5. Termination of Agreement.

5.1. With Cause. The Board may at any time during the term of this Agreement or any extensions thereof suspend or terminate coverage for (i) nonpayment of the Membership Fees or any other breach by the Member of the terms of this Agreement; or (ii) the failure to satisfy underwriting requirements established by the Pool. In such case, coverage shall be suspended or terminated, and membership shall be terminated pursuant to Section 8 of this Agreement.

5.2. Without Cause. Insurance coverage under this Agreement may be terminated by the Pool or the Member by written notice of termination given at least ninety (90) days prior to the anniversary of the Property and Liability Coverage Effective Date (in the case of the Property and Liability Coverage Agreement) or at least ninety (90) days prior to the anniversary of the Workers’ Compensation Coverage Effective Date (in the case of the Workers’ Compensation Coverage Agreement). For example, if the Member has entered into both a Property and Liability Coverage Agreement and a Workers’ Compensation Coverage Agreement, coverage under either Coverage Agreement may be terminated by either party without cause by written notice of termination given at least ninety (90) days prior to the anniversary of the applicable Coverage Effective Date. Terminating coverage under one Coverage Agreement without cause pursuant to this Section 5.2 does not necessarily terminate

coverage under the other Coverage Agreement. The Board may in its sole and absolute discretion, and only in the event of extraordinary circumstances demonstrated by the Member, grant the Member a thirty (30) day extension of coverage under the Property and Liability Coverage Agreement or the Workers' Compensation Coverage Agreement on such renewal terms and conditions that are submitted to the Member by the Administrator for the next succeeding renewal year, prorated by the Administrator for the thirty (30) day extension period. Any extension granted pursuant to this Section 5.2 shall not change the Coverage Effective Date for the applicable Coverage Agreement or the term of this Agreement and any renewals thereof.

5.3. Termination of Coverage. This Agreement shall terminate and the Member shall cease being a member of the Pool upon the termination of all coverage under the Coverage Agreements. Upon such termination, the terminated Member may not apply to rejoin the Pool for a period of three (3) years after the date of termination.

5.4. Distribution of Assets On Termination. In the event the Member shall terminate this Agreement for any reason, or in the event the Board shall terminate this Agreement pursuant to Section 5.1 and Section 8 of this Agreement, the Member shall thereupon forfeit any and all rights to the return of any surplus, unearned contributions, or other legally permitted distributions from the Pool.

5.5. Effect of Termination. Notwithstanding the termination of this Agreement, following the date of termination a Member shall (i) cooperate fully with the Administrator in connection with the resolution of covered claims; and (ii) cooperate and assist the Administrator and any claims adjuster or legal counsel retained by the Pool.

6. Termination of the Pool. Notwithstanding any other provision hereof, the Pool may be terminated at such time as the Board determines (by a vote of at least two-thirds of the number of Board members then serving on the Board at a duly called meeting of the Board at which a quorum is present) that the number of members of the Pool or the size of the Pool is too small to provide coverage against the risks specified in the Property and Liability Coverage Agreement and the Workers' Compensation Coverage Agreement. Any termination pursuant to this Section 6 shall not be effective until the Board shall have given each member of the Pool at least twelve (12) months' written notice.

7. Membership Fees. The Property and Liability Coverage Agreement and the Workers' Compensation Coverage Agreement shall each set forth the fees for the coverages selected by the Member (collectively, the "**Membership Fees**"). The Membership Fees shall be based on sound underwriting criteria as recommended by the Pool's actuary and the Administrator. The Member agrees to furnish the Administrator all available data regarding exposures and loss experience of the Member necessary to calculate Membership Fees. The Member shall pay its total Membership Fees to the Pool in cash pursuant to a payment plan established by the Board.

8. Suspension. In the event the Member (i) fails to pay its Membership Fees as specified herein; (ii) fails to comply with any of the other terms of this Agreement; or (iii) fails to satisfy underwriting requirements established by the Pool, the Board may, if such failure is not cured after ten (10) days' written notice, terminate the Member's coverage under the applicable

Coverage Agreement. The date of such termination shall be referred to as the “**Coverage Termination Date.**” Notwithstanding such termination of coverage, the Member shall retain its rights to the return of any surplus or other distributions from or assets of the Pool for a ninety (90) day period (the “**Ninety Day Reinstatement Period**”) following such notice by the Pool. To retain this right, the Member must notify the Pool in writing during the Ninety Day Reinstatement Period of the Member’s election (the “**Reinstatement Election**”) to reinstate coverage by delivering to the Pool a payment in an amount equal to any outstanding Membership Fees and otherwise curing the failure giving rise to the termination of coverage. Upon the Pool’s receipt of such payment and evidence documenting that the Member has cured the failure giving rise to the termination of coverage, together with such underwriting data and other information as the Pool may reasonably request, and provided that the Administrator determines (in the exercise of the Administrator’s sole and absolute discretion) that the reinstatement of coverage is appropriate based on sound business judgment, loss control and underwriting criteria, and loss experience during the Ninety Day Reinstatement Period (or applicable portion thereof), coverage under the applicable Coverage Agreement will be reinstated, effective as of the Coverage Termination Date. If the Member fails to provide the Pool the Reinstatement Election (together with such documentation, data and other information as required pursuant to this Section 8) during the Ninety Day Reinstatement Period, or if the Member provides the Reinstatement Election (together with such documentation, data and other information as required pursuant to this Section 8) during the Ninety Day Reinstatement Period and the Member’s coverage reinstatement is denied pursuant to this Section 8, upon the expiration of the Ninety Day Reinstatement Period, and if the Member no longer has coverage under both Coverage Agreements, the Member shall cease to be a member of the Pool and shall lose all rights as a member of the Pool including (without limitation) the right to return of any surplus or other distributions from or assets of the Pool and coverage under any Coverage Agreement. In the event of such termination, the Member shall be relieved of any liability for ordinary Membership Fees under Section 7 for fiscal years after the year of the Member’s termination. The Member’s liability for additional assessments shall continue to the extent provided in Section 9 below.

9. Assessment. The Member shall be subject to assessment pursuant to A.R.S. § 11-952.01(M), as may be amended, and the terms of such statute are incorporated by reference. The amount of such assessment may not exceed the amount of the Member's annual Membership Fees to the Pool for the year in which the assessment is made or (if the Member has withdrawn from the Pool) for the last year that the Member was a member of the Pool. The amount of each assessment and a description of the manner of calculating the same shall be provided to the Member in writing (the “**Assessment Notice**”), and the Member shall pay such assessment pursuant to the terms and conditions of the Assessment Notice. The Member shall remain liable for assessments for liabilities of the Pool incurred during the Member's period of membership in the Pool, notwithstanding the Member's withdrawal from participation in the Pool or the termination of this Agreement.

10. Inspection and Audit. The Administrator or any other designee of the Pool shall be permitted, but shall not be obligated, to inspect the Member's properties and operations at any time. Neither the Administrator's right nor any such designee's right to make inspections nor the making thereof shall constitute an undertaking on behalf of or for the benefit of the Member or others to determine or warrant that such properties or operations are safe or are in compliance with any law or rule.

10.1. The Administrator or any other designee of the Pool may examine and audit the Member's financial and administrative records that relate to the subject matter of this Agreement at any time during the period of this Agreement is in effect and within five (5) years after the termination of this Agreement.

10.2. The Pool shall be audited annually at the expense of the Pool by a certified public accountant, and a copy of the report shall be submitted to the Board, the Member, and the Arizona Department of Insurance. The Board shall obtain an appropriate actuarial evaluation of the claim reserves of the Pool including, an estimate of the incurred but not reported claims and shall maintain claim reserves equal to known incurred losses and an estimate of incurred but not reported claims, as determined by the Board.

11. **Risk Management.** The Member shall maintain a program of risk management in substantial conformance with the Risk Management Program for Members, a copy of which is attached hereto as Appendix C and incorporated by this reference (the “**Risk Management Program**”). The Member acknowledges, understands and agrees (i) that the Risk Management Program is simply recommendations concerning the minimum standards that should be adopted by each member of the Pool, (ii) that to be effective, a risk management program must be tailored to the specific requirements of each member of the Pool, (iii) that the Pool makes no representation or warranty that the Risk Management Program is sufficient or adequate to meet the specific requirements of the Member, and (iv) that it is the Member's sole responsibility to modify the Risk Management Program to meet the specific requirements of the Member.

12. Subrogation. In the event a recovery is obtained against a third party pursuant to the right of subrogation set forth in the Property and Liability Coverage Agreement and the Workers’ Compensation Coverage Agreement, such recovery shall first be applied to the costs of recovery, and the balance, if any, shall be apportioned between the Pool and the Member in proportion to their respective losses from the occurrence giving rise to such recovery.

13. Conformity with Law. In the event any term or provision of this Agreement shall be in conflict with the laws and statutes of the State of Arizona as they now exist or are hereafter amended, this Agreement shall be automatically deemed amended to conform to such laws and statutes.

14. Authorized Representatives; Prompt Reply. The Pool and the Member shall each designate a representative authorized to act on each of the respective parties' behalf in all matters pertaining to this Agreement.

For the Pool:

Name

Title

Address

City, State, Zip Code

Telephone

Email Address

For the Member:

Name

Title

Address

City

State

Zip Code

Telephone

Email Address

Such representatives and/or addresses may be changed by either party from time to time by written or electronic notice to the other. The Member (through its Authorized Representative listed above) shall reply promptly to all correspondence or inquiries from the Pool.

15. Prior Acts of Parties. All covenants, promises, agreements, conditions and understandings between the Pool and the Member, and any other acts of the parties undertaken pursuant to A.R.S. § 11-952.01 are superseded by and merge into this Agreement, and this Agreement and any Appendices hereto set forth all covenants, promises, agreements, conditions and understandings between the Pool and the Member as of the date hereof. There are no covenants, promises, agreements, conditions or understandings either oral or written between the Pool and the Member other than set forth herein and in the Appendices hereto.

16. Liability. The Pool, the Board and the Administrator shall have no obligation to pay or defend claims except from the funds in the Pool, and no liability pursuant to this Agreement and any Appendix hereto except to disburse funds in the Pool in accordance with the terms of this Agreement. In the event that after collecting all assessments or Membership Fees from the members of the Pool as provided for herein, there are insufficient funds in the Pool to pay the expenses and to discharge the obligations of the Pool, neither the Pool, the Board nor the Administrator shall have any further obligation to defend or pay claims.

16.1. No member of the Pool has any liability for claims brought by third parties against any other member of the Pool, other than the obligation to contribute certain funds to the Pool as expressly required by this Agreement. The liability for any claim against the Member shall remain the sole and exclusive liability of the Member. The obligation of the Pool is to indemnify the Member against such liability as required by the Property and Liability Coverage Agreement and the Workers' Compensation Coverage Agreement, and only to the extent there are funds in the Pool for such indemnification.

16.2. The Member is not relieved of its liability incurred during the Member's period of membership in the Pool except through the payment of losses by the Pool (as required by the Property and Liability Coverage Agreement and the Workers' Compensation Coverage Agreement) or by the Member.

17. Invalidity of a Term. The parties agree that in the event any term, covenant or condition herein contained should be held to be invalid or void by a court of competent jurisdiction, the invalidity of any term, covenant or condition shall in no way affect any other term, covenant or condition of this Agreement.

18. Prohibition Against Discrimination. In the event that it applies, the parties agree to comply with the Arizona Governor's Executive Order No. 75-5, entitled "Prohibition of Discrimination in State Contracts - Non-Discrimination in Employment by Government Contractors and Subcontractors," and any subsequent similar Executive Order.

19. Governing Law And Venue. This Agreement shall be construed under the laws of the State of Arizona. Any action arising out of this Agreement, whether for the enforcement thereof or otherwise, shall be brought in Maricopa County.

20. Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of such counterparts shall be deemed an original hereof.

21. Conflict of Interest and Israel Provision. The parties acknowledge that this Agreement is subject to cancellation pursuant to A.R.S. 38-511, the provisions of which are incorporated herein. The Parties agree that they are not currently engaged in and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35- 393.

