

**WATER RESOURCE AND WATER SYSTEM INFRASTRUCTURE
DEVELOPMENT AGREEMENT BETWEEN APACHE JUNCTION
WATER UTILITIES COMMUNITY FACILITIES DISTRICT AND
CAMPGROUND USA, LLC**

This Agreement is made and entered into on the ____ day of _____ 2020 (the "Effective Date") by and between APACHE JUNCTION WATER UTILITIES COMMUNITY FACILITIES DISTRICT ("District"), an Arizona municipal corporation, and CAMPGROUND USA, LLC, an Arizona limited liability company ("Developer"), both of which may be hereinafter referred to collectively as the "Parties" or individually as a "Party", for a water line extension to the Campground USA, LLC and payment of the associated fees (the "Project").

RECITALS

A. Developer owns ten acres of improved and unimproved real property located at 2851 South Tomahawk Road, Apache Junction, Arizona (the "Property"), the legal description and improvement plans of which are attached hereto as Exhibits A and B, respectively, and are incorporated herein by reference.

B. Developer has expressed its intent to develop one parcel of land into a 129-space seasonal campground known as the "Campground USA, LLC".

C. Developer is desirous of extending and constructing water mains and appurtenances in order to provide water service to the above-described Project.

D. Developer is desirous of obtaining a written commitment of water service for the subdivision from a municipal water provider which has a designated assured water supply ("DAWS") pursuant to A.R.S. § 45-576.

E. District possesses a DAWS with the Arizona Department of Water Resources ("DWR")(DWR No. 86-002025.0001)

F. District is desirous of providing the water service herein described and the Parties have memorialized their understanding as fully set forth in this Agreement.

G. The Parties also desire to set forth when and how much funds shall be paid for the District's Water System Connection Fee and Water Resource Fee.

H. The Parties also desire to set forth when and how much funds shall be paid for inspection.

AGREEMENT

NOW, THEREFORE, in consideration of the above-noted Recitals, the mutual covenants and conditions below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. ACCURACY OF THE RECITALS: The Parties hereby confirm the accuracy of the Recitals set forth above, which are incorporated herein by this reference.

2. PROJECT: This Agreement shall relate to the Project more particularly identified in the plans on file with District Engineer. The Developer will adhere to the Payment Schedule, which is attached hereto as Exhibit C.

3. WATER IMPROVEMENT PLANS: Subject to the terms and conditions of this Agreement, Developer shall design and construct (the "Work"), per approved plans, a water main from District's distribution system together with the pertinent valves and other equipment (the "Facilities") required for the operation of such water main in accordance with water plans prepared by Developer and subject to the approval of District Engineer.

A. Notice to Proceed. Developer's and District's rights and obligations as set forth in this Agreement shall terminate if Developer has not issued the Notice to Proceed ("NTP") for construction of the Facilities to the approved contractor by December 1, 2019, unless such date is extended in writing by District and Developer. Once the NTP has been issued, the Work shall be completed to the satisfaction of District Engineer.

B. Time for Completion. The Facilities must be completed and accepted by District within twelve (12) months of issuance of the NTP. The District Manager is hereby authorized to extend this deadline on behalf of District to a date not later than up to twelve (12) months after issuance of the NTP in his or her sole discretion.

C. Term. This Agreement is only valid for twelve (12) months after the plans have been approved by the District, unless the NTP has been issued.

4. COST: The cost of Work as more fully detailed in the Engineer's Cost Estimate, attached hereto as Exhibit D, is \$89,879.00 (Eighty Nine Thousand Eight Hundred Seventy Nine dollars). Developer further agrees that upon execution of this Agreement and no later than three hundred sixty five (365) days after such execution, Developer shall pay all adopted and applicable District fees.

