

**Intergovernmental Agreement
Between
Town of Wickenburg and Wickenburg Rural Fire District
For
Funding of the Wickenburg Fire Station 755**

This Intergovernmental Agreement ("Agreement") is entered into between the Town of Wickenburg ("Town"), a political subdivision of the State of Arizona, and the Wickenburg Rural Fire District ("District") also known as the Wickenburg Volunteer Fire District, an Arizona special taxing district, for the purpose of funding construction of the Wickenburg Fire Station 755. Town and District are sometimes referred to within the Agreement as the "Parties," with each entity sometimes referred to as a "Party."

RECITALS

WHEREAS, the Town is an Arizona municipal corporation responsible for providing fire and emergency medical services within its corporate boundaries, and

WHEREAS, the District is a special taxing district responsible for providing fire and emergency medical services in the District area, and

WHEREAS, the Town and District have a long-standing relationship for the cooperative provision of fire and emergency medical services, and

WHEREAS, A.R.S. § 11-951 and A.R.S. § 48-805, *et seq.*, authorize the Parties to enter into intergovernmental agreements for the provision of fire services and joint exercise of powers; and

WHEREAS, on April 19, 2021, the Parties entered into an Intergovernmental Agreement for the Cooperative Provision of Fire and Emergency Medical Services (the "Services Agreement") for a three-year term; and

WHEREAS, the Town intends to construct a new Fire Station ("Wickenburg Fire Station 755" or "Project") located at 2955 N US Hwy 93 (parcel number 201-07-004G), in the Town of Wickenburg, Arizona, which will benefit both Parties in their efforts to provide fire and emergency medical services; and

WHEREAS, the District intends to make a one-time capital contribution to the Town for construction of the Wickenburg Fire Station 755; and

WHEREAS, a contractual relationship detailing the Contribution and its disposition is in the best interest of the Parties.

NOW, THEREFORE, Town and District, pursuant to the above and in consideration of the matters hereinafter set forth, do mutually agree as follows:

AGREEMENT

1. CONTRIBUTION.

1.1 Initial Contribution. The District shall make a one-time capital contribution of one million two hundred thousand dollars (\$1,200,000.00) to the Town within sixty days of the Effective Date of this Agreement (as defined below) to be used solely for Project costs, including but not limited to: design and engineering, site construction, permits, utilities, plumbing, electrical, finishes, flooring, painting, and other construction costs from the design and engineering phase through Project completion and acceptance of the Wickenburg Fire Station 755 (the "Contribution").

1.2 Contingency Contribution. The total cost of the Project is estimated to be three million one hundred eighty-one thousand dollars (\$3,181,000.00) upon the best information available at the time of this Agreement (the "Best Estimate"). If costs for the Project exceed the Best Estimate, the Town may, in its sole and absolute discretion, request an additional contribution from the District as contingency for completion of the Project (the "Contingency Contribution"). Any Contingency Contribution made by the District shall not exceed twenty percent (20%) of the Contribution amount in Section 1.1 so that the District's total liability for Contingency Contribution is capped at a maximum of two hundred forty thousand dollars (\$240,000.00). The Parties agree that the Town shall bear seventy percent (70%) of any costs above the Best Estimate with the District paying the remaining thirty percent (30%) of any costs above the Best Estimate up to its maximum Contingency Contribution of two hundred forty thousand dollars (\$240,000.00) pursuant to this section.

1.3 Town to Bear Risk of Overage. If a Contingency Contribution is requested by the Town, the Parties shall amend this Agreement to reflect the most recent cost projections for the Project and the use of such Contingency Contribution. In no event shall the District be charged any capital costs for the Project in excess of the agreed-upon Contribution in Section 1.1 and the Contingency Contribution in Section 1.2, for a total contribution by the District of one million four hundred forty thousand dollars (\$1,440,000.00). The Town bears all risk of Project overage and costs above one million four hundred forty thousand dollars (\$1,440,000.00) to complete construction of the Wickenburg Fire Station 755.

2. **TERM.** The Term of this Agreement shall be thirty (30) years, effective as of the date of the last signature of the Parties below (the "Effective Date"), unless sooner terminated pursuant to this Agreement.

