INTERGOVERNMENTAL AGREEMENT

BETWEEN THE CITY OF CHANDLER AND THE CITY OF PHOENIX

(TO ESTABLISH CATALINA COMPONENTS INCORPORATED WITHIN A FOREIGN-TRADE ZONE)

This INTERGOVERNMENTAL AGREEMENT **("Agreement")** is made and entered into this _____ day of _______________, 2025 **("Effective Date")**, by and between the City of Chandler **("Chandler")**, a municipal corporation duly organized and existing under the laws of the State of Arizona, and the City of Phoenix **("Phoenix")**, a municipal corporation duly organized and existing under the laws of the State of Arizona. Chandler and Phoenix are sometimes referred to collectively as **"Parties"** and individually as a **"Party."**

RECITALS

A. Chandler is empowered to enter into this Agreement under A.R.S. §11-952, as amended, and has authorized the undersigned to execute this Agreement on behalf of Chandler by resolution, a copy of which is attached to this Agreement as **Exhibit A** and incorporated by reference.

B. Phoenix is empowered to enter into this Agreement under A.R.S. §11-952, as amended, and has authorized the undersigned to execute this Agreement on behalf of Phoenix by resolution, a copy of which is attached to this Agreement as **Exhibit B** and incorporated by reference.

C. Phoenix has received a Grant (Board Order 185, dated March 25, 1982) from the Foreign-Trade Zones Board **("Board")** to establish FTZ No. 75, and the alternative site framework format for FTZ No. 75 was approved by the Board in a notice published on October 20, 2010 in 75 Fed. Reg. 64708.

D. Chandler does not have a grant of authority to establish a Foreign-Trade Zone.

E. Catalina Components Incorporated **("Catalina")** operates facilities on certain real property within the City of Chandler located at 4015 W. Milky Way, Chandler, Arizona 85286 (APN 301-89-853) and 320 S. McClintock Drive (APN 301-90-725), Chandler, Arizona 85286 (collectively, **"Site"**) and desires to have the Site designated as a foreign-trade zone **("Zone Site")**. The Site as shown in **Exhibit C**, which is attached to this Agreement and incorporated by reference, is utilized as a distribution facility. Catalina seeks the import/export duty-related benefits afforded businesses located within the FTZ.

F. Chandler desires to assist Catalina in obtaining approval from the Board to establish, operate, and maintain a foreign-trade zone at the Zone Site.

G. Phoenix is willing to submit an application to the Board on behalf of Catalina **("Application")** for a minor boundary modification to establish, operate, and maintain a foreign-trade zone at the Zone Site to demonstrate its interest in a cooperative regional effort to encourage the retention and expansion of business in the greater metropolitan area.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual agreements contained and described herein, the parties agree as follows:

I. Statutory Requirements

1. Purpose – Ariz. Rev. Stat. § 11-952(B)(2). The purpose of this Agreement is to memorialize Chandler's and Phoenix's agreement to work together to assist Catalina in its efforts to obtain foreign-trade zone status for the Zone Site and to assure Phoenix that the establishment, operation, and maintenance of a foreign-trade zone status at the Zone Site, including any unsuccessful efforts made in respect thereto, shall be accomplished without any cost or liability whatsoever to Chandler or Phoenix.

2. Duration – Ariz. Rev. Stat. § 11-952(B)(1). This Agreement shall take effect and become operative on its **Effective Date** provided above, after it has been approved by Chandler's and Phoenix's respective City Councils and executed by the duly authorized officials of each of the Parties. This Agreement will continue in duration for the term of the Foreign-Trade Zone Operations Agreement **("Operations Agreement")**, which is to be negotiated and executed between Phoenix and Catalina pursuant to **§§ 7 and 8** below, until that Operations Agreement terminates or otherwise expires unless this Agreement is terminated earlier in accordance with **§ 4** below. The Parties do not intend that the term of this Agreement shall exceed any limitation imposed by law, including without limitation the laws of the State of Arizona, and agree to comply with any applicable requirements of such laws in connection with the Agreement's term.

3. Manner of Financing/Budgeting – Ariz. Rev. Stat. § 11-952(B)(3). Funding for Chandler's and Phoenix's respective responsibilities under this Agreement are annually approved by Chandler's and Phoenix's respective City Councils when they approve their annual budgets.

4. Termination – Ariz. Rev. Stat. § 11-952(B)(4). This Agreement will terminate upon the earliest occurrence of the following:

4.1. the Agreement reaches the end of its term;

4.2. the Parties mutually agree to terminate this Agreement by formal amendment signed by the Parties;

4.3. one Party is in default of its obligations and fails to institute required corrective actions (*see* **§ 26** below); or

4.4. one Party provides the other Party with a Notice to terminate at least **180 calendar days** before the effective termination date, with each Party to bear its own costs and expenses incurred as a result of that termination.