District's fees associated with this Project are as summarized as more fully detailed in the Payment Schedule, attached hereto as Exhibit C.

| | |
|-----------------------------------|-------------------|
| a. Water Resource Acquisition Fee | \$5,209.00 |
| b. Water System Connection Fee | \$230,870.00 |
| c. Inspection Fee | \$1,189.00 |
| d. Meter Fee | \$1,890.00 |
| <hr/> | |
| Total | \$239,158.00 |
| <u>Amount Paid to Date</u> | <u>\$9,248.00</u> |
| Amount Remaining to be Paid | \$229,910.00 |

5. MATERIALS, WORKMANSHIP, DEFECTS IN FACILITIES, EQUIPMENT, MACHINERY, ONE YEAR WARRANTY:

A. Specifications to be Met. Developer understands and specifically agrees that the Work to be performed shall meet the specifications and standards of the American Water Works Association Standards, the Arizona Department of Environmental Quality, Maricopa Association of Governments specifications and details, ("MAG specifications and details") with District additions and all local regulatory agencies. Developer agrees that it will conduct at least one pre-construction meeting with the District in attendance before any Work commences.

B. Standard of Care. While performing the services, Developer shall exercise the reasonable professional care and skill customarily exercised by reputed members of Developer's profession practicing in the Phoenix metropolitan area, and shall use reasonable diligence and best judgment while exercising its professional skill and expertise. All materials shall be new and both workmanship and materials shall be of good quality. Developer shall also be responsible for all errors and omissions Developer commits in the performance of this Agreement. Developer understands and agrees that inspection of the Work being performed hereunder will occur by District.

C. Inspection by District. Developer agrees that District will have the exclusive right to determine, in its sole discretion, whether the Work has been performed in accordance with all contract documents. Developer further agrees to make such corrections to the Work as may be directed by District to conform to all applicable policies and regulations,

without requirement of change order or any additional charge or cost to District whatsoever. Developer further agrees to make such corrections to the Work within the time allowed for completion as long as it does not affect the overall deadline of completion set forth in this Agreement.

D. Cure of Defective Workmanship by District. Developer shall repair, remove and/or replace at Developer's own expense any workmanship or materials which prove to be defective at any time within 365 calendar days from the date of the final acceptance of the Work by District. Developer also guarantees that all equipment and machinery, will perform the required function in a manner satisfactory to District, and agrees to pay all costs for removing and replacing any part or parts thereof which prove defective within 365 calendar days after being placed in regular operation.

E. Defective Materials in District Easement. Defective materials or Work that does not jeopardize service to District's customers may be corrected by Developer's contractor. However, whenever there is any defect in the Work, and Developer fails to act in a reasonable time in the judgment of District, then District may take such action deemed necessary to remedy the situation. Any time a failure of the water line extension creates an emergency which threatens service or poses an inconvenience to District's customers, District may perform the Work. Work may be performed by District under the above conditions prior to the commencement of the warranty period. Developer shall pay District for the actual cost of all such Work no later than thirty (30) calendar days after District sends an invoice to Developer. The ending date for the warranty period will be included in District's acceptance letter.

6. DEVELOPER'S OBLIGATIONS: Developer agrees to do all of the following:

A. Construction Plans. Developer shall employ a professional engineer (the "Developer's Engineer"), licensed in Arizona, to prepare detailed construction plans and specifications of the proposed line extension. The plans shall comply with District's design standards for line extensions. Developer's Engineer shall submit the plans to District for its review and approval and Developer's Engineer may be required by District to revise the plans prior to District issuing its written approval. When the plans are approved by the District, an AutoCad file shall be delivered to District for its use. Upon completion of the line extension, the Developer's Engineer shall produce as-built drawings of the line extension. Developer's Engineer shall submit the as-built drawings to District for its review and approval and Developer's Engineer may be required by the District to revise the plans prior to District issuing its final review approval. When the as-built plans are approved by the District, an AutoCad as-built file shall be delivered to District within thirty (30)

calendar days from date of approval for its use at no charge to the District. All AutoCad drawings shall be referenced to a minimum of two known Maricopa County Department of Transportation ("MCDOT") Geodetic Densification and Cadastral Survey ("GDACS") control locations (section corners and/or quarter-section corners) and projected to the following national coordinate system:

1. Horizontal Coordinates:

- North American Datum ("NAD") 1983 High Accuracy Reference Network ("HARN")

- State Plane Arizona Central

- Unit of Measure – International Feet

The AutoCad file with the as-builts shall become the property of the District.