22. In addition to Appendices A, B and C previously referred to herein, the following Appendices are attached hereto and incorporated by this reference as if set forth in full, and such Appendices are subject to amendment pursuant to each of their respective terms:

Appendix D – Bylaws of the Pool

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this _day
of _____, 20¹

POOL:

ARIZONA MUNICIPAL RISK RETENTION
POOL, an Arizona nonprofit corporation

By: _____
Its: _____

THE MEMBER:

By: _____
Its: _____



**ARIZONA MUNICIPAL RISK RETENTION POOL
MUNICIPAL LIABILITY COVERAGE AGREEMENT**

NOTICE

THIS COVERAGE AGREEMENT IS ISSUED BY ARIZONA MUNICIPAL RISK RETENTION POOL ("POOL"). THIS AGREEMENT PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS. EACH OF THE COVERAGE AGREEMENTS INCLUDES SPECIAL REQUIREMENTS FOR PROVIDING WRITTEN NOTICE TO THE POOL. THIS COVERAGE AGREEMENT PROVIDES GENERAL LIABILITY AND MUNICIPAL MANAGEMENT PRACTICES LIABILITY COVERAGE ONLY FOR DAMAGES AWARDED AGAINST A MEMBER AS A RESULT OF A CLAIM FIRST MADE AGAINST A MEMBER AND REPORTED TO THE POOL IN WRITING DURING THE RATING PERIOD OR AN EXTENDED REPORTING PERIOD.

PLEASE READ THIS COVERAGE AGREEMENT CAREFULLY. ALL TERMS IN QUOTES HAVE A SPECIAL MEANING FOUND UNDER **SECTION VII, DEFINITIONS** OR IN THE **COMMON CONDITIONS**.

IN CONSIDERATION OF THE PAYMENT OF THE PREMIUM SHOWN IN THE DECLARATIONS AND IN RELIANCE ON ALL OF THE STATEMENTS AND REPRESENTATIONS MADE DURING THE APPLICATION PROCESS TO THE POOL, AND SUBJECT TO ALL THE TERMS, CONDITIONS AND LIMITS OF THIS COVERAGE AGREEMENT, THE POOL AGREES AS FOLLOWS:

SECTION I - COVERAGE AGREEMENTS

A. GENERAL LIABILITY COVERAGE AGREEMENT

1. The Pool will pay "damages" the "member" is legally obligated to pay for "bodily injury", "property damage" or "personal and advertising injury". This Coverage Agreement only applies if:
 - a. prior to the effective date of this policy, no "member" knew that the "claim" for "bodily injury", "property damage" or "personal and advertising injury" was reasonably likely to be made;
 - b. the "bodily injury" or "property damage" is caused by an "occurrence" which happened after the "retroactive date";
 - c. the "claim" is first made against any "member" during the "rating period", and the "claim" is reported to the Pool in writing during the "rating period" or any applicable extended reporting period; and
 - d. the "bodily injury" or "property damage" is first sustained or the "personal and advertising injury" is first committed after the "retroactive date" and prior to the end of the "rating period" in the "coverage territory".
2. The Pool has the right and duty to defend the "member" against any "suit" seeking covered "damages". The Pool may, at the Pool's discretion, investigate any "claim" and settle any "claim" or "suit."
3. The Pool has no obligation to pay "damages", defend any "member" or incur any expense after the applicable limit of liability shown in the Declarations has been paid.

B. MUNICIPAL MANAGEMENT PRACTICES LIABILITY COVERAGE AGREEMENT

1. The Pool will pay "damages" the "member" is legally obligated to pay for a "wrongful act". This Coverage Agreement only applies if:
 - a. prior to the effective date of this policy, no "member" knew that the "claim" resulting from a "wrongful act" was reasonably likely to be made;

- b. the "wrongful act" happened after the "retroactive date";
 - c. the "claim" is first made against any "member" during the "rating period", and the "claim" is reported to the Pool in writing during the "rating period" or any applicable extended reporting period; and
 - d. the "wrongful act" is first committed after the "retroactive date" and prior to the end of the "rating period" in the "coverage territory".
2. The Pool has the right and duty to defend the "member" against any "suit" seeking covered "damages". The Pool may, at the Pool's discretion, investigate any "claim" and settle any "claim" or "suit."
 3. The Pool has no obligation to pay "damages", defend any "member" or incur any expense after the applicable limit of liability shown in of the Declarations has been paid.

Damages attributable to "bodily injury", "property damage" or "personal and advertising injury" will be covered by this policy only to the extent they fall within the coverage provided by Coverage Agreement A.

SECTION II - COVERED EXPENSES AND COSTS

A. FOR ANY "CLAIM" THE POOL INVESTIGATES OR SETTLES OR ANY "SUIT" THE POOL DEFENDS, THE POOL WILL PAY:

1. "Loss adjustment expense" the Pool incurs, subject to the "loss adjustment expense" limitations in this section and other "member" obligations contained in this Policy.
2. The cost of bonds to release attachments, but only for bond amounts within the applicable Limit Of Liability. The Pool does not have to furnish these bonds.
3. All reasonable expenses incurred by a "member" at the Pool's request to assist in the investigation or defense of the "claim" or "suit", including actual loss of earnings up to \$100 a day because of time off from work.
4. All costs, other than attorney's fees, taxed against the "member" in the "suit".
5. Prejudgment interest awarded against the "member" on that part of the judgment the Pool pays. If the Pool makes an offer to pay the applicable Limit Of Liability, the Pool will not pay any prejudgment interest incurred that accrued after the offer.
6. All interest on the full amount of any judgment that accrues after entry of the judgment and before the Pool has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Liability.

These payments will not reduce the Limits Of Liability unless otherwise noted in the Limits of Liability section.

B. FOR ANY "DECLARATORY RELIEF CLAIM" OR "INJUNCTIVE RELIEF CLAIM" THAT IS NOT BROUGHT WITH A "CLAIM" FOR "DAMAGES" THE POOL WILL PAY:

1. 50% of the first \$25,000 of "loss adjustment expense; and
2. 25% of the next \$25,000 of "loss adjustment expense".
3. The "Named Member" shall pay all "loss adjustment expense" in excess of \$50,000.
 - a. The Pool may pay any part or all of the "loss adjustment expense" amount to effect settlement of any "claim" or "suit". The "Named Member" shall promptly reimburse the Pool for its share of "loss adjustment expense".
 - b. The most the Pool will pay for all "loss adjustment expense" arising out of "injunctive relief claims" and "declaratory relief claims" made during the "rating period" is \$100,000.

This Policy does not apply to:

A. AIRCRAFT, DRONE OR WATERCRAFT

"Damages" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, drone or watercraft owned or operated by or rented or loaned to any "member". Use includes operation and "loading or unloading".

This Exclusion does not apply to:

1. A watercraft while ashore on premises the "member" owns or rents;
2. A watercraft that is:
 - a. Less than 26 feet long; and
 - b. Not being used to carry persons or property for a charge;

B. AUTO

"Damages" arising out of the ownership, maintenance, use or entrustment to others of any "auto," owned or operated by or rented or loaned to any "member." use includes operation and "loading or unloading."

This exclusion does not apply to

1. Parking an "auto" on, or on the ways next to, premises the "member" owns or rents, provided the "auto" is not owned by or rented or loaned to any "member".
2. "Bodily injury" or "property damage" caused by the "Named Member's" work servicing or repairing vehicles provided the damage occurs off the "Named Member's" premises and when no "member" had care, custody or control of the vehicle.
3. "Damages" sustained by a suspect arising from lawful and official law enforcement operations conducted in pursuit of that suspect.

C. ASBESTOS

"Damages" arising directly or indirectly out of, resulting from, caused by or contributed to by:

1. The use, sale, installation, removal, abatement, distribution, or containment of or exposure to asbestos, asbestos products, asbestos-containing material, asbestos fibers, or asbestos dust;
2. The actual or threatened abatement, mitigation, removal or disposal of asbestos, asbestos products, asbestos-containing material, asbestos fibers, or asbestos dust;
3. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with (1) or (2) above; or
4. Any obligation of the "member" to indemnify any party in connection with (1), (2) or (3) above.

D. BREACH OF CONTRACT

"Damages" arising out of any breach of an express or implied contract or warranty including, but not limited to, any "claim" for amounts due under the terms of any contractual obligation. This exclusion does not apply to liability the "member" would have in the absence of the contract.

E. CONTRACTUAL LIABILITY

"Damages" which a "member" is obligated to pay by reason of the assumption of liability in a contract. This Exclusion does not apply to liability for "damages":

1. That the "member" would have in the absence of the contract; or
2. Assumed by a "member" in a "covered contract", provided the "wrongful act" or "occurrence" giving rise to the "damages" occurs subsequent to the execution of the contract.

F. DAMAGE TO IMPAIRED PROPERTY OR PROPERTY NOT PHYSICALLY INJURED

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

1. A defect, deficiency, inadequacy or dangerous condition in "the Member's product" or "the Member's work"; or
2. A delay or failure by the "member" or anyone acting on the "member's" behalf to perform a contract or agreement in accordance with its terms.

This Exclusion does not apply to the loss of use of other property arising out of the sudden and accidental physical injury to "the Member's product" or "the Member's work" after it has been put to its intended use.

G. DAMAGE TO PROPERTY

"Property damage" to:

1. Property the "member" owns, rents, or occupies, including any costs or expenses incurred by the "member", or by any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
2. Premises the "member" sells, gives away or abandons, if the "property damage" arises out of any part of those premises;
3. Property loaned to a "member";
4. Personal property in the care, custody or control of a "member";
5. That particular part of real property on which the "member" or any contractors or subcontractors working directly or indirectly on the "member's" behalf are performing operations, if the "property damage" arises out of those operations; or
6. That particular part of any property that must be restored, repaired or replaced because "the member's work" was incorrectly performed on it.

Paragraph (2) of this Exclusion does not apply if the premises are "the member's work" and were never occupied, rented or held for rental by the "member".

Paragraphs (3), (4), (5) and (6) of this Exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this Exclusion does not apply to "property damage" included in the "products-completed operations hazard".

H. DAMAGE TO THE MEMBER'S PRODUCT

"Property damage" to "the Member's product" arising out of it or any part of it.

I. DAMAGE TO THE MEMBER'S WORK

"Property damage" to "the Member's work" arising out of it or any part of it.

J. DATA SECURITY EVENT

"Damages" arising out of any "Data Security Event".

K. DISHONEST, FRAUDULENT, CRIMINAL OR MALICIOUS ACTS

"Damages" arising out of:

1. Any dishonest, fraudulent, criminal, knowingly wrongful or malicious act, error or omission, committed by the "member", including the willful or reckless violation of any statute or ordinance; or
2. Any criminal proceedings or any proceedings under any open meeting law against any "member."

L. EMPLOYER'S LIABILITY

"Bodily injury" to:

1. An "employee" of a "member" arising out of and in the course of:
 - a. Employment by the "member"; or
 - b. Performing duties related to the "member's" municipal activities; or
2. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (a) above.

This Exclusion applies:

1. Whether the "member" may be liable as an employer or in any other capacity; and
2. To any obligation to share "damages" with or repay someone else who must pay "damages" because of the injury.

This Exclusion does not apply to liability assumed by the "member" under a "covered contract".

M. EMPLOYEE WAGES OR BENEFITS

"Damages" that are:

1. Claimed increases in wages or benefits; or
2. Fringe benefits, educational expenses, overtime or similar payments arising out of an "employment-related practices claim".

N. EMPLOYMENT RELATED LAWS

"Damages" arising out of an obligation imposed by or an alleged violation of:

1. any workers' compensation law;
2. any occupational disease law;
3. any unemployment compensation law;
4. any social security or disability benefits law;
5. the Employee Retirement Income Security Act;

6. the U.S. Longshoreman and Harbor Workers' Act;
7. the Federal Employers' Liability Act;
8. the Jones Act;
9. the Fair Labor Standards Act; or
10. the Migrant & Seasonal Agricultural Worker Protection Act.

O. EXPECTED OR INTENDED DAMAGES

Under the coverage provided under the General Liability Coverage Agreement in paragraph A above, any "damages" expected or intended from the standpoint of the "member". This exclusion does not apply to "bodily injury" or "property damage" that is the direct result of an act that the "member" believes to be necessary to safeguard or preserve or protect person or property.

Under the coverage provided under the Municipal Management Practices Liability in paragraph B above, "damages" arising out of a "wrongful act" the "member" knew or reasonably should have known to be wrongful at the time the act was committed. This exclusion does not apply to a "Member" for negligence in training, hiring or supervising an employee or agent.