5. **Separate Legal Entity – A.R.S. § 11-952(B)(5).** This **Section** is intentionally left blank.

6. **Other Necessary Matters – A.R.S. § 11-952(B)(6).** *See* **§ II (Responsibilities)** below.

<u>II. Responsibilities</u>

7. Chandler's Obligations. Chandler's responsibilities under this Agreement include the following:

7.1. Facilitate the negotiation and execution of an Operations Agreement, if any, between Phoenix and Catalina;

7.2. Support the Application process;

7.3. Notify Phoenix when Chandler desires enforcement of Phoenix's right to terminate the Operations Agreement if Catalina, without the prior approval of Chandler and in breach of the Operations Agreement, either seeks or obtains property tax reclassification under Arizona Revised Statutes § 42-12006(2) for real or personal property at the Zone Site; and

7.4. Take all action requested by Phoenix related to enforcement of the provisions referred to in **§ 7.3** above.

8. Phoenix's Obligations. Phoenix's responsibilities under this Agreement include the following:

8.1. Conduct operations in good faith with Catalina; and

8.2. Enter into an Operations Agreement with Catalina for operation of the Zone Site, which shall contain provisions that: (a) Catalina must be responsible for all costs related to the Zone Site that are incurred by Phoenix and Chandler, and (b) Phoenix may terminate the Operations Agreement if Phoenix is advised by Chandler that Catalina has sought or obtained a property tax classification under A.R.S. § 42-12006(A)(2) **("Reclassification Statute")**.

9. Indemnity. Each Party (as **"Indemnitor"**) agrees to indemnify, defend, and hold harmless the other Party (as **"Indemnitee")** from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as **"Claims"**) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

10. Acknowledgements.

10.1. The Parties acknowledge that 15 C.F.R § 400.49 provides for monitoring and reviews of foreign-trade zone operations and activity. Section 400.49(c) provides that the Board or the Commerce Department's Assistant Secretary for Import Administration may restrict or prohibit zone activity that it finds is no longer in the public interest and the Board has authority under 14 C.F.R. § 400.61 to revoke a grant of authority to operate a zone for cause.

10.2. Chandler acknowledges that both Chandler and Catalina have determined that it would be detrimental to the public interest if Catalina were to seek and obtain property tax classification under the Reclassification Statute in breach of the Operations Agreement.

11. Notices. Any notice, demand, or other communication **("Notice")** given or to be given, by either Party to the other, shall be given in writing, by certified mail, and shall be addressed to the Parties at the addresses set forth below, or at such other address as the Parties may otherwise designate by given Notice. Any Notice shall be deemed received upon **actual receipt** or **three (3) business days** after deposit in the United States mail, whichever date is earlier.

11.1. To Phoenix

Community & Economic Development Director
City of Phoenix, Community & Economic Development Department
200 West Washington Street, 20th Floor
Phoenix, Arizona 85003-1611

and

City Clerk
City of Phoenix, City Clerk Department
200 West Washington Street, 15th Floor
Phoenix, Arizona 85003-1611

11.2. To Chandler

City Manager
City of Chandler
P.O. Box 4008, Mail Stop 605
Chandler, Arizona 85244-4008

and

City Attorney
P.O. Box 4008, Mail Stop 602
Chandler, Arizona 85244-4008

III.General Provisions

12. Recitals and Captions: The Parties acknowledge that recitals set forth above are true and correct and are incorporated into this Agreement by reference. The captions in this Agreement are merely for reference, and not to construe or limit the text.

13. Governing Law and Jurisdiction. The laws of the State of Arizona will govern this Agreement, both as to interpretation and performance. Any citations to a statute in this Agreement refer to the version of that statute in effect when the Parties execute this Agreement. ARIZ. REV. STAT. §§ 12-133 and 12-1518 may require arbitration of a dispute. Otherwise, the dispute is subject to the jurisdiction of the Maricopa County Superior Court.

14. Compliance with Laws. The Parties will comply with all applicable federal, state, and local laws, ordinances, codes, rules, regulations, and executive orders, including those governing equal employment opportunity, immigration, nondiscrimination, and the Americans with Disabilities Act.

15. Mutual Benefits. In making the promises contained in this Agreement, the Parties agree that certain benefits and advantages will accrue for each Party by performance of this Agreement, so they enter this Agreement in reliance on the mutual benefits afforded each Party.

16. No Adverse Inference. This Agreement shall not be construed more strongly against one Party or the other. The Parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one Party than the other shall be used in interpreting this Agreement.