B. Arizona Department of Environmental Quality Approval. After approval by the District, Developer shall obtain an Approval To Construct ("ATC") from the Arizona Department of Environmental Quality ("ADEQ") before any Work is performed. Developer shall provide a copy of ADEQ's ATC to the District within thirty (30) calendar days of receipt from ADEQ. Upon completion of the Project and acceptance by the District, Developer shall obtain an Approval of Construction ("AOC") from ADEQ. The District will not establish service to the Project until the Developer has provided the AOC from ADEQ to the District.

C. Required Easements. Developer will obtain all required easements, both on and off the Developer's property. District's standard easement form must be executed by the property owners involved to allow access to the proposed water lines. An encroachment permit or letter of authorization must be obtained from the City of Apache Junction if proposed facilities encroach into existing city public rights-of-way. Developer is responsible for restoring or repairing any rights-of-way for the Work.

D. Developer's Contractor. Developer shall construct the Work in accordance with the approved plans and District's standard specifications. Developer's construction contractor shall be experienced in the type of Work to be performed and shall be approved in writing by District's Engineer before Developer enters into an agreement with the contractor. Developer shall be responsible to direct the contractor and shall authorize and direct all Work in a continuous orderly manner as approved by District's Engineer at a pre-construction meeting between Developer, the contractor and District's Engineer. If the contractor does not perform the Work in a continuous orderly manner, Developer shall notify the contractor to discontinue the Work until such time as it can be completed in an orderly manner. District's Engineer shall have authority

to direct the contractor to cease Work until Developer, the contractor and District's Engineer agree on a construction schedule.

E. Future Work. Developer shall ensure that water lines are constructed initially with consideration for future grade work. However, if in the future, the area through which this water line construction passes requires grade work and adjustments to the water line, fire hydrants, and appurtenances, Developer agrees to reimburse District for expenses incurred for said adjustments no later than thirty (30) calendar days after invoice is sent by District to Developer. Any changes in the original development plan which cause adjustments to water system Facilities, including service lines, will be at the expense of Developer. If such adjustments to the facilities are required, District will estimate the cost and Developer will pay an advance cash deposit in that amount for District to make the adjustments.

F. District Control. Upon completion of construction of the water line extension and acceptance by District, Developer shall relinquish any and all control over the facilities covered under this Agreement and the facilities constructed in accordance with this Agreement shall become the property of District.

G. Legal Expenses. In the event of default under the Agreement by Developer, any reasonable legal expense incurred by District to enforce provisions of this Agreement shall be paid by Developer after thirty (30) calendar days from date District sends the invoice.

H. System Connection Fees. Developer or the person applying for service shall pay the standard system connection fee based on the most current District System Connection Fee charge for service required, in full, in accordance with Exhibit C before water service will be established to the Property.

I. Water Resource Acquisition Fees. Developer shall pay the established water resource fee based on the most current District Water Resource Acquisition Fee Schedule all planned service connections within fifteen (15) calendar days of this fully executed Agreement.

J. Inspections. Developer's contractor shall provide an estimate of the construction period and based on such estimate, District will estimate the cost of its services. Before any water line construction begins, Developer shall deliver a cash deposit to District in the amount equal to its estimated costs. If the construction period approaches the time estimated and/or the deposit for services is nearly depleted, all Work shall cease until Developer makes an additional cash deposit to District to cover an additional estimate of the Work to be performed by District. Developer shall employ a contractor who shall schedule the Work so that District's

inspection services are not required on Saturdays, Sundays or any holiday observed by District.

K. Final Inspection and Acceptance of Facilities. Developer shall provide District all water facility invoices with a summary of all Work costs. Developer and the contractor shall each provide a Release of Liens to District indicating that all costs related to the Work have been paid.

7. DISTRICT'S OBLIGATIONS: District agrees to do all of the following:

A. Inspections. District shall perform construction inspection, with Developer reimbursing District for actual costs involved with engineering and inspection, including Work required for as-built drawings, and all other costs incurred by District related to the extension.