P. FIDUCIARY LIABILITY

"Damages" arising out of any "wrongful act" committed by any "member" in a fiduciary capacity

Q. GENERAL LIABILITY

"Damages" for "bodily injury", "property damage" or "personal and advertising injury" are not covered by Municipal Management Practices Liability Coverage Agreement in paragraph B above. "Damages" for "bodily injury", "property damage" or "personal and advertising injury" will be covered only to the extent they fall within the coverage provided under the General Liability Coverage Agreement in paragraph A above. This exclusion does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is sustained in the course of lawful and official law enforcement operations. In that case, those "damages" will only be covered under the Municipal Management Practices Liability Coverage Agreement.

R. INADEQUACY OF PERFORMANCE OF INVESTMENT/ADVICE

"Damages" arising out of:

1. Failure of any investment to perform;
2. Errors in providing information on past performance of investment vehicles;
3. Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program"; or
4. The investment of or failure to invest funds.

S. INSUFFICIENCY OF FUNDS

"Damages" arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

T. INSURANCE AND BONDS

"Damages" arising out of the purchase of or failure to purchase or maintain any insurance, other risk transfer agreement or bonds, including notary bonds.

U. INTELLECTUAL PROPERTY

"Damages" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

V. LAND USE

"Damages" arising out of

1. any taking, annexation, condemnation, inverse condemnation, adverse possession, or dedication by adverse use of land or property, whether or not as a result of the denial of substantive or procedural due process or both.
2. actual or alleged physical occupation, invasion, or use of property by the Member;
3. Reduction or invalidation of special assessment; or
4. actual or alleged negligent inspection or enforcement of any building, plumbing, electrical, fire or similar codes.

W. LEAD

"Damages" arising directly or indirectly out of, resulting from, caused by or contributed to by:

1. The toxic or pathological properties of lead, lead compounds or lead contained in any materials;
2. The actual or threatened abatement, mitigation, removal or disposal of lead, lead compounds or materials containing lead;
3. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with (1) or (2) above; or
4. Any obligation of the "member" to indemnify any party in connection with (1), (2) or (3) above.

X. LIQUOR LIABILITY

"Damages" for which any Covered Entity may be held liable by reason of:

1. Causing or contributing to the intoxication of any person;
2. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
3. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This Exclusion applies only if the Covered Entity:

- a) Is in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages; or
- b) Serves or furnishes alcoholic beverages without a charge if a license is required for such activities. For the purposes of this provision, license does not mean a consumption and display permit.

Y. MATERIAL PUBLISHED WITH KNOWLEDGE OF FALSITY

"Personal and advertising injury" arising out of oral or written publication of material, if done in direction of the "member" with knowledge of its falsity.

Z. MATERIAL PUBLISHED PRIOR TO RATING PERIOD

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the "rating period".

AA. MOBILE EQUIPMENT

"Damages" arising out of the transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any "member".

BB. MUNICIPAL ACTIVITIES, SERVICES AND FACILITIES

1. "Damages" arising out of:
 - a. The complete or partial failure to adequately supply gas, oil, water, electricity or steam;
 - b. The failure or bursting of any dam, dike, levee or canal;
 - c. The detention or confinement of any person or persons in any jail, holding cell or similar detention facility if the "wrongful act" resulting in such "damages" occurs after a continuous detention or confinement period of 30 days, or in any detention facility which is intended and regularly used for confinement of persons for periods in excess of 30 days;
 - d. The ownership, operation, maintenance or use of any landfill or dump; or
2. "Damages" arising out of the ownership, operation, maintenance or use of any:
 - a. Airport; or
 - b. Hospital, nursing home or medical clinic.
3. Exclusion 1.a. does not apply if the failure to supply results from the sudden or accidental injury to tangible property owned or used by the "member".

Subject to above 3 above the "Failure to Supply" limit is \$1,000,000 per Claim / \$1,000,000 Aggregate and is the most the pool will pay for the sum of "damages" and "loss adjustment expense" arising out of all "failure to supply claims" made during the rating period.

CC. OTHER THAN MONEY DAMAGES

Any loss, cost or expense arising out of any judgment for declaratory relief or injunctive relief.

DD. POLLUTION

1. "Damages" for which a "member" would not have been liable in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.
2. Any loss, cost or expense arising out of any:
 - a. Request, demand, order or statutory or regulatory requirement that any "member" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - b. "Claim" or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

3. This Exclusion does not apply to "damages" arising out of the use of insecticide application control, provided the use of the product was in compliance with the law.

EE. PRIOR KNOWLEDGE

"Damages" arising out of any "wrongful act" or "occurrence" that any "member" knew or reasonably should have known, prior to the effective date of this Coverage Agreement, was likely to result in a "claim".

FF. PRIOR ACTS

"Damages" arising out of any "wrongful act" or "occurrence" committed before the "retroactive date" of this Coverage Agreement.

GG. PROFESSIONAL SERVICES

"Damages" arising out of the rendering of or failure to render professional services by any professional listed below:

1. Attorney; but this Exclusion does not apply to a staff attorney employed full-time by the "member";
2. Architect;
3. Doctor of Medicine;
4. Dentist;
5. Nurse, except with respect to activities in the capacity of an emergency medical technician or first responder;
6. Pharmacist; or
7. Emergency Medical Technicians and First Responders, except with respect to activities while responding to emergencies.

HH. QUALITY OR PERFORMANCE OF GOODS - FAILURE TO CONFORM TO STATEMENTS

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in an "advertisement".

II. RECALL OF PRODUCTS, WORK OR IMPAIRED PROPERTY

"Damages" claimed for any loss, cost or expense incurred by the "member" or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

1. "The Member's product";
2. "The Member's work"; or
3. "Impaired property"

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

JJ. SECURITIES CLAIMS

"Damages" arising out of any "Securities Claim".

KK. SILICA

"Damages" arising out of an exposure to or the existence of "silica".

LL. SOVEREIGN IMMUNITY

The Pool has no obligation to pay "damages" that the "member" would not be obligated to pay under applicable governmental or sovereign immunity law if this Coverage Agreement had not been obtained. The existence of this Coverage Agreement does not constitute a waiver of any statutory immunity or limitation on the amount of "damages" that can be awarded against a "member".

MM. SPECIAL EVENTS

"Damages" arising out of a "member's" ownership, sponsorship, maintenance or operation of any:

1. Mechanically operated amusement devices;
2. "Mobile equipment", "auto", snowmobile, motorcycle or other item in or while being prepared for any racing, pulling, pushing, speed, demolition or stunting activity;
3. Rodeos;
4. Fireworks displays or exhibitions;
5. Ski facility;
6. Climbing wall;
7. Trampoline or rebound device; or
8. Skateboard facility or skateboard activity.

This Coverage Agreement also does not apply to any "damages" arising out of the cancellation of any event.

NN. TAXATION

"Damages" arising out of the assessment, adjustment, collection or refunding of taxes.

OO. VOLUNTEER WORKERS

"Damages" as a result of "bodily injury" or "personal and advertising injury" to:

1. Any "volunteer worker" while acting on behalf of the "member"; or
2. The spouse, child, parent, brother or sister of that "volunteer worker" as a consequence of Paragraph (1) above

if the "volunteer worker" is:

- a. An employee within the meaning of a Workers' Compensation law or similar law, or
- b. Covered under a Voluntary Compensation endorsement to a Workers' Compensation coverage agreement or insurance policy.

PP. STORAGE TANKS

"Damages" arising out of the presence, ownership or use of any "storage tank".

QQ. WAR AND MILITARY ACTION

"Damages" due to:

1. War, including undeclared or civil war;
2. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
3. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

RR. WRONG DESCRIPTION OF PRICES

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in an "advertisement".

SECTION IV - LIMITS OF LIABILITY AND DEDUCTIBLES

A. LIMITS OF LIABILITY

1. The Limits Of Liability shown in the Declarations and the rules below fix the most the Pool will pay regardless of the number of:
 - a. "Members" involved;
 - b. "Claims" made or "suits" brought;
 - c. Persons or organizations making "claims" or bringing "suits"; or
 - d. A "claim" and its "related claims" share one applicable limit.
2. For any "claim" or "suit" seeking "damages" for which coverage is provided by both Coverage Agreement A and Coverage Agreement B, only one Limit of Liability will apply. The "Named Member" is entitled to choose which Limit will apply.
3. Each sublimit stated below applies as part of, and not in addition to, any overall applicable coverage limit. Each sublimit is the maximum limit amount potentially recoverable for all "damages" arising from or relating to that particular "claim" or "suit."
4. The General Aggregate Limit is the most the Pool will pay for the sum of all "damages" and medical expenses covered by this Coverage Agreement. If "loss adjustment expenses" erode a particular limit, those expenses are also subject to this aggregate limit.
5. The Products-Completed Operations Aggregate Limit is the most the Pool will pay under Coverage A – General Liability for "damages" because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
6. Subject to 5. above, the Each Claim-Occurrence/Offense Limit is the most the Pool will pay for "damages" under Coverage A – General Liability arising out of any one "occurrence" or offense.
7. The Each Claim-Wrongful Act Limit is the most the Pool will pay for "damages" under Coverage B. – Municipal Management Practice Liability arising out of any one "wrongful act".
8. The Medical Payments Each Accident Limit is the most the Pool will pay for all medical expenses because of "bodily injury" sustained in any one "occurrence".
9. The Medical Payments Each Person Limit is the most the Pool will pay for all medical expenses because of "bodily injury" sustained by any one person in any one "occurrence".

10. Sublimit-Back Wages

- a. The "Back Wages" Aggregate Limit is the most the Pool will pay for the sum of "damages" and "loss adjustment expense" arising out of all "employment-related practices claims" and "suits" seeking "back wages" made during the "rating period".
- b. Subject to a. above, the Back Wages Each Claim Limit is the most the Pool will pay for the sum of "damages" and "loss adjustment expense" arising out of any one "employment-related practices claim" seeking "back wages" made during the "rating period".
- c. Subject to b. above, payment for past or back wages is limited to the claimant's regular salary for the twelve month period immediately preceding the "wrongful act" without adjustment for actual or possible overtime, incentive pay, or promotional or merit increases. Regular salary includes on-call wages.

11. Sublimit-Fire Damage

Exclusions E. and F do not apply to damage by fire to premises while rented to the "Named Member" or temporarily occupied by the "Named Member" with permission of the owner, but the Fire Damage Limit is the most the Pool will pay for "damages" for "property damage" by fire to any one premises.

12. Land Use

- a. The Land Use Liability Aggregate Limit is the most the Pool will pay for the sum of "damages" and "loss adjustment expense" arising out of all "land use liability claims" made during the "rating period".
- b. Subject to a. above, the Land Use Liability Each Claim Limit is the most the Pool will pay for the sum of "damages" and "loss adjustment expense" arising out of any one "land use liability claim" made during the "rating period".
- c. The Pool shall be reimbursed by the "member" for 20% of the "damages" and "loss adjustment expense" paid under 12 a & b above.

13. Sublimit-Organic Pathogens

- a. The Organic Pathogen Aggregate Limit is the most the Pool will pay for the sum of "damages" and "loss adjustment expense" arising out of all "organic pathogen claims" made during the "rating period".
- b. Subject to a. above, the Organic Pathogen Each Claim Limit is the most the Pool will pay for the sum of "damages" and "loss adjustment expense" arising out of any one "organic pathogen claim" made during the "rating period".

14. Sublimit-Pollution Liability

Paragraph (1) of Exclusion DD – Pollution does not apply to "damages" arising out of a "Sudden Pollution Event".

- a. The Pollution Liability Each Event Limit is the most the Pool will pay for the sum of "damages" and "loss adjustment expense" arising out of any one "Sudden Pollution Event".
- b. Subject to a. above, the Pollution Liability Each Claimant Limit is the most the Pool will pay for the sum of "damages" and "loss adjustment expense" arising out of all injury or damage sustained by any one person or organization in any one "Sudden Pollution Event".

15. The Limits Of Liability apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the "rating period" shown in the Declarations, unless the "rating period" is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Liability.

