FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CHANDLER AND THE ARIZONA DEPARTMENT OF REVENUE FOR DISTRIBUTION OF REVENUES UNDER A.R.S. § 42-5032.02

This FIRST AMENDMENT is made and entered into by and between the ARIZONA DEPARTMENT OF REVENUE (the "Department") and the CITY OF CHANDLER ("City") (collectively, the "Parties"), effective this ______ day of ____________, 2023.

RECITALS

WHEREAS, the Parties entered into an Intergovernmental Agreement on July 12, 2019, for the purpose of facilitating the City to obtain, and the Department to distribute, funding for the cost of Public Infrastructure Improvement Projects pursuant to Arizona Revised Statutes ("A.R.S.") § 42-5032.02 (the "IGA"); and

WHEREAS, the IGA, on account of restrictions then set forth under A.R.S. § 42-5032.02, limited said funding to a maximum of $50,000,000 and set the term of the IGA and duration of when payments may be made to the City as due to expire on September 30, 2023; and

WHEREAS, the Arizona Legislature has since amended A.R.S. § 42-5032.02 to increase the statutory maximum for funding of Public Infrastructure Improvement Projects and extend the time period in which the Department may make payments in accordance with A.R.S. § 42-5032.02; and

WHEREAS, since the execution of the IGA, the Department has established a uniform method for the distribution of payments to all cities, towns, and counties under A.R.S. § 42-5032.02 that was not captured within the provisions of the IGA; and

WHEREAS, the Parties wish to amend the IGA to incorporate these changes, update outdated references contained within, and extend its duration.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises of the Parties, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to amend the IGA by the following additions (**indicated by underlining**) and deletions (**indicated by strikethroughs**):

A. Section 1.11 is amended to read as follows:

> 1.11 "Statutory Maximum" means the total <u>not-to-exceed</u> amount <u>to be</u> paid to all cities, towns, and counties under A.R.S. § 42-5032.02~~, which shall not exceed a maximum of Fifty Million Dollars ($50,000,000)~~.

B. Section 4.3 is amended to read as follows:

> 4.3 Revenue derived from contracts subject to A.R.S. § 42-5075 for Public Infrastructure Improvement Projects under this Agreement shall be used exclusively to pay for Public Infrastructure Improvement Projects identified under this Agreement until either (a) the Statutory Maximum for payments to all cities, towns and counties under A.R.S. §

42-5032.02~~, which as of the date of this Agreement is Fifty Million Dollars ($50,000,000),~~ is reached, or (b) September 30, ~~2023~~ 2033 or such later date as amended in A.R.S. § 42-5032.02.

C. Section 5.5 is amended to read as follows:

5.5 The total amount paid to City for any Public Infrastructure Project under this Agreement shall not (a) exceed eighty percent (80%) of the total cost of the Public Infrastructure Improvement Project as set forth in Addendum B, or (b) exceed the Statutory Maximum for payments to all cities, towns and counties under A.R.S. § 42-5032.02~~, which as of the date of this Agreement is Fifty Million Dollars ($50,000,000)~~. If the amount needed to meet eighty percent (80%) of the Public Infrastructure Improvement Project would exceed the Statutory Maximum, such amount shall be funded by Intel. In no event shall payments be made to City under this Agreement from and after September 30, ~~2023~~ 2033 or such later date as amended in A.R.S. § 42-5032.02.

D. Section 5.8 is amended to read as follows:

5.8 City will promptly notify the Department if monies received under this Agreement exceed eighty percent (80%) of the cost of any Public Infrastructure Improvement Project and will return the amount of the excess to the State ~~treasurer~~ Treasurer for deposit ~~in the State general fund~~ according to A.R.S. § 42-5032.02(G)(4) or successor provision.