B. Final Inspection and Acceptance of Facilities. Connection of the water line extension to the existing water system does not constitute acceptance of the facilities by District. When Developer's contractor requests it, District will perform a final inspection of the Work. A list of any items not conforming to the approved plans and standard specifications will be provided to Developer. When all items on this list are performed, the Work will be considered complete. When the Work is complete, releases of liens and the construction cost summary shall be delivered as described above and any amounts due to District shall be paid by Developer. District shall then notify Developer in writing of its acceptance of the Work. District will not provide service to any customer on the water line extension until District acceptance is received in writing as authorized by District Engineer.

C. Right to Extend. District is specifically granted the right to make extensions to any water lines which are the subject of this Agreement, at no expense to Developer, and without any reimbursement to Developer for any connections made on said extensions constructed by District. Final authority relative to additions, extensions, taps, and/or uses of the subject water mains and appurtenances shall rest solely with District Engineer.

D. Written Commitment to Serve. District shall provide a written commitment to provide water service for the subdivision described in Exhibit A of this agreement no later than fifteen (15) calendar days after the Water Resource Fee is paid in full.

8. APPROVALS, RIGHTS-OF-WAY, AND PERMITS: In addition to the other obligations described in this Agreement, Developer or its respective designees shall undertake the following at the sole cost and expense of Developer with District's cooperation but at no cost or expense to District:

A. Easements, Licenses, Permits, Approvals. Developer shall apply for and obtain, with the cooperation and participation of District (where required), all necessary construction easements, licenses and all federal, state, county and city permits required in connection with the construction and dedication of the facilities including, but not limited to, environmental based permits including but not limited to 404 permits and Endangered Species Act, Section 7 consultations, encroachment permits, and City of Apache Junction business and privilege tax licenses. The obtaining of such required permits shall be a condition precedent to Developer's obligation to build the facilities.

9. NOTICES: All notices to the Parties required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following:

If to District: Apache Junction Water Utilities
Community Facilities District
300 East Superstition Boulevard
Apache Junction, AZ 85119

And a Copy to: Richard J. Stern, District Attorney
300 E. Superstition Blvd.
Apache Junction, AZ 85119

If to Developer: Campground USA, LLC
Attn: George McGavin
1837 North Thornton Road
Casa Grande, AZ 85122

10. SUPERINTENDENT: Developer shall employ a competent Project superintendent who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent and be the community agent of Developer and its contractors and communications given to the superintendent shall be as binding as if given to Developer. Important communications shall be confirmed in writing. The designated superintendent shall be:

Name: Fred Dominquez
Address: 208 S. 67th Ave.
City/State/Zip: Phoenix, AZ 85043
Phone: 602-688-0653
Cell Phone: 602-688-0653
Email: fd@juarezcontracting.com
Emergency Phone: 602-688-0653

11. INSURANCE REQUIREMENTS. Developer shall maintain the following insurance coverages:

A. Property. During the period of any construction involving the Public Improvements, builder's risk insurance on an all-risk, replacement cost basis for the Public Improvements.

B. Liability. During the period of any construction involving the Public Improvements, insurance covering the Developer and (as an additional insured party) the District against liability imposed by law or assumed in any written contract, and/or arising from personal injury, bodily injury or property damage, with a limit of liability of \$1,000,000.00 per occurrence with a \$2,000,000.00 products/completed operations limit and a \$2,000,000.00 general aggregate limit. Such policy must be primary and written to provide blanket contractual liability, broad form property damage, premises liability and products and completed operations.

C. Developer. During the period of any construction involving the Public Improvements, each of the general or other contractors with which the Developer contracts for any such construction shall be required to carry liability insurance of the type and providing the minimum limits set forth below:

i) Worker's Compensation insurance and Employer's Liability with limits of \$1,000,000.00 per accident, \$1,000,000.00 per disease and \$1,000,000.00 policy limit disease.

ii) Commercial general liability insurance on a \$1,000,000.00 per occurrence basis providing coverage for:

Products and Completed Operations
Blanket Contractual Liability
Personal Injury Liability
Broad Form Property Damage
X.C.U.

iii) Business automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than \$1,000,000.00 combined single limit for personal injury, including bodily injury or death, and property damage.