B. DEDUCTIBLES

1. The Pool's obligation to pay "damages" on a "member's" behalf applies only to the amount of "damages" in excess of any Deductible amount stated in the Declarations.
2. The Aggregate Deductible amount applies to all "damages" arising out of "claims" made during the "rating period".
3. Subject to Paragraph 2. above, the Each Claim-Wrongful Act and Each Claim-Occurrence/Offense Deductible amount applies to all "damages" as the result of any one "wrongful act", "occurrence" or offense, regardless of the number of persons or organizations who sustain "damages".
4. The Pool may pay any part or all of the Deductible amount to effect settlement of any "claim" or "suit". The "member" shall promptly reimburse the Pool for such part of the Deductible amount as has been paid by the Pool.
5. The Member is not obligated to pay a deductible for any "land use liability claim", "organic pathogens claim", "back wages", or claim arising out of a "Sudden Pollution Event."

SECTION V - MEMBERS**A. INDIVIDUALS AND ORGANIZATIONS THAT QUALIFY AS MEMBERS**

1. The city, town or other governmental body or entity identified as the "Named Member" in the Declarations.

Unless specifically identified by endorsement, "member" does not include:

- a. A gas, airport, electrical, or steam utilities commission;
 - b. A port authority, housing and redevelopment authority, economic development authority, area or municipal redevelopment authority, or similar agency;
 - c. A municipal power agency or municipal gas agency;
 - d. A hospital or nursing home board or commission;
 - e. A welfare or public relief agency;
 - f. A school board; or
 - g. A "joint venture", except as provided in Paragraph 2.c.(2) below.
2. Each of the following is also a "member" for liability while acting within the scope of their duties in the positions described:
 - a. Any of the "Named Member's" elected or appointed officials;
 - b. Any person serving on the "Named Member's" council;
 - c. Any "employee" of the "Named Member", while acting within the course and scope of their duties on behalf of:
 - (1) The "Named Member"; or
 - (2) Another governmental entity pursuant to a mutual aid agreement;
 - d. Any person on a "Named Member's" board, commission, agency or committee that is not excluded under Paragraph 1. above;
 - e. Any "volunteer worker" or volunteer organization only while acting on behalf of the "Named Member" and subject to the "Named Member's" direction and control;

- f. Any "Named Member" relief association and its officers and "employees"; and
- g. Any other authorized person or agent of the "Named Member" while acting on behalf of the "Named Member", including the "Named Member's" "leased workers".

This provision does not include independent contractors.

- 3. No person or organization described under Paragraph 2. is a "member" with respect to any "claim" or "suit" against that person or organization by any other "member".

SECTION VI - ADDITIONAL COVERAGES

A. MEDICAL PAYMENTS

- 1. The Pool will pay the medical expenses identified below resulting from "bodily injury" caused by an "occurrence" on the "covered premises", provided that:
 - a. The "bodily injury" arises out of a condition in or on the "covered premises";
 - b. The "occurrence" takes place during the "rating period";
 - c. The expenses are incurred and reported to the Pool within one year of the date of the accident; and
 - d. The injured person submits to examination, at the Pool's expense, by physicians of the Pool's choice as often as the Pool reasonably requires.

2. The Pool will make these payments regardless of fault.

- 3. The Pool will pay reasonable expenses for:
 - a. First aid administered at the time of an accident;
 - b. Necessary medical, surgical, x-ray and dental services, including prosthetic devices;
 - c. Necessary ambulance, hospital, professional nursing and funeral services; and
 - d. Replacement or repair of damaged eyeglasses or clothing.

4. Exclusions

The Pool will not pay expenses for "bodily injury":

- a. Any "member"
 - To any "member".
- b. Hired Person
 - To a person hired to do work for or on behalf of any "member" or a tenant of any "member".
- c. Injury On Normally Occupied Premises
 - To a person injured on that part of premises the "member" owns or rents that the person normally occupies.
- d. Workers Compensation And Similar Laws
 - To a person, whether or not an "employee" of any "member", if benefits are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

- e. Athletic Activities
 - Includes wording © ISO Properties, Inc., used with permission

To a person injured while practicing, instructing, training for or taking part whether on an organized or non-organized basis.

- f. Products-Completed Operations Hazard
Included within the "products-completed operations hazard".
- g. Liability Exclusions
Excluded under Coverages A & B.
- h. Independent Contractors
Arising out of operations performed for the "member" by an independent contractor.
- i. Maintenance And Repair
To any person while engaged in:
 - (1) Maintenance and repair of the "covered premises"; or
 - (2) Alteration, demolition or new construction at such premises.
- j. Member Or Guest
To a member or guest of any club, tourist court or trailer park operated or owned by the "member".
- k. Snowmobiles
Arising out of the operation or use of any snowmobile or trailer designed for use therewith.

Exclusions a., c., i. and j. do not apply to a "volunteer worker" described in the definition of "covered premises".

- 5. As soon as practicable, but in no event later than the termination of the "rating period" or any applicable Extended Reporting Period, the injured person or someone on the injured person's behalf shall:
 - a. Give the Pool written proof of "claim", under oath if required, and
 - b. After each request from the Pool, execute authorization to enable the Pool to obtain copies of medical reports and records.

B. CRISIS INTERVENTION COVERAGE

- 1. The Pool will reimburse the "Named Member" for costs incurred by the "Named Member" to provide the following services:
 - a. On-premises mental health crisis and grief counseling, by a licensed counselor, for employees or officials of the "Named Member" in need of such services for a period of one week after a "Traumatic Work-Related Event" occurs;
 - b. A 24-hour, 7-day per week crisis hotline for a period of up to 3 months after a "Traumatic Work-Related Event" occurs;
 - c. Crisis follow-up and relapse prevention services, by a licensed counselor, for employees or officials of the "member" in need of such services for a period of up to 3 months after a "Traumatic Work-Related Event" occurs;

- d. A media specialist to handle crisis-related external communications with electronic television and radio media for up to one month after a "Traumatic Work-Related Event" occurs.
- 2. The Limit of this Additional Coverage for each "Traumatic Work-Related Event" is \$25,000. The annual aggregate limit of this Additional Coverage is \$25,000.

SECTION VII - DEFINITIONS

- A. **"ADVERTISEMENT"** means a notice that is broadcast or published to the general public or specific market segments about goods, products or services for the purpose of attracting customers or supporters.
- B. **"AUTO"** means:
 - 1. A land motor vehicle, trailer or semi-trailer designed for travel on public roads; or
 - 2. An all-terrain vehicle licensed for road use;
 including any attached machinery or equipment. But "auto" does not include "mobile equipment".
- C. **"BACK WAGES"** means the regular salary for the twelve month period immediately preceding the "wrongful act" without adjustment for actual or possible overtime, incentive pay, or promotional or merit increases. Regular salary includes on-call wages.
- D. **"BODILY INJURY"** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- E. **"CAFETERIA PLANS"** means any plan authorized by applicable law to allow employees to elect to pay for certain benefits with pre-tax dollars.
- F. **"CLAIM"** means a written demand for money or services.
- G. **"COVERAGE TERRITORY"** means:
 - 1. The United States of America (including its territories and possessions) and Canada;
 - 2. International waters or airspace, but only if the "wrongful act", "occurrence" or offense occurs in the course of travel or transportation between any places included in 1 above; or
 - 3. All other parts of the world if the "claim" for "damages" arises out of:
 - a. Goods or products made or sold by the "member" in the territory described in 1 above; or
 - b. The activities of a person whose home is in the territory described in a. above, but is away for a short time on the "member's" business;
 provided a "member's" responsibility to pay "damages" is determined in a "suit" on the merits, in the territory described in 1 above or in a settlement the Pool agrees to.
- H. **"COVERED CONTRACT"** means:
 - 1. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to the "member" or temporarily occupied by the "member" with permission of the owner is not a "covered contract";
 - 2. A sidetrack agreement;
 - 3. Any easement or license agreement, including those for vehicle or pedestrian private railroad crossings at grade, but not including easements or license agreements in connection with construction or demolition operations on or within 500 feet of a railroad;
 - 4. An obligation, as required by ordinance, to indemnify a municipality;

- 5. An elevator maintenance agreement;
- 6. That part of any other contract or agreement pertaining to the "member's" municipal activities under which the "member" assumes the tort liability of another party to pay "damages" to a third person or organization if the contract or agreement is made prior to the date of the "wrongful act" giving rise to claimed "damages". Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph 6 does not include that part of any contract or agreement:

- a. That indemnifies a railroad for "damages" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- b. That indemnifies an architect, engineer or surveyor for "damages" arising out of:
 - (1) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings, designs and specifications; or
 - (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the "damages"; or
- c. Under which the "member", if an architect, engineer or surveyor, assumes liability for "damages" arising out of the "member's" rendering or failure to render professional services.

I. "COVERED PREMISES" means:

All premises owned or rented to the "member"; and

- 1. The ways on land next to premises the "member" owns; or,
- 2. Any location in the "coverage territory" if the person making the "claim" is a "volunteer worker" who is:
 - a. Subject to the "member's" direction and control;
 - b. Injured while acting on behalf of the "member"; and
 - c. Not covered by the "member" for worker's compensation, disability, or medical benefits.

J. "DAMAGES" means money paid to another for injury.

"Damages" does not include:

- 1. Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law;
- 2. Repayment of any tax or assessment that was wrongfully obtained, or any interest on such tax or assessment; or
- 3. Amounts paid or payable for the purchase or permanent acquisition of property or property rights, or for the right to permanently enforce an ordinance, regulation, or restriction on the use of property.

K. "DATA SECURITY EVENT" means:

- 1. a Privacy Event;
- 2. unauthorized access to or use of a Member's Computer System;

3. a denial of service attack upon or directed at the Member's Computer System; or
4. malicious code or computer virus created or transmitted by, or introduced into a Member's Computer System.

L. "DECLARATORY RELIEF CLAIM" means any "claim" arising out of a request for a court of competent jurisdiction to decide the rights and obligations of the parties pursuant to the state of Arizona or Federal statutes on declaratory relief.

M. "DISCRIMINATION" means violation of a person's civil rights with respect to such person's race, color, national origin, religion, gender, marital status, age, sexual orientation or preference, physical or mental condition, or any other protected class or characteristic established by any federal, state or local statutes, rules or regulations.

N. "EMPLOYEE" means any natural person:

1. While in the "Named Member's" service;
2. Who the "Named Member" compensates directly by salary, wages or commissions;
3. Who the "Named Member" has the right to direct and control while performing services for the "Named Member"; and
4. "Leased worker".

"Employee" does not mean or include any agent, independent contractor or representative acting in the same general capacity.

O. "EMPLOYEE BENEFIT PROGRAM" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:

1. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
2. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
3. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and
4. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

P. "EMPLOYMENT-RELATED PRACTICES CLAIM" means a "claim" or "suit" alleging:

1. Demotion or failure to promote, negative evaluation, reassignment or discipline of the "Named Member's" current "employee" or wrongful refusal to employ;
2. Wrongful termination, meaning the actual or constructive termination of an "employee":
 - a. In violation or breach of applicable law or public policy;
 - b. Which is determined to be in violation of a contract, other than any employment contract, which stipulates financial consideration is due as the result of a breach of the contract;

- c. Wrongful denial of training, wrongful deprivation of career opportunity;
- d. Negligent hiring or supervision which results in any of the other offenses listed in this definition;
- e. Retaliatory action against an "employee" because the "employee" has:
 - (1) Declined to perform an illegal or unethical act;
 - (2) Filed a complaint with a governmental authority or a "suit" against the "member" or any other "member" in which "damages" are claimed;
 - (3) Testified against the "member" or any other "member" at a legal proceeding; or
 - (4) Notified a proper authority of any aspect of the "member's" municipal activities which is illegal;
- f. Coercing an "employee" to commit an unlawful act or omission within the scope of that person's employment;
- g. Work-related harassment;
- h. Employment-related libel, slander, invasion of privacy, defamation or humiliation; or
- i. Other work-related verbal, physical, mental or emotional abuse arising from "discrimination".

Any "claim" qualifying as an "employment-related practices claim" will be considered to be an "employment-related practices liability claim" in its entirety, regardless of whether the "claim" may assert other "claims" or "damages".

Q. "IMPAIRED PROPERTY" means tangible property, other than "the Member's product" or "the Member's work", that cannot be used or is less useful because:

- 1. It incorporates "the Member's product" or "the Member's work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- 2. The "member" has failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- 3. The repair, replacement, adjustment or removal of "the Member's product" or "the Member's work"; or
- 4. The "member's" fulfilling the terms of the contract or agreement.