17. Successors and Assigns. The Parties bind themselves and their successors, assigns, and legal representatives to this Agreement's covenants. A Party may not assign or otherwise transfer its interest in this Agreement without the other Party's written consent and formal amendment to this Agreement signed by the Parties. Any attempt to assign otherwise is void.

18. No Agency Created. Nothing in this Agreement: **(a)** creates any partnership, joint venture, or agency relationship between the Parties; or **(b)** gives any right or cause of action for the benefit of any person, firm, organization, or corporation that is not a Party here.

19. No Third-Party Beneficiaries or Agency. Nothing in this Agreement gives any rights or benefits to anyone but the Parties. All duties and responsibilities undertaken under this Agreement are for the exclusive benefit of the Parties—and not any other party. This Agreement does not create a contractual relationship with any third party or otherwise establish any third-party beneficiaries. No third party may enforce the terms and conditions of this Agreement.

20. Conflict of Interests. The Parties acknowledge that this Agreement is subject to cancellation within three years under ARIZ. REV. STAT. § 38-511 in the event of a conflict of interest for a Party's official/employee. No official/employee of the Parties may: have any direct or indirect interest in this Agreement; or participate in any decision relating to the Agreement that is prohibited by law.

21. No Payment of Consideration for Agreement. The Parties warrant that they have not paid or given—and will not pay or give—any third person any money or other consideration for obtaining this Agreement.

22. Entire Agreement. This Agreement expresses the full agreement and understanding of the Parties, superseding all prior written or oral communications.

23. Modification. This Agreement's terms may *not* be modified, supplemented, amended, or otherwise changed except by formal amendment signed by the Parties. There will be no oral modification of this Agreement.

24. Severability. If any provision or application of this Agreement is invalid or illegal, then the Agreement's remainder endures unaffected and enforceable to the fullest extent permitted by law—so long as the severability does not defeat this Agreement's fundamental purposes.

25. Counterparts. The Parties may sign this Agreement in counterparts, and each counterpart will be effective and enforceable as though it were the original agreement.

26. Default. A Party shall be deemed in default under this Agreement upon failure of such Party to observe or perform any material covenant, condition, or agreement on its part to be observed or performed under this Agreement, and the continuance of such failure for a period of **30 days** after Notice is given by the other Party. Such Notice shall specify the failure and request it be remedied within **30 days**, unless the Party giving Notice agrees in writing to an extension of the time period prior to its expiration. However, if the failure stated in the Notice cannot be corrected within the applicable period, it will not give rise to a default under this Agreement if corrective action is instituted within the applicable period and diligently pursued until the failure is corrected.

27. Default Rights/Remedies. In the event of default under this Agreement, the non-defaulting Party will have all rights and remedies available to it at law or in equity. The exercise by any Party of one or more such rights or remedies will not preclude that Party from exercising—at a different time—any other rights or remedies for the same default or any other default by the defaulting Party.

28. Nonliability of Officials and Employees. In the event of any default or breach by any Party, no official or employee of that Party will be personally liable for any payments or other obligations due under this Agreement.

29. No Waiver. A Party may not construe the failure or delay of the other Party to enforce—or require performance of—any of this Agreement's provisions to be a waiver of that provision. Such failure or delay will not affect the validity of any part of this Agreement or the rights of the Parties to enforce every provision.

30. Additional Documents/Actions. The Parties agree to execute and deliver all documents and take all actions reasonably necessary to implement and enforce this Agreement.

31. Force Majeure. The Parties will *not* be responsible or otherwise liable, or deemed in breach of this Agreement, for any delay in the performance of this Agreement's obligations to the extent caused by circumstances beyond its control, without the fault or negligence, that could *not* have been prevented by their exercise of due diligence (such as fires, natural disasters, riots, wars, and unavoidable or unforeseeable site conditions).

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

CITY OF CHANDLER

Kevin Hartke
Mayor
Director

ATTEST:

Chandler City Clerk

APPROVED AS TO FORM:

Attorney for Chandler

CITY OF PHOENIX

Jeffrey Barton, City Manager

Christine Mackay
Community & Economic Development

ATTEST:

Phoenix City Clerk

APPROVED AS TO FORM:

Julie M. Kriegh, City Attorney

Micah Ray Alexaner
Assistant Chief Counsel

ATTORNEY DETERMINATION

In accordance with the requirements of A.R.S. § 11-952(D), the undersigned attorneys acknowledge: (1) that they have reviewed the above Agreement on behalf of their respective clients; and (2) that, as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Attorney for Chandler

Micah Ray Alexaner
Assistant Chief Counsel

Exhibit A

[INSERT CHANDLER RESOLUTION]

Exhibit B

[INSERT PHOENIX RESOLUTION]

Exhibit C

[INSERT SITE MAP]