D. Architect. In connection with any construction involving the Public Improvements, the Developer's architect shall be required to provide architect's or engineer's professional liability insurance with a limit of \$1,000,000.00 per claim. This policy, or other policies, shall cover claims for a period of not less than three (3) years after the completion of construction involving the Property and the Public Improvements.

E. Engineer. In connection with any construction involving the Public Improvements, the Developer's engineer contractor shall be required to provide engineer's professional liability insurance with a limit of \$1,000,000.00 per claim. This policy, or other policies, shall cover claims for a period of not less than three (3) years after the completion of the construction involving the Property and the Public Improvements.

F. CPI Adjustments. The minimum coverage limits set forth above shall be adjusted every five (5) years by rounding each limit up to the million dollar amount which is nearest the percentage of change in the Consumer Price Index (the "CPI") determined in accordance with this paragraph. In determining the percentage of change in the CPI for the adjustment of the insurance limits for any year, the CPI for the month of October in the preceding year, as shown in the column for "All Items" in the table entitled "All Urban Consumers" under the "United States City Averages" as published by the Bureau of Labor Statistics of the United States Department of Labor, shall be compared with the corresponding index number for the month of October one (1) year earlier.

G. Primary Coverage. Developer's insurance coverage shall be primary insurance with respect to the District, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the District, its officers, officials, agents, and employees shall be in excess of the coverage provided by Developer and shall not contribute to it.

H. Indemnities. Coverage provided by the Developer shall not be limited to the liability assumed under the indemnification provisions of the Agreement.

I. Waiver of Subrogation. The policies shall contain a waiver of subrogation against the District, its board members, officers, officials, agents, and employees.

J. Notice of Cancellation: Each insurance policy shall include provisions to the effect that it shall not be suspended, voided, cancelled, reduced in coverage except after thirty (30) calendar days' prior written notice has been given to the District. Such notice shall be sent directly to Apache Junction Water District, District Manager, 300 East Superstition Blvd., Apache Junction, AZ 85119, and shall be sent by certified mail, return receipt requested.

K. Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. The District in no way warrants that the above-required minimum insurer rating is sufficient to protect Developer from potential insurer insolvency.

L. Verification of Coverage: Developer shall furnish the District with original certificates of insurance (Association for Cooperative Operations Research Development ("ACORD") form or equivalent approved by the District) as required herein. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

All certificates are to be received and approved by the District before the commencement of construction. Each insurance policy must be in effect at or prior to the commencement of construction and must remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the Agreement.

All certificates required by this Agreement shall be sent directly to District Attorney, 300 East Superstition Blvd., Apache Junction, Arizona, 85119. The District reserves the right to require complete, certified copies of all insurance policies and endorsements.

M. Approval: Any modification or variation from the insurance requirements must have prior approval from the District Attorney's Office whose decision shall be final. Such action will not require formal contract amendment, but may be made by administrative action.

12. ENVIRONMENTAL LAWS AND INDEMNITY:

1. Definitions. The following terms used in this Agreement shall have the meanings set forth below (unless otherwise expressly provided herein):

(a) "Environmental Laws" are included in the definition of applicable laws and shall mean any and all laws, statutes, regulations and judicial interpretations thereof of the United States, of any state in which the construction site is located, and of any other government or quasi-government authority having jurisdiction, that relate to the prevention, abatement and elimination of pollution and/or protection of the environment, including but not limited to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 *et seq.*, the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, the Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.*, the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f *et*

seq., the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 *et seq.*, and the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 *et seq.*, together with any state statutes or local ordinances or other requirements serving any similar or related purposes.

(b) "Hazardous Materials" shall mean those materials, substances, wastes, pollutants or contaminants which are deemed to be hazardous, toxic or radioactive and shall include but not be limited to those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," or other similar designations in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, the Hazardous Materials Transportation Act 49 U.S.C. § 1801 *et seq.*, and all applicable laws, codes, ordinances, rules, regulations and precautions, or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) petroleum products or byproducts, or petroleum, including crude oil or any fraction thereof, or natural gas, natural gas liquids, liquefied natural gas, synthetic gas or mixtures of synthetic gas and natural gas, (iii) asbestos and (iv) polychlorinated biphenyls.