R. "INJUNCTIVE RELIEF CLAIM" means any "claim" arising out of an injunction or request for an injunction:

- 1. Forbidding the "member" to do some act, which the "member" intends or is attempting to commit;
- 2. Restraining the "member" in the continuance of an act; or
- 3. Requiring the "member" to undertake requested action

pursuant to the state of Arizona or Federal statutes on injunctive relief.

S. "JOINT VENTURE" means a joint powers agreement, intergovernmental agreement, mutual aid agreement, or any similar agreement, including any entity, corporation, association, partnership or other arrangement formed by that agreement.

T. "LAND USE LIABILITY CLAIM" means any "claim" directly relating to:

- 1. The enforcement or interpretation of a land use, zoning or subdivision ordinance or regulation; or

- 2. The "Named Member's" regulatory approval or disapproval of any development or project.

Any "claim" qualifying as a "land use liability claim" under 1 or 2 above will be considered to be a "land use liability claim" in its entirety, regardless of whether the "claim" may assert other "claims" or "damages".

U. "LEASED WORKER" means a person leased to the "Named Member" by a labor leasing firm under an agreement between the "Named Member" and the labor leasing firm, to perform duties related to the conduct of the "Named Member's" municipal operations.

V. "LOADING OR UNLOADING" means the handling of property:

- 1. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- 2. While it is in or on an aircraft, watercraft or "auto"; or
- 3. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

W. "LOSS ADJUSTMENT EXPENSE" means expenses incurred and allocated to any "claim" or "suit" for investigation, defense, and administration.

"Loss adjustment expense" does not include:

- 1. Salaries and expenses of employees of the Pool or the Pool's Administrator, other than that portion of the Pool's employed attorney's fees, salary and expenses allocated to a specific "claim" or "suit"; or
- 2. Salaries of the "Named Member's" "employees" or the "member's" office expenses.

X. "MEMBER" means anyone or any entity who qualifies under Section V.

Y. "MOBILE EQUIPMENT" means any of the following types of land vehicles, including any attached machinery or equipment:

- 1. Bulldozers, farm machinery, forklifts, all-terrain vehicles not licensed for road use, and other vehicles designed for use principally off public roads;
- 2. Street cleaning equipment not licensed for road use;
- 3. Vehicles that travel on crawler treads;
- 4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - a. Power cranes, shovels, loaders, diggers or drills; or
 - b. Road construction or resurfacing equipment such as graders, scrapers or rollers;
- 5. Vehicles not described in Paragraphs 1, 2, 3 or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - b. Cherry pickers and similar devices used to raise or lower workers.

- 6. Vehicles not described in Paragraphs 1, 2, 3 or 4 above maintained primarily for purpose the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- a. Street cleaning equipment, if licensed for road use;
- b. Equipment designed primarily for:
 - (1) Snow removal; or
 - (2) Road maintenance, but not construction or resurfacing;
- c. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- d. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

Z. "**OCCURRENCE**" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions. A series of "occurrences" related by cause, fact or service will be considered one "occurrence" deemed to have only occurred when the first "occurrence" in the series happened.

AA. "**ORGANIC PATHOGEN CLAIM**" means any "claim" or "suit" seeking "damages" arising from any bacterium, virus, fungus, mold or mildew, or any of their mycotoxins, spores, scents or other by-products. Any "claim" qualifying as a "organic pathogen claim" will be considered to be an "organic pathogens claim" in its entirety, regardless of whether the "claim" may assert other "claims" or "damages".

BB. "**PERSONAL AND ADVERTISING INJURY**" means injury arising out of the following offenses:

- 1. False arrest or imprisonment;
- 2. Malicious prosecution;
- 3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy;
- 4. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- 5. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- 6. The use of another's advertising idea in the "Named Member's" "advertisement";
- 7. Infringing upon another's copyright, trade dress or slogan in the "Named Member's" "advertisement"; or
- 8. Assault or battery committed for the purpose of protecting persons or property or incident to an arrest.

For the offense of malicious prosecution, the injury is deemed to have been occurred and the offense committed only at the time the prosecution was initiated.

Any series of "personal and advertising injury" offenses related by cause, fact or service will be considered one "personal and advertising injury" offense deemed to only have been committed when the first "personal and advertising injury" offense was committed.

CC. "**PERSONAL INFORMATION**" means:

- 1. An individual's name or initials in combination with any one or more of the following data elements, when the data element is not encrypted:
 - a. The individual's social security number.

- b. The individual's number on a driver license or identification license issued applicable state law.
- c. The individual's financial account information in combination with any required security code, access code or password.

2. "Personal information" does not mean any publicly available information.

DD. "POLLUTANTS" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

EE. "PRODUCTS-COMPLETED OPERATIONS HAZARD" includes all "bodily injury" and "property damage" occurring away from premises the "member" owns or rents and arising out of "the Member's product" or "the Member's work" except:

- 1. Products that are still in the "member's" physical possession; or
- 2. Work that has not yet been completed or abandoned. However, "the Member's work" will be deemed completed at the earliest of the following times:
 - a. When all of the work called for in the "member's" contract has been completed.
 - b. When all of the work to be done at the job site has been completed if the "member's" contract calls for work at more than one job site.
 - c. When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

FF. "PROPERTY DAMAGE" means:

- 1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- 2. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

Electronic data or information is not tangible property for purposes of this definition.

GG. "RATING PERIOD" means the Rating Period shown in the Declarations.

HH. "RELATED CLAIMS" means all claims that allege the same or related "wrongful acts", "occurrences" or offenses. A wrongful act, "occurrence" or offense is related if it is one of a series of events or shares a common cause, fact or service.

II. "RETROACTIVE DATE" means the date identified as such in the Declarations.

JJ. "SECURITIES CLAIM" means any "suit" or "claim" for any relief, including informal or formal investigations or enforcement actions brought by any Federal or State agency or office, and licensure or disciplinary proceedings instituted by any Federal or State agency or office, or instituted by the Financial Institution Regulatory Authority ("FINRA") and any similar industry regulatory authority performing the same or a similar function as FINRA, or international, national, or regional stock, commodities, or futures exchanges, arising out of any actual or alleged violation of:

- 1. The Securities Act of 1933;
- 2. The Securities Exchange Act of 1934;
- 3. The Public Utilities Holding Act of 1935;

4. The Trust Indenture Act of 1939;
5. The Investment Company act of 1940;
6. The Investment Advisors Act of 1940;
7. Any state Blue Sky Laws; including any rules, regulations or amendments issued in relation to the acts referenced in 1-6 above; or
8. Any common law claim arising out of or in any way concerning or related to:
 - a. The promotion, issuance, sale or solicitation for sale of securities, bonds, debentures, stocks, options, warrants, trusts, real estate, REIT, or any other investment of any kind by any "member"; or
 - b. Recommendations, representations, or opinions concerning investment advice given by any "member" or any person or organization referred to by any "member" in connection with the performance or nonperformance of any securities, bonds, debentures, stocks, options, warrants, trusts, real estate, REIT, or any other investment of any kind by any "member"; or
 - c. The provision or furnishing of, by any "member", any information, data, statistics, projections, or other written or oral communication subsequently used, in any manner whatsoever, by the other party in making any decisions regarding any securities, bonds, debentures, stocks, options, warrants, trusts, real estate, REIT, or any other investment of any kind; or
 - d. Any common law principles of liability, if made in connection with an actual or alleged violation of any law listed in 1-7 above.

"Securities Claim" includes claims arising out of the solicitation of, attempt to commit, or conspiracy to commit, any act described in the preceding paragraphs.

KK. "**SILICA**" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.

LL. "**SUDDEN POLLUTION EVENT**" means a discharge, dispersal, release or escape of "pollutants" which:

1. Begins during the "rating period";
2. Begins at an identified time and place;
3. Ends, in its entirety, at an identified time within 48 hours of the beginning of the discharge, dispersal, release or escape of the "pollutants";
4. Is not a repeat or resumption of a previous discharge, dispersal, release or escape of the same "pollutant" from essentially the same source within 12 months of a previous discharge, dispersal, release or escape; and
5. Does not originate from a "Storage Tank."

To be a "Sudden Pollution Event", the discharge, dispersal, release or escape of "pollutants" need not be continuous. However, if the discharge, dispersal, release or escape is not continuous, then each and all discharges, dispersals, releases or escapes of the same "pollutants" from essentially the same source, considered together, must satisfy this definition to be considered a Sudden Pollution Event.

The "member" must notify the Pool of the "Sudden Pollution Event" as soon as practicable, but no more than 14 days after its ending.

MM. "**SUIT**" means a civil proceeding in which covered "damages" are alleged. "Suit" includes:

- 1. An arbitration proceeding to which the "member" must submit or does submit with the Pool or
- 2. Any other alternative dispute resolution proceeding to which the "member" submits with the Pool's consent.

"Suit" does not mean any criminal proceeding against any "member" or any open meeting law proceeding.

NN. "THE MEMBER'S PRODUCT":

- 1. Means:
 - a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (1) The "Named Member";
 - (2) Others trading under the "Named Member's" name; or
 - (3) A person or organization whose business or assets the "Named Member" has acquired; and
 - b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- 2. Includes:
 - a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "the Member's product"; and
 - b. The providing of or failure to provide warnings or instructions.
- 3. Does not include vending machines or other property rented to or located for the use of others but not sold.

OO. "THE MEMBER'S WORK":

- 1. Means:
 - a. Work or operations performed by the "Named Member" or on the "Named Member's" behalf; and
 - b. Materials, parts or equipment furnished in connection with such work or operations.
- 2. Includes:
 - a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "the Member's work; and
 - b. The providing of or failure to provide warnings or instructions.

PP. "TRAUMATIC WORK-RELATED EVENT" is an unforeseen event that occurs at the premises described in the Declarations and results in loss of life or serious injury of a person while on those premises.

QQ. "STORAGE TANK" means any storage tank, including any attached pumps, valves or piping, either on or buried below the surface of the ground or water, or which, at any time, had been buried under the surface of the ground or water and then subsequently exposed by any means. For the purposes of this definition, "buried" means that at least 10% of it is below the surface of the ground or water.

RR. "VOLUNTEER WORKER" means a person who:

1. Is not the "Named Member's" "employee";
2. Donates his or her work;
3. Acts at the direction of and within the scope of duties determined by the "Named Member"; and
4. Is not paid a fee or salary by the "Named Member" or anyone else for their work performed for the "Named Member".

SS. "WRONGFUL ACT" means any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect, or breach of duty by a "member".

However, "wrongful act" shall not mean any act:

1. Which is criminal, wanton or reckless;
2. Which constitutes:
 - a. Malfeasance in office;
 - b. Willful neglect of duty;
 - c. Bad faith;
 - d. Dishonesty; or
 - e. The willful violation of a statute or ordinance.
3. For which the "Named Member" is not authorized to indemnify any person by law or public policy.

Any series of "wrongful acts" related by cause, fact or service will be considered one "wrongful act" deemed to have only happened when the first "wrongful act" in the series happened.

SECTION VIII - CONDITIONS

A. WHEN A "CLAIM" IS FIRST MADE AND REPORTED AND RELATED CLAIMS

A "claim" is deemed to have been first made on the date any "member" receives notice of the "claim".

A "claim" is deemed to have been reported to the Pool on the date the Pool receives written notice of the "claim" from the "member".

All "related claims" will be considered to have been first made and reported to the Pool under the coverage in effect at the time the first "claim" is made and reported to the Pool. All "related claims" will be deemed to be one claim for purposes of any applicable Limit of Liability.

B. GOVERNMENTAL TORT LIABILITY LIMITATION

By accepting coverage under this Coverage Agreement, the "member" does not waive any of its statutory immunities for monetary limits of liability (commonly known as tort liability damages caps), and the Pool shall not be liable for any "claims" in excess of the statutory monetary limits unless the statutory tort limitation is found by a court not to apply. If "claims" are asserted in any judicial jurisdiction where statutory liability damage caps do not apply, then the Limits of Liability shown in the Declarations and further described in the Limits of Liability apply.

C. BANKRUPTCY

Bankruptcy or insolvency of the "member" or of the "member's" estate shall not relieve the Pool of any of its obligations hereunder.

D. DUTIES IN THE EVENT OF WRONGFUL ACT, OCCURRENCE OFFENSE, CLAIM OR SUIT

1. The "member" must see to it that the Pool is notified as soon as practicable of a "wrongful act", "occurrence" or offense which may result in a "claim" or "suit". The notice must include:
 - a. Details sufficient to identify the "member" involved;
 - b. How, when, and where the "wrongful act", "occurrence" or offense took place;
 - c. The names and addresses of any injured persons and witnesses; and
 - d. The nature and location of any injury or damage.