E. Section 5.9 is amended to read as follows:

5.9 The Department shall notify the State Treasurer to cease payments under this Agreement when either (a) the total for all payments to City meet or exceed eighty percent (80%) of the cost of the Public Infrastructure Improvements under this Agreement, or (b) payments to all cities, towns and counties under A.R.S. § 42-5032.02 have reached the Statutory Maximum~~, which as of the date of this Agreement is Fifty Million Dollars ($50,000,000)~~. City agrees that it has no claims to additional payments under these conditions.

F. Between Sections 5.9 and 6, the following language is inserted:

5.10 The Department shall distribute and City shall receive funding payments for eligible Public Infrastructure Improvement Project costs rendered after City substantiates to the Department the cost has been expended, is allowable, and is relevant for the submitted program expenditures. To request reimbursement, City shall submit its request to the Department for review and processing in a form and manner agreed upon by both City and the Department. Unless otherwise specifically indicated, City as a funding recipient is not required to submit any supporting documentation with a reimbursement request. However, City is required to maintain all necessary supporting documentation to ensure such documentation is available to the Department for review, upon request. City must maintain records that show: (a) the total amount of funds received under this Agreement; (b) how City used the funds; (c) the total cost of the projects; and other records to facilitate an effective audit. Allowable costs are those eligible Public Infrastructure Improvement Project costs invoiced to City on or after the month of the effective date of this Agreement, as substantiated by supporting documentation.

5.11 The Department will process reimbursement requests under A.R.S. § 42-5032.02 on a first-come, first-served basis, so it is important for City to submit payment requests as early as possible. City may request updates on the remaining amounts available under A.R.S. § 42-5032.02 from time to time.

G. Section 9 is amended to read as follows:

9. **Effective Date and Duration.** This Agreement shall become effective upon execution by City and the Department, and shall remain in effect until (1) the Statutory Maximum has been reached, or (2) September 30, ~~2023~~ 2033 or such later date as amended in A.R.S. § 42-5032.02, whichever first occurs.

H. Section 13, paragraph B is amended to read as follows:

B To the Department:

~~Grant Nülle~~
~~Deputy~~ Director
1600 W. Monroe St.
Phoenix, Arizona 85007

with a copy to:

~~Frank Boucek~~
General Counsel
1600 W. Monroe St.
Phoenix, Arizona 85007

I. Section 14 is struck in its entirety and replaced with the following:

14. **Non-discrimination.** The Department and City shall comply with Executive Order 2023-01, which prohibits discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status, by persons performing state contracts or subcontracts. The Department and City also agree to comply with Executive Orders 2003-22 and 2009-09 as amended by Executive Order 2023-01, and all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act of 1990.

All other terms and conditions of the IGA shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed as authorized by the laws of the State of Arizona.

CITY OF CHANDLER

By: ______________________________

Signature

Name and title: Kevin Hartke, Mayor

Date signed: ______________________

ATTEST:

By: ______________________________

City Clerk

ARIZONA DEPARTMENT OF REVENUE

By: ______________________________

Signature

Name and title: Robert Woods, Director

Date signed: ______________________

APPROVAL OF THE CHANDLER CITY ATTORNEY

Pursuant to Arizona Revised Statutes § 11-951 through § 11-954, I have reviewed the foregoing First Amendment to Intergovernmental Agreement between the ARIZONA DEPARTMENT OF REVENUE and the CITY OF CHANDLER, and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this _____________ day of _____________________, 2023.

By: ____
Signature

Name and title: Kelly Y. Schwab, City Attorney

APPROVAL OF THE ARIZONA ATTORNEY GENERAL

Pursuant to Arizona Revised Statutes § 11-951 through § 11-954, I have reviewed the foregoing First Amendment to Intergovernmental Agreement between the ARIZONA DEPARTMENT OF REVENUE and the CITY OF CHANDLER, and declare this Agreement to be in proper form and within the powers and authority granted to the Department under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this _____________ day of _____________________, 2023.

KRISTIN K. MAYES
Arizona Attorney General

By: ____
Signature

Name and title: Jerry Fries, Tax Section Chief Counsel