(c) "Storm Water Requirements" means all federal, state or local laws, regulations, ordinances, permits or other authorizations, approvals or other requirements relating to storm water discharges or the control of erosion or sediment discharges from construction projects, including but not limited to the CWA and the National Pollutant Discharge Elimination System ("NPDES") General Permit for Stormwater Discharges Associated with Construction Activities.

2. Environmental Indemnity. Developer shall indemnify, protect, defend and hold harmless District and its appointees, officers, employees, agents, consultants, representatives, successors, transferees, volunteers and assigns (collectively, the "District Indemnified Parties") from and against any and all damages arising from, relating to or associated with any actual or alleged (i) actions or omissions of Developer or its employees, agents, representatives, volunteers or general contractor, subcontractors or sub-subcontractors, or any employees, agents, representatives or contractors of any of the foregoing, in connection with the Work and the Facilities located within the public right-of-way, including, without limitation, any injury, damage, harm or loss arising from, relating to or in any manner connected with the "release" or "threatened release" of Hazardous Materials, contaminants, oil or radioactive materials from or onto any District premises as a result of or

connected with Developer's performance of the Work, even if not discovered or alleged until after the termination of this Agreement; and/or (ii) any breach, violation or default by Developer or its employees, agents, representatives, or general contractor, subcontractors or sub-subcontractors, or any employees, agents, representatives or contractors of any of the foregoing, of Developer's obligations under this Agreement, including, without limitation, any violation of any law, statute, ordinance, order, rule or regulation, including, without limitation, any Environmental Law or the Storm Water Requirements.

3. Environmental Compliance. During the design and construction of the Project, Developer shall comply with any and all applicable laws, rules, regulations, statutes, codes, orders and ordinances, including (i) all Environmental Laws and (ii) those applicable to the use, generation, storage, handling, discharge, disposal and transport of Hazardous Materials; provided that, notwithstanding the foregoing, Developer shall not cause any Hazardous Material to be used, generated, stored, handled or disposed of on or about any tract without the prior written consent of District, which consent may be withheld in the sole discretion of District. The foregoing provision shall not be construed as limiting the right of Developer to use, store, handle, discharge, dispose of and transport Hazardous Materials in the ordinary course of its business operations on the Property without the consent of District, provided that such operations are in accordance with all applicable laws. Without limiting the foregoing, all chemicals and other products utilized in the performance of the Work must be environmentally acceptable, as determined by District in its sole discretion, and such use must be permitted by and be fully compliant with all applicable laws. Developer hereby covenants and agrees that the application of all chemicals and other products utilized in the performance of the Work must be performed by a licensed applicator if so required under any applicable law. Developer acknowledges and agrees that it is informed and aware that strict compliance with City of Apache Junction Storm Water Requirements is required of the Developer by District as a material condition of this Agreement. Developer does hereby agree, covenant, warrant and represent that it will, at times during the performance of the Project, strictly comply with all Storm Water Requirements. Developer shall also include requirements for such compliance in all contracts relating to the performance and completion of the Work that is the subject of this Agreement. Developer shall be responsible for applicable taxes arising from or relating to the performance or completion of the Project, including, without limitation, all federal, state and local unemployment taxes and federal and state income and social security taxes to be withheld from wages. District is hereby authorized to file, on behalf of Developer, any and all reports, returns or other documents which are required of Developer by any governmental authority and which Developer shall have failed to file in accordance with

the provisions of this Agreement. Developer further authorizes and empowers District to pay on behalf of Developer any and all taxes, fees and assessments which Developer shall have failed to pay as required by the provisions of this Agreement, together with all required penalties and interest, and Developer shall promptly reimburse District within ten (10) calendar days after receiving an invoice for such amounts.

13. **SUCCESSORS & ASSIGNS:** District and Developer each bind themselves, their partners, successors, assigns and legal representatives to the other Party hereto and to the partners, successors, assigns and legal representatives of such other Party in respect to all covenants, agreements and obligations contained in the contract documents. Neither Party to this Agreement shall assign the contract or sublet it as a whole without the written consent of the other, nor shall Developer assign any monies due or to become due to or to become due to it without the previous written consent of District.