Notice of a "wrongful act", "occurrence" or offense is not notice of a "claim".
2. The "member" must provide written notice of any "claim" or "suit" to the Pool or any of its authorized agents as soon as practicable, but not later than the termination of the "rating period" or any applicable Extended Reporting Period.
3. The "member" must:
 - a. Immediately send the Pool copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";
 - b. Authorize the Pool to obtain records and other information;
 - c. Cooperate with the Pool in the investigation or settlement of the "claim" or defense against the "suit"; and
 - d. Assist the Pool, upon the Pool's request, in the enforcement of any right against any person or organization which may be liable to the "member" because of injury or damage to which this coverage may also apply.
4. No "member" will, except at that "member's" own cost, voluntarily make a payment, assume any legal obligation, or incur any expense, other than for first aid, without the Pool's consent.

E. LEGAL ACTION AGAINST THE POOL

No person or organization has a right under this Coverage Agreement:

1. To join the Pool as a party or otherwise bring the Pool into a "suit" to determine any "member's" liability; or
2. To sue the Pool under this Coverage Agreement unless all of its terms have been fully complied with.

A person or organization may sue the Pool to recover on an agreed settlement or on a final judgment against a "member"; but the Pool will not be liable for "damages" that are not payable under the terms of this Coverage Agreement or that are in excess of the applicable Limit Of Liability. An agreed settlement means a settlement and release of liability signed by the Pool, the Member and the claimant or the claimant's legal representative.

Any legal action by a "member" against the Pool for breach of this Coverage Agreement must be filed within one year of the date of the alleged breach.

F. REPRESENTATIONS

By accepting this Coverage Agreement, the "member" agrees:

1. The statements in the Declarations and applications are accurate and complete;
2. Those statements are based upon representations the "member" made to the Pool;
3. The Pool has issued this Coverage Agreement in reliance upon the "member's" representations; and
4. The "member" does not waive any statutory or common law immunity.

G. OTHER INSURANCE

The coverage afforded by this Coverage Agreement is excess coverage over any other insurance, self-insurance or other risk transfer agreement, whether primary, excess, contingent or provided on any other basis, whether collectible or not. This provision does not apply to any policy that is written to be excess over this policy.

H. INSPECTION AND AUDIT

1. The Pool will be permitted, but is not obligated, to inspect the "member's" property and operations. The purpose of these inspections is to assist the Pool in underwriting and assessing the risk. It is understood and agreed that in undertaking these inspections the Pool does not warrant or guarantee that the property or operations are safe or are in compliance with any law, rule, or regulation.
2. The Pool may examine and audit the "member's" relevant books and records at any time during the "rating period" or any extension and within three (3) years after the final termination of this Coverage Agreement.

I. CHANGES, ASSIGNMENT AND SUBROGATION

This Coverage Agreement contains all the agreements between the Pool and all "members" concerning the coverage afforded. The "Named Member" shown in the Declarations is authorized to make changes to the terms of this Coverage Agreement with the consent of the Pool. The Coverage Agreement's terms can be amended or waived only by endorsement issued by the Pool and made a part of this Coverage Agreement.

Assignment of interest or any transfer or waiver of subrogation under this Coverage Agreement shall not bind the Pool unless and until the Pool's consent is endorsed to this Coverage Agreement.

SECTION IX - EXTENDED REPORTING PERIODS**A. EXTENDED REPORTING PERIODS**

1. The Pool will provide one or more Extended Reporting Periods, as described below, if:
 - a. This Coverage Agreement is canceled; or
 - b. The Pool renews or replaces this Coverage Agreement with coverage that:
 - (1) Has a "Retroactive Date" later than the date shown in the Declarations; or
 - (2) Does not apply on a claims-made and reported basis.
2. Extended Reporting Periods do not extend the "rating period" or change the scope of coverage provided. They apply to afford a "member" additional time to report an otherwise covered "claim".
Once in effect, Extended Reporting Periods may not be canceled.
3. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the "rating period" and lasts for sixty days. During this time a covered "claim" first made during the "rating period" may be reported in writing to the Pool.
4. A Supplemental Extended Reporting Period of unlimited duration is available, but only by an endorsement and for an extra membership fee. This supplemental period starts when the Basic Extended Reporting Period, set forth in Paragraph 3. above, ends.

The "Named Member" must give the Pool a written request for the endorsement within 60 days after the end of the "rating period". The Supplemental Extended Reporting Period will not go into effect unless the "Named Member" pays the additional membership fee when due.

The Pool will determine the additional charge as a percentage of the expiring annual fee for this Coverage Agreement as follows:

<i>Number of years since retroactive date shown on Declarations page</i>	<i>Additional Membership Fee</i>
1	50%
2	70%
3	80%
4	90%
5 or more	100%

The Supplemental Extended Reporting Period endorsement shall set forth the terms, not inconsistent with this Section, applicable to the Supplemental Extended Reporting Period.

5. The Extended Reporting Periods do not reinstate or increase the Limits Of Liability.



WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who Is Insured

You are insured if you are an employer named in Item 1 of the Information Page.

C. Workers' Compensation Law

Workers' Compensation Law means the workers' compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers' compensation law, any federal occupational disease law or the provisions of any law that provide non-occupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE

WORKERS' COMPENSATION INSURANCE

A. How This Insurance Applies

This workers' compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employee's employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers' compensation law of the applicable state.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;

3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers' compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers' compensation law.

If we make any payments in excess of the benefits regularly provided by the workers' compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.

2. Your default or the bankruptcy or insolvency of you will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers' compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers' compensation law that apply to
 - a. benefits payable by this insurance;
 - b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers' compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO

EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.

4. Bodily injury by disease must be caused or aggravated by the conditions of your employee's employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your employee's work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;

3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers' compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers' or workmen's compensation law or other federal occupational disease law, or any amendments to these laws
9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. bodily injury to a master or member of the crew of any vessel;
11. fines or penalties imposed for violation of federal or state law; and

12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act(29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued there under, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident-each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. Bodily Injury by Disease. The limit shown for "bodily injury by disease-policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you will not relieve us of our obligations under this Part.

PART THREE

OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers' compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

PART FOUR

EMPLOYER'S DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Employer's other duties are listed here.

1. Provide for immediate medical and other services required by the workers' compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE-PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers' Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers' compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers' compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper

classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata; based on the time this policy was in force. Final premium will not be less than the pro rata share of the premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

PART SIX-CONDITIONS

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections do not substitute for your own safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to

perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If the employee dies and we receive notice within thirty days after the death, we will cover your legal representative as insured.

D. Cancellation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect in accordance with the provision of the membership agreement (3.2).
2. We may cancel this policy. We must mail or deliver to you not less than 90 days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancellation notice.
4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.



ARIZONA MUNICIPAL RISK RETENTION POOL Risk Management Program Agreement

Introduction

The Arizona Municipal Risk Retention Pool (AMRRP) since its inception has placed the safety of employees, the public and the protection of property as our top priority. In keeping with the AMRRP commitment to safety, the guidelines presented in this document are designed to provide municipalities with a framework for the development and maintenance of an effective risk management program.

Establishment of Risk Management Contact or Committee

An employee or an employee committee shall be designated to act as a risk management Coordinator, to represent the Member in matters associated with the Pool, including the implementation of risk management programs.

[AMRRP Safety Committee Best Practice](#)

Establishment of Risk management Guidelines

- The Member shall develop and maintain appropriate risk management policies and procedures in areas of Employment, Police, Fire, Streets and Roads, Park and Recreation, and all other areas of liability and property exposures applicable to each member.
- For Workers' Compensation the member shall identify a health care provider to send all employees for the first visit.
- The member shall develop a light-duty return-to-work program to reduce lost time claims.
- The Member shall review its risk management program with the Administrator on an annual basis and make appropriate changes to improve the overall effectiveness of the program

[AMRRP Safety Program Evaluation Best Practice](#)

- The Member shall establish a safety and risk management education and training program with emphasis on safe methods and procedures to follow while performing tasks where accidents have occurred, or where there is a potential for accidents.
- Members are strongly urged to and participate in non-required training programs sponsored and/or recommended by the Administrator. Participation in other special training appropriate for the members' exposures and claim activity is also highly encouraged.

[AMRRP Safety Training Best Practice](#)

- The Member and Administrator shall meet on an annual basis, or as needed, for a safety inspection. A report will be provided by the Administrator to the member and corrections should be made in a timely manner.
- The Member shall establish their own internal procedures for routine safety inspections of vehicles, buildings, grounds, equipment, machinery and work practices.

[AMRRP Safety Inspection Best Practice](#)

The Member and the Administrator shall meet on an annual, or as needed, basis to review Worker's Compensation and Property and Casualty losses. The purpose of these meetings is to:

- Establish procedures to investigate claims and incidents to determine the root cause.
- Establish procedures or develop training to eliminate or reduce the claims.
- Establish procedures for reporting incidents and claims and provide proper maintenance of records.

[AMRRP Accident Investigation Best Practice](#)

Establish appropriate motor fleet safety procedures for the operation of Municipal motor vehicles (owned and non-owned).

[AMRRP Defensive Driving Best Practice](#)

[AMRRP Distracted Driver Policy Best Practice](#)

[AMRRP 15-Passenger Van Best Practice](#)

Member Risk Management Program Audit

In order to evaluate the effectiveness of the member's risk management plan, the Administrator shall conduct a site inspection of each member and prepare loss runs for review. The site inspection shall take place with such frequency as the Administrator deems necessary, but in no case less often than annually. The site inspection shall include but is not limited to, a review of the member's progress towards the fulfillment of the provisions of this agreement and its effectiveness in controlling losses. The findings shall be used to enhance or improve the overall success of the member's risk management program. Following a site inspection the Administrator shall submit a written report to each member along with any recommendations.

Disclaimer

1. It is the sole responsibility of the Member to modify the risk management standards set forth in this Appendix to meet its specific requirements.
2. Neither the Pool nor any of its officers, directors, or representatives, makes any representation or warranty that the risk management requirements or provisions set forth in this Appendix are sufficient or adequate to meet the specific needs of the Member.

**EIGHTH AMENDED AND RESTATED BYLAWS
OF
ARIZONA MUNICIPAL RISK RETENTION POOL**

The Arizona Municipal Risk Retention Pool (“**Pool**”) is an Arizona nonprofit corporation formed pursuant to A.R.S. ' 11-952.01 for the purposes set forth in A.R.S. ' 11-952.01, as may be amended from time to time.

**ARTICLE I
OFFICES**

Section 1. Principal Offices. The principal office of the Pool shall be at the offices of the Administrator (defined below) in Maricopa County, State of Arizona.

Section 2. Other Offices. The Pool may establish its principal office or other offices at such other places within the State of Arizona as the Board of Trustees of the Pool (the “**Board**”) may from time to time determine are necessary for the proper conduct of the Pool's business.

**ARTICLE II
ANNUAL MEMBERSHIP MEETINGS**

Section 1. Membership. The Pool shall have two classes of members: (a) those cities and towns in the State of Arizona that execute all necessary documents to become and remain members of the Pool and make all payments to the Pool as are required by such documents (the “**Voting Members**”), and (b) those public agencies of the State of Arizona (other than cities or towns) that are permitted to join the Pool by resolution of the Board, that execute all necessary documents to become and remain members of the Pool, and that make all payments to the Pool as are required by such documents (the “**Non-Voting Members**” and collectively, the Voting Members and the Non-Voting Members shall be referred to herein as the “**Members**”). Voting Members must also be members of the League of Arizona Cities and Towns, except that the Board may waive this requirement by a vote of two-thirds (2/3) of the Board members voting at a duly called meeting of the Board.

Section 2. Annual Meetings. An annual meeting of the Members shall be held at the principal place of business of the Pool, or at such other place designated in the notice of annual meeting, on a day designated in the notice of annual meeting. At such meeting, the Board shall be elected in accordance with the requirements of Article III of these Bylaws. At an annual meeting, the Voting Members may transact such business of the Pool as may properly come before them. Notwithstanding the foregoing provision of this Section 2, and notwithstanding Section 7 of this Article II, at the direction of the Board an annual meeting may be conducted only by ballot pursuant to A.R.S. ' 10-3708, as may be amended.