14. **APPLICABLE 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 Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county or for removal to federal court. 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.

15. **RIGHTS & REMEDIES:** The duties and obligations imposed in this Agreement shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by District or Developer shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any action or failure to act constitute an approval of or an acquiescence to any breaches thereunder except as may be specifically agreed to in writing.

16. **FORCE MAJEURE:** Neither District nor Developer, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including

but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the obligations under this Agreement. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular contractors, subcontractors, vendors or investors desired by Developer in connection with the obligations under this Agreement. Developer agrees that Developer alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this section shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

17. **TERMINATION:** This Agreement may be terminated by either Party for any alleged material breach of contract upon thirty (30) calendar days' written notice.

18. **INDEMNIFICATION:** To the fullest extent permitted by law, Developer shall defend, indemnify and hold harmless District, its board and appointed officers, officials, agents, and employees from and against any and all liability including but not limited to demands, claims, actions, fees, costs and expenses, including attorney and expert witness fees, arising from or connected with or alleged to have arisen from or connected with, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, Work or services of Developer, its agents, employees, or any tier of Developer's subcontractors in the performance of this Agreement. Developer's duty to defend, hold harmless and indemnify District, its board, elected and appointed officers, officials, agents, and employees shall arise in connection with any tortious claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by an Developer's acts, errors, mistakes, omissions, Work or services in the performance of this Agreement including any employee of Developer, any tier of Developer's subcontractor or any other person for whose acts, errors, mistakes, omissions, Work or services Developer may be legally liable.

19. **LICENSE:** Developer represents and warrants that any license necessary to perform the work under this Agreement is current and valid. Developer understands that the activity described herein constitutes "doing business in the City of Apache Junction" and Developer agrees to obtain a

business license pursuant to Volume I, Chapter 8 of the Apache Junction City Code ("A.J.C.C") and to keep such license current during the term of this Agreement. Developer also agrees to obtain a privilege license and pay all applicable taxes to the City of Apache Junction pursuant to A.J.C.C., Vol. I, Chapter 8. Any activity by subcontractors within the corporate city limits, will invoke the same business and tax regulations on any subcontractors. Developer ensures, confirms and is responsible for its subcontractors in obtaining any required business and privilege tax licenses.

20. **RECORDS:** Records of Developer's labor, payroll, and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to District for inspection on request. Developer shall maintain records for a period of at least two (2) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by District personnel during regular business hours.

21. **RIGHT OF DISTRICT TO CONTRACT WITH OTHERS:** Nothing in this Agreement shall imply District is obligated to obtain the services described herein with only this particular Developer.

22. **WAIVER OF TERMS AND CONDITIONS:** The failure of District or Developer to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

23. **ENTIRE AGREEMENT:** This Agreement and any attachments represent the entire agreement between District and Developer 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 this 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.

24. **SEVERABILITY:** District and Developer each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring District to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same

date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

25. ACCURACY OF WORK: Acceptance of services or Work by District shall not relieve Developer of the responsibility for subsequent correction of any such errors and the clarification of any ambiguities. Developer shall make all necessary revisions or corrections resulting from errors and omissions on the part of Developer without additional compensation.

26. CONFLICTS OF INTEREST: This Agreement is subject to, and may be terminated by District in accordance with, the provisions of A.R.S. § 38-511.

27. CONTRACTS THAT CONDONE BOYCOTT OF ISREAL: The provisions of A.R.S. § 35-393 through 35-393.03 apply to this agreement and shall be enforced against any contractor or subcontractor.

IN WITNESS WHEREOF, Developer and District have executed this Agreement as of the date first set forth above.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Developer and District have executed this Agreement as of the date first set forth above.

DEVELOPER:

CAMPGROUND USA, LLC, an Arizona limited liability company

J. McGavin
By: George McGavin
Its: owner/member

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing was acknowledged before me this 26th day of February, 2020, by George McGavin as Owner of CAMPGROUND USA, LLC, an Arizona limited liability company, for and on behalf of the corporation.