Section 3. Notice of Annual Meeting. Written notice of the annual meeting shall be given to each Member at least ten (10) days (but no more than sixty (60) days before the date of the meeting. The Members entitled to such notice shall be those cities, towns and other public agencies of the State of Arizona that are Members of the Pool on the date such notice is effective pursuant to this section. Such notice shall be deemed effective when the notice is either sent electronically or mailed postage prepaid to the Member's address of record appearing on the books of the Pool.

Section 4. Special Meetings. A special meeting of the Members, for any purpose, unless otherwise prescribed by statute or by the Articles of Incorporation of the Pool, as amended (the “**Articles**”), may be called by the president and shall be called by the president or secretary at the request in writing of a majority of the Trustees, or at the request in writing signed by Voting Members entitled to cast one-tenth of all the votes of all Voting Members. Such request shall state the purpose or purposes of the proposed meeting.

Section 5. Notice of Special Meeting. Written notice of a special meeting of the Members, stating in reasonable detail the time, place and purpose thereof, shall be given to each Member at least ten (10) days (but no more than sixty (60) days before the date fixed for the meeting. The Members entitled to such notice shall be those cities, towns and other public agencies of the State of Arizona that are Members of the Pool on the date such notice is effective pursuant to this section. Such notice shall be deemed effective when the notice is either sent electronically or mailed postage prepaid to the Member's address of record appearing on the books of the Pool.

Section 6. Business Transacted at Special Meeting. Business transacted at any special meeting of Members shall be limited to the purposes stated in the notice.

Section 7. Voting Rights. At all meetings of the Members, each Voting Member shall be entitled to one vote on each matter coming before the Members, and such vote may be exercised in person, by proxy or by ballot. Non-Voting Members shall have no right to vote.

Section 8. Quorum. The presence, either in person, by proxy or by ballot, of the Voting Members holding one-third of the votes entitled to be cast shall constitute a quorum of the Members for all purposes unless the representation of a larger group shall be required by law, by the Articles or by these Bylaws, and in that event representation of the number so required shall constitute a quorum. The act of a majority of the Voting Members present at a meeting at which a quorum is present shall be the act of the membership.

Section 9. Adjournment of Meetings. If the number of Voting Members necessary to constitute a quorum fails to attend in person, by proxy and/or by ballot at the time and place of the meeting, the president or a majority of the Voting Members present in person or by proxy may adjourn the meeting from time to time without notice other than an announcement at the meeting, unless a quorum is present or represented. At any adjourned meeting, at which a quorum is present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

ARTICLE III BOARD OF TRUSTEES

Section 1. Number and Qualification. The number of Trustees shall be fixed from time to time by resolution of the Board within the limits prescribed by the Articles, as amended. Each Trustee shall hold office until his or her successor is duly elected and shall qualify, provided that any Trustee may resign at any time upon written notice as provided in Section 8 of this Article III. A Trustee shall resign if he or she no longer meets the qualifications of serving as a Trustee, as set forth in A.R.S. § 11-952.01(H), as may be amended. A Trustee may be removed from the Board, with or without cause, upon the vote of two-thirds of the Trustees then serving on the Board. One person designated by the Executive Director of the League of Arizona Cities and Towns shall automatically be a non-voting special advisor to the Board. The Board may also designate such non-voting special advisors to the Board as the Board deems appropriate.

Section 2. Manner of Election. At least ten (10) days (but no more than sixty (60) days prior to each annual meeting of the Members, the nominating committee of the Board shall submit a list of persons nominated for election as Trustees of the Pool to each Voting Member that (a) is a member of the Pool on the date that notice of the annual meeting is effective pursuant to Article II, Section 3 of these Bylaws, and (b) is in good standing. Only such Voting Members shall be entitled to vote at the annual meeting, which at the direction of the Board may only be by ballot as permitted by Article II, Section 2. Each Voting Member is entitled to one vote for each vacancy on the Board, but no Voting Member may cast more than one vote for the same nominee. For the purposes of this Section 2, a Voting Member in good standing is a city or town that meets the requirements of Article II, Section 1 of these Bylaws and is not suspended from coverage pursuant to the contract to participate in a risk retention pool between the city or town and the Pool.

Section 3. Vacancies. Vacancies among trustee positions on the Board, by death, resignation, removal or otherwise, and newly created positions resulting from any increase in the authorized number of Trustees may be filled by the affirmative vote of two-thirds of the Trustees then in office, though less than a quorum; and the Trustees so chosen shall hold office for the unexpired terms of the Trustees being replaced.

Section 4. Classes of Trustees. The Board shall be classified so that each Trustee shall serve a term of four (4) years, and the Board shall have staggered terms so that the term of approximately one-fourth (1/4) of the entire number of Trustees shall expire annually.

Section 5. Powers. The business of the Pool shall be managed by its Board of Trustees, which may exercise all such powers of the Pool and do all such lawful acts and things as are permitted by statute, by the Articles and by these Bylaws. The Board may, without limitation, do all of the following on behalf of the Pool:

5.1 The Board may cause the Pool to enter into agreements and do all other acts necessary or appropriate to enable additional Members to join the Pool.

5.2 The Board may adopt policies, rules and procedures for the administration and operation of the Pool; provided, however, that such policies, rules and procedures may not be inconsistent with the Articles, these Bylaws or applicable state and federal law and regulations.

5.3 The Board may retain the services of legal counsel, actuaries, auditors, engineers, private consultants, administrators and advisors as the Board deems necessary in order to carry out the business and purposes of the Pool.

5.4 The Board shall authorize the payment of all claims (pursuant to and limited by the Member's Coverage Agreements as defined in Article III, Section 6.1 of these Bylaws, with the Pool) for which a Member incurs liability during the Member's period of membership; provided that the Pool's obligation under this Section 5.4 shall be no greater than that required by A.R.S. § 11-952.01(K), as may be amended from time to time.

5.5 The Board may purchase, lease or rent any real and personal property it deems necessary.

5.6 The Board may enter into a financial services agreement with banks and issue checks in the name of the Pool. The Corporation may invest its monies in equity securities, mutual funds, and investment funds registered with the United States Securities and Exchange

Commission, debt obligations, and any eligible investment permitted by A.R.S. § 35-323, as may be amended.

5.7 The Board may employ or contract for necessary staff to carry out the purposes of the Pool.

5.8 The Board may make, alter or repeal these Bylaws; provided, however, that the Board shall give at least forty-five days' (45) prior written notice to the Members of any such proposed amendment of the Bylaws, and that any such amendment shall be subject to all applicable law.

Section 6. Duties. In accordance with A.R.S. ' 11-952.01(H), as amended, the Board shall:

6.1 Establish terms and conditions of coverage including exclusions of coverage pursuant to coverage agreements approved by the Board ("**Coverage Agreements**").

6.2 Ensure that all claims are paid promptly.

6.3 Take all necessary precautions to safeguard the assets of the Pool.

6.4 Maintain minutes of its meetings.

6.5 Designate an administrator (the "**Administrator**") to carry out the policies established by the Board and to provide day-to-day management of the Pool. The Board shall delineate in the written minutes of its meetings the areas of authority it delegates to the Administrator. The Administrator shall be an ex officio member of all committees of the Board, unless the Board expressly provides otherwise, and shall have the authority to settle claims as may be granted by the Board from time to time.

6.6 File a copy of the Articles of Incorporation, as amended, with the Director of the Arizona Industrial Commission.

Section 7. Prohibitions. In accordance with A.R.S. ' 11-952.01(J), as may be amended from time to time, the Board shall not:

7.1 Extend credit to the Members for payment of a premium, except pursuant to payment plans established by the Board.

7.2 Borrow any monies from the Members or in the name of the Members except in the ordinary course of business.

Section 8. Trustee Resignation. Any Trustee may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall be effective on the date of receipt of such notice or at any later time specified therein.

Section 9. Trustee Reimbursement. By resolution of the Board, a Trustee may be reimbursed for reasonable expenses incurred in attending meetings of the Board and performing other authorized services as a Trustee, provided such expenses are not reimbursed to the Trustee in any other manner.

ARTICLE IV MEETINGS OF THE BOARD OF TRUSTEES

Section 1. Meetings. The Board may hold meetings, both regular and special, within the State of Arizona. All such meetings shall comply with the Arizona open meeting laws, to the extent applicable. Meetings may be held by means of conference telephone or other similar communication equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to such communication shall constitute presence in person at such meeting.

Section 2. Annual Meetings. The annual meeting of the Board shall be held in conjunction with the annual meeting of the Members, or at the Board's election, within sixty (60) days thereafter.

Section 3. Regular Meetings. The Board shall hold at least four (4) regular meetings of the Board per fiscal year. All regular meetings shall be called at the discretion of the Board. Written notice of a regular meeting shall be given to each Trustee at least three (3) days before the date of the meeting. Such notice shall be deemed effective when the same shall be either sent electronically or mailed postage prepaid to the Trustee's address of record appearing on the books of the Pool.

Section 4. Special Meetings. Special meetings of the Board may be called by the president and shall be called by the president or the secretary upon request of two Trustees. Written notice of special meetings of the Board shall be given to each Trustee at least seven (7) days before the date of the meeting. Such notice shall be deemed effective when the same shall be either sent electronically or mailed postage prepaid to the Trustee's address of record appearing on the books of the Pool.

Section 5. Quorum. At all meetings of the Board, a majority of the Trustees then serving shall constitute a quorum for the transaction of business, but in no event may a quorum consist of less than one-third of the number of Trustees fixed pursuant to these Bylaws. The act of a majority of the Trustees present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by statute, or by the Articles or these Bylaws. In the event a Trustee is unable to attend a Board meeting, the Trustee may, after receiving notice of, but prior to the Board meeting, designate a representative who will act as an observer on the Trustee's behalf at the Board meeting. Such representative shall have no power to vote and shall not be counted for establishing a quorum. If a quorum is not present at any meeting of the Board, the Trustees present may recess the meeting from time to time until a quorum shall be present. At such resumed meeting at which a quorum is eventually present, any business may be transacted which might have been transacted at the meeting originally noticed.

**ARTICLE V
COMMITTEES OF TRUSTEES**

Section 1. Powers. The Board may, by resolution passed by a majority of the Trustees then serving on the Board, designate one or more committees. Each such committee shall consist of at least two (2) Trustees selected by the Board. Such committees shall have such names as may be determined from time to time by resolution of the Board; provided, however, that no such committee may exercise the authority of the Board of Trustees in reference to the following matters: (i) submitting any matter to the Members that requires an act of the membership; (ii) filling vacancies on the Board or any committee of the Board; (iii) adoption, amendment or repeal of these Bylaws; and (iv) fixing compensation of Trustees.

Section 2. Advisory Committees. The Board may, by resolution passed by a majority of the Trustees then serving on the Board, designate one or more advisory committees to the Board. Such committees shall have no authority to act on behalf of the Board. The Board shall designate the members of each advisory committee, and each such committee may be comprised of any number of Trustees or persons who are not Trustees.

Section 3. Meetings. Committees shall comply with Arizona open meeting laws, shall keep regular minutes of their proceedings, and shall report their proceedings to the Board when required.

**ARTICLE VI
NOTICES TO TRUSTEES**

Section 1. Notices. Except as otherwise provided herein, notices to the Trustees may be by telephone, e-mail, facsimile transmission or in writing and delivered personally or mailed to the Trustees at their addresses appearing on the books of the Pool. Notice by mail shall be deemed effective when the same shall be mailed postage prepaid to such addresses. Notice by personal delivery shall be deemed effective upon delivery. In all other cases, notices shall be deemed effective upon transmission.

Section 2. Waiver. Any individual notice required to be given under the provisions of applicable law, the Articles or these Bylaws may be waived in writing either before or after the event requiring such notice, provided such waiver is signed by the person or persons entitled to such notice.

**ARTICLE VII
OFFICERS**

Section 1. Officers. The officers of the Pool shall be chosen by the Board of Trustees and shall be a president, one or more vice presidents, a secretary, a treasurer, and a special non-voting director for purposes of Medicare and Medicaid reporting. Two or more offices may be held by the same person; provided, however, that the same person shall not simultaneously hold the offices of president and secretary.