Cheryl Long
Notary Public

My Commission Expires:
2/28/2021



DISTRICT:

**APACHE JUNCTION WATER UTILITIES
COMMUNITY FACILITIES DISTRICT, an
Arizona municipal corporation**

By: _____

Name: Jeff Serdy

Its: Chairman

ATTEST:

Jennifer Peña, District Clerk

APPROVED AS TO FORM:

R. Joel Stern, District Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing was acknowledged before me this ____ day of _____
_____, 2020, by Jeff Serdy as Chairman of APACHE JUNCTION WATER
UTILITIES COMMUNITY FACILITIES DISTRICT, an Arizona municipal
corporation.

Notary Public

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

That part of the Northwest quarter of Section 34, Township 1 North, Range 6 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona (Parcel No. 103-22-004C), Described as follows;

**Commencing at the west quarter corner of the said section 34, found ADOT brass cap in hand hole, basis of bearing is the west line of the northwest quarter, said line bears north 00 degrees 17 minutes 37 seconds west, a distance of 2642.67 feet to an iron pipe at the intersection of S Tomahawk Road and East Southern Avenue;
Thence along said line, a distance of 660.67 feet to the point of beginning;
Thence north 00 degrees 17 minutes 37 seconds west, a distance of 330.09 feet;
Thence north 89 degrees 45 minutes 25 seconds east, a distance of 897.78 feet;
Thence south 00 degrees 14 minutes 35 seconds east, a distance of 330.00 feet to a point on a quarter section line and north right of way line of US 60;
Thence south 89 degrees 45 minutes 25 seconds west along said line, a distance of 897.48 feet to the point of beginning.**

IMPROVEMENT PLANS

21

EXHIBIT C
PAYMENT SCHEDULE

| Nonresidential (per meter) | Water Resource Acquisition Fee Per Unit | Water Resource Acquisition Fee¹ |
|---------------------------------------|--|---|
| 1-2" | \$4,386¹ | \$4,386.00 |
| 1-5/8" | \$823¹ | \$823.00 |
| Total | | \$5,209.00 |

| Nonresidential (per service) | System Connection Fee Per Space | System Connection Fee² |
|---|--|--|
| 1-5/8" | \$4,490¹ | \$4,490.00 |
| 1-2" | \$13,640¹ | \$13,640.00 |
| 2-8" | \$212,740¹ | \$212,740.00 |
| Total | | \$230,870.00 |

| Units | Description | Fee¹ |
|-----------------|----------------------------|------------------------|
| 814 feet | 8" DIP | \$814.00 |
| 1 each | Tapping Sleeve | \$225.00 |
| 2 each | Fire Hydrant | \$50.00 |
| 3 each | Service Connections | \$225.00 |
| Total | | \$1,189.00 |

| Number of meters | Meter Size | Fee¹ |
|-----------------------------|-------------------|------------------------|
| 1 | 2" meter | \$1,530.00 |
| 3 | 5/8" meter | \$360.00 |
| Total | | \$1,890.00 |

1. The fees are based on 2018-19 rates and are subject to change annually.
2. The Total System Connection Fee is required to be paid in full prior to establishing service to the development.

EXHIBIT D

ENGINEER'S COST ESTIMATE

| Description | Quantity | Unit | Unit Cost | Sub-Total |
|-------------------------|----------|------|-------------|-------------|
| 8-inch DIP Water Line | 814 | lf | \$75.00 | \$61,050.00 |
| 12" x 8" Tapping Sleeve | 1 | ea | \$2,000.00 | \$2,000.00 |
| Fire Hydrant | 2 | ea | \$3,200.00 | \$6,400.00 |
| 8" Gate Valve | 4 | ea | \$1,300.00 | \$5,200.00 |
| 8" Tee | 6 | ea | \$200.00 | \$1,200.00 |
| 8" 90 degree | 1 | ea | \$129.00 | \$129.00 |
| Vertical Re-alignment | 1 | ea | \$10,000.00 | \$10,000.00 |
| 2" blow assembly | 1 | ea | \$1,500.00 | \$1,500.00 |
| 2" service connection | 1 | ea | \$1,400.00 | \$1,400.00 |
| ¾" service connection | 1 | ea | \$1,000.00 | \$1,000.00 |
| | | | | |
| Total | | | | \$89,879.00 |