Section 2. Selection. Not later than sixty (60) days after each annual meeting of the Board of Trustees, the Board of Trustees shall choose a president from among the Trustees, and shall choose one or more vice presidents, a secretary and a treasurer, none of whom need be a member of the Board. In addition, the Board shall choose a special non-voting director for purposes of Medicare and Medicaid reporting.

Section 3. Compensation. The salaries, if any, of all officers and agents of the Pool shall be fixed by the Board of Trustees.

Section 4. Removal and Vacancies. The officers of the Pool shall hold office until their successors are elected. Any officer chosen or appointed by the Board may be removed whenever in the Board's judgment the best interests of the Pool will be served by the removal. Any vacancy occurring in any office of the Pool by death, resignation, removal or otherwise shall be filled by the Board of Trustees.

Section 5. President. The president or (in the absence of the president, a vice-president designated by the president) shall preside over all meetings of the Members and Board of Trustees; and shall sign all contracts and agreements, and all other instruments requiring execution on behalf of the Pool.

Section 6. Vice Presidents. There shall be as many vice presidents as shall be from time to time determined by the Board, and they shall perform such duties as may be from time to time assigned to them. Any one of the vice presidents shall have all the powers and perform all the duties of the president in case of the temporary absence of the president or in case of his temporary inability to act unless otherwise restricted by the Board. In case of the permanent absence or inability of the president to act, the office shall be declared vacant by the Board of Trustees and a successor chosen by the Board.

Section 7. Secretary. The secretary shall see that the minutes of all meetings of Members, of the Board of Trustees and any committees are kept. He shall give or cause to be given required notices of all meetings of the Members and of the Board of Trustees. He shall have charge of all the books and records of the Pool except the books of account and shall in general perform all the duties incident to the office of secretary of a corporation and such other duties as may be assigned to him.

Section 8. Treasurer. The treasurer or the treasurer's designee shall have general custody of all of the funds of the Pool except as may be required by law to be deposited with any state official; he shall see to the deposit of the funds of the Pool in such depositories as the Board of Trustees may designate. Regular books of account shall be kept under his direction and supervision, and he or his designee shall render financial statements to the President, Trustees and Members at proper times. He shall have charge of the preparation and filing of such reports and financial statements and returns as may be required by law. He shall give to the Pool such fidelity bond as may be required, and the premium therefor shall be paid by the Pool as an operating expense.

Section 9. Assistant Secretaries. There may be such number of assistant secretaries as the Board of Trustees may from time to time fix, and such persons shall perform such functions as may be from time to time be assigned to them.

Section 10. Assistant Treasurers. There may be such number of assistant treasurers as the Board of Trustees may from time to time fix and such persons shall perform such functions as may be from time to time be assigned to them.

Section 11. Special Non-Voting Director. The special non-voting director is appointed by the Board solely for the purposes of Medicare and Medicaid reporting and is not a Trustee, shall not have any voting rights at meetings of the Board of Trustees and shall not be counted for quorum purposes.

Section 12. Delegation of Duties. Whenever an officer is absent or whenever for any reason the Board of Trustees may deem it desirable the Board may delegate the powers and duties of an officer to any other officer or officers or to any Trustee or Trustees.

ARTICLE VIII INDEMNIFICATION

Section 1. Power. To the fullest extent permitted by law, Members, trustees, officers, employees or agents of the Pool shall be indemnified by the Pool in accordance with the provisions of Title 10, Chapters 24-40, Arizona Revised Statutes, as the same exists or hereafter may be amended.

ARTICLE IX DISSOLUTION

Section 1. Dissolution of the Pool. Upon dissolution of the Pool, and after making adequate provision for all pending and anticipated claims, the assets of the Pool shall be liquidated, a final accounting shall be made, and the assets thereafter remaining in the Pool shall be distributed among the then-existing members of the Pool in proportion to the contributions made to the Pool by each of the then existing members during the preceding one hundred and twenty (120) months.

ARTICLE X GENERAL PROVISIONS

Section 1. Checks. All checks or demands for money and notes of the Pool shall be signed by such persons as the Board may from time to time designate.

Section 2. Fiscal Year. The fiscal year of the Pool shall be fixed by resolution of the Board.

Section 3. Inspection of Books. The books, records and papers of the Pool shall be available at the principal office of the Pool for inspection at reasonable times by any person as may be permitted by Arizona law. The Articles and Bylaws of the Pool shall likewise be available for inspection by any person at the principal office of the Pool, or at such other location designated by the Board.

Section 4. Interpretations. To the extent permitted by the context in which used, words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter and vice versa.

Section 5. Captions. Captions used herein are for convenience only and are not a part of these Bylaws and shall be not deemed to limit or alter any provisions hereof and shall not be deemed relevant in construing these Bylaws.

CERTIFICATE

I, Jean Poe, the duly elected, qualified and acting Secretary of Arizona Municipal Risk Retention pool, an Arizona nonprofit corporation (“**AMRRP**”), do hereby certify that the above and foregoing are the Bylaws of AMRRP, duly adopted by the Board of Trustees at meetings held on August 19, 2014 and November 21, 2014.

I have hereunto executed this Certification effective April 9, 2015.

Jean Poe

Jean Poe, Secretary

INDUSTRIAL COMMISSION OF ARIZONA

**SUPPLEMENTAL INDEMNITY AGREEMENT FOR
WORKERS' COMPENSATION POOL CREATED UNDER
A.R.S. 11-952.01(B)**

The undersigned person or entity (hereinafter referred to as a "member") desires to join a Workers' Compensation pool organized and formed under the authority of A.R.S. 11-952.01(B). The pool ("Pool") operates under the name "the Arizona Municipal Risk Retention Pool".

Attached as exhibit B and incorporated in this supplemental agreement by reference is the indemnity agreement for the Pool executed by the Arizona Municipal Risk Retention Pool and the . The terms of the indemnity agreement are incorporated by reference in this supplemental agreement.

The undersigned Member, by executing this supplemental indemnity agreement, joins in the Pool and accepts, as applicable to it, the indemnity agreement attached as Exhibit B. The Member acknowledges that it is bound by the terms of the indemnity agreement and its conditions.

The undersigned authorized representative of the Pool has executed this supplemental indemnity agreement to indicate the Pool's acceptance of the Member.

Administrator

Date

Authorized Representative of Member
Title:

Date

**DOUGLAS, AZ
COUNCIL AGENDA ITEM**

Meeting Date: 06/22/22

SUBMITTED BY: Alma Andrade, City Clerk

MANAGEMENT TEAM REVIEW: Donald C. Huish, Mayor

FOCUS AREA: Other / NA

ORGANIZATIONAL IMPROVEMENTS: N/A

SUBJECT: **RESOLUTION NO. 22-1508**, a Resolution of the Mayor and Council of the City of Douglas, Cochise County, Arizona, **AUTHORIZING** the **EXECUTION** of a **CONTRACT RENEWAL** between the City of Douglas and **ALMA VILDOSOLA** to provide services as the **CITY MAGISTRATE** for the City of Douglas.

EXECUTIVE SUMMARY:

Alma Vildosola was first appointed as City Magistrate in 2002. Her current contract will expire on June 30, 2022; therefore, Judge Vildosola would like to be reappointed by Mayor and Council, pursuant to City Charter Article XI, Section 3.

BACKGROUND:

Changes to the contract will include a salary increase from \$16,398.96 to \$25,000 annually and shall be eligible to receive cost of living increases provided to all city employees and approved by Mayor and Council. Her contract will end on June 30, 2024, unless terminated earlier because of a loss of the office of Justice or the Peace or if removed by Council for cause.

DISCUSSION:

FISCAL IMPACT: \$25,000.

Fiscal Year: 2022/2023

Amount Requested: \$25,000

Budgeted: Y / N

Account (s):

“...I move that the Mayor and Council approve Resolution No. 22-1508.”

RESOLUTION NO. 22-1508

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF DOUGLAS, COCHISE COUNTY, ARIZONA, AUTHORIZING THE EXECUTION OF A CONTRACT RENEWAL BETWEEN THE CITY OF DOUGLAS AND ALMA VILDOSOLA TO PROVIDE SERVICES AS THE CITY MAGISTRATE FOR THE CITY OF DOUGLAS.

WHEREAS, the City of Douglas seek to enter into a two year extension to the agreement with Alma R. Vildosola who has been providing services as the City Magistrate since 2002 for the City of Douglas at the Douglas Municipal Court; and

WHEREAS, the contract providing for the terms and conditions of the two-year renewal to said agreement, is attached as Exhibit "A" and incorporated herein by reference; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of Douglas, Arizona, as follows:

Section 1. The terms of said agreement are in the best interest of the City of Douglas.

Section 2. The City Manager and the City Clerk are hereby authorized to execute and deliver the agreement, attached hereto as Exhibit "A", and any related documents necessary to finalize the extension to the agreement for and on behalf of the City of Douglas.

Section 3. The officers of the City Council and the City of Douglas are hereby authorized and directed to fulfill all obligations under the terms of said agreement.

PASSED AND ADOPTED by the Mayor and Council of the City of Douglas, Arizona, this 22nd day of June, 2022.

Donald C. Huish, Mayor

Attest:

Approved as to Form:

Alma Andrade, City Clerk

Denis Fitzgibbons, City Attorney

**AGREEMENT TO RETAIN SERVICES AS CITY MAGISTRATE
FOR THE CITY OF DOUGLAS, ARIZONA**

This agreement is made and entered into this 22nd day of June 2022, between the **CITY OF DOUGLAS**, and Arizona municipal corporation, acting by and through its duly authorized officers, hereinafter referred to as “the City”, and **ALMA R. VILDOSOLA**, hereinafter referred to as the “Magistrate.”

**SECTION 1.
NATURE OF EMPLOYMENT**

Pursuant to Article XI of the City Charter, the City hereby, retains the services of the Magistrate to serve as City Magistrate. The duties of City Magistrate shall include the following:

- a. The Magistrate shall perform his duties in accordance with the conditions and requirements imposed on municipal courts by A.R.S. §22-401, et seq., and other applicable laws, rules and regulations.
- b. The Magistrate shall preside over all the cases arising under the various ordinances of the City of Douglas and civil traffic violations of laws of the State committed within the limits of the City.
- c. The Magistrate shall perform all other duties required by the Arizona Supreme Court and applicable Arizona law.
- d. The Magistrate may but is not required to establish a program for collecting delinquent accounts.

**SECTION 2.
ACCEPTANCE OF EMPLOYMENT**

The Magistrate hereby accepts employment as City Magistrate and agrees to render to the best of her ability the services and duties of the City Magistrate during the continuance of this Agreement and shall carry out duties in accordance with the City related provisions of the Court Consolidation Agreement with Cochise County. The Magistrate shall not assign any of her rights and duties under this Agreement without the prior written consent of the City.

**SECTION 3.
COMPENSATION**

In consideration of the services rendered as City Magistrate, Magistrate shall receive from the City the sum of \$2,083.33 per month and shall be eligible to receive any cost-of-living increases provided to City employees and approved by Mayor and Council. It is expected that the duties of the Magistrate can be performed in approximately twelve (12) hours per week. There will be no additional compensation, beyond the terms of the contract, for time the Magistrate may spend

on training or other duties related to administering the City Court. Magistrate shall be considered an independent contractor and not an employee of the City.

**SECTION 4.
TERM OF AGREEMENT**

This Agreement shall commence on July 1, 2022, and end June 30, 2024; unless City Magistrate loses the office of Justice of the Peace; at which point the appointment of City Magistrate will also end. The City Council may remove the City Magistrate at any time during the term of this Agreement for cause.

**SECTION 5.
CONFLICT OF INTEREST**

The provisions of A.R.S. §38-511 are incorporated by reference and made part hereof.

**SECTION 6.
CHOICE OF LAW AND VENUE**

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 Cochise 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.

**SECTION 7.
SEVERABILITY**

Should any provision of this Agreement be held invalid or unenforceable by any governmental body, arbitrator, or court of competent jurisdiction, such holding will not diminish the validity or enforceability of any other provision hereof.

**SECTION 8.
ENTIRE AGREEMENT**

This Agreement and any attachments represent the entire agreement between City and Magistrate 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.

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

CITY OF DOUGLAS

Alma R. Vildosola

Ana Urquijo, City Manager

Attest:

Approved as to Form:

Alma Andrade, City Clerk

Denis Fitzgibbons, City Attorney