3. **CANCELLATION, PAY-BACK, & DEPRECIATION SCHEDULE.** During the Term of this Agreement, the Parties agree that the Contribution and any Contingency Contribution paid to the Town shall be repaid to the District in accordance with the following terms and conditions:

3.1 Cancellation of the Services Agreement by the Town. If the Town terminates the Services Agreement prior to the expiration of the Services Agreement on June 2, 2024 the Town shall pay the District the entire amount of the Contribution and any Contingency

Contribution, as applicable, without interest, within twelve (12) months of termination, and this Agreement shall terminate upon the date of full repayment.

3.2 Cancellation of the Services Agreement by the District. If the District terminates the Services Agreement prior to the expiration of the Services Agreement on June 2, 2024 the Town shall retain the entire amount of the Contribution and any Contingency Contribution, as applicable, and this Agreement shall immediately terminate.

3.3 Pay-back & Depreciation Schedule. The Parties hereby acknowledge and express their intent to continue to provide cooperative fire and emergency medical services beyond the term of the current Services Agreement and agree to negotiate in good faith regarding any subsequent agreements. Notwithstanding the above, neither Party is bound to any future or amended agreements. In recognition of the uncertainty of future agreements, the Parties hereby agree that the Town will repay, without interest, the balance of the Contribution and any Contingency Contribution, less a set amount for expected depreciation (“Depreciation Reduction”), if the Parties discontinue cooperative fire and emergency medical services after the term of the current Services Agreement. Depreciation Reduction will be calculated on an annual basis, using a straight-line, assuming a thirty (30) year expected life with an asset value of the amount of the Contribution and any Contingency Contribution and a salvage value of zero (\$0). If only using the initial Contribution of one million two hundred thousand dollars (\$1,200,000.00) the annual Depreciation Reduction will be forty thousand dollars (\$40,000.00). The below table illustrates the effect of Sections 3.1, 3.2, and 3.3:

Year One through Three:	Services Agreement in Effect. Section 3.1 and 3.2 govern.
Year Four:	Town to repay balance of Contribution and Contingency Contribution less 3 years of Depreciation Reduction. For example, if Contingency Contribution is equal to \$0 then Town will repay one million eighty thousand dollars (\$1,080,000) which amounts to one million two hundred thousand (\$1,200,000.00) less three years accumulated Depreciation Reduction of forty thousand dollars (\$40,000) per year. If Contingency Contribution is twenty percent (20%), then Town will repay one million two hundred ninety-six thousand dollars (\$1,296,000.00) which is one million four hundred forty thousand dollars (\$1,440,000.00) less three years accumulated Depreciation Reduction of forty-eight thousand dollars (\$48,000) per year.
Year Five through Twenty-Nine:	Town to repay balance of Contribution and Contingency Contribution less Depreciation Reduction.
Year Thirty and Beyond:	District shall receive no repayment of any Contribution or Contingency Contribution from Town.

4. **PAYMENT OF EXPENSES.** The Town shall undertake and complete the construction of the Wickenburg Fire Station 755 and be responsible for all payments owed to any entity arising in connection with the construction.

5. **OWNERSHIP OF THE PROJECT.** Participation in this Agreement shall create no ownership interest in the Project for District relative to any real or personal property existing as of the effective date of this Agreement or to be acquired or constructed as part of the Project. Ownership of any improvements constructed in connection with the Project shall remain with the Town.

6. **DISSOLUTION OF DISTRICT.** In the event District is dissolved for any reason, or in the event Town annexes into its corporate limits all taxable property within District's corporate limits, the Parties agree to abide by the provisions of A.R.S. § 48-812 *et seq.*, as amended, for disposition of District assets. The Parties further agree that any cancellation of the Services Agreement which may result from said dissolution may result in the Town retaining the Contribution in accordance with Section 3.2.

7. **RECORDS.** Each Party, upon written request and at reasonable times, shall have the right to review, inspect, audit and copy all books, accounts, reports, files and any and all other records relating to the performance and/or costs associated with this Agreement.

8. **CONFLICT OF INTEREST.** The Parties reserve all rights that each may have to cancel this Agreement for possible conflicts of interest under A.R.S. § 38-511, as amended.

9. **SEVERABILITY.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall continue to be valid and enforceable to the full extent permitted by law.

10. **DEFAULT AND REMEDIES.**

10.1 Default. Failure or unreasonable delay by either Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days (the "Cure Period") after written notice thereof from the other Party shall constitute a default under this Agreement. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. If any such default cannot reasonably be cured within the Cure Period for reasons beyond the defaulting Party's control, then such longer period as may be reasonably required, provided and so long as such cure is promptly commenced within the Cure Period and diligently prosecuted to completion.

10.2 Remedies. In the event such default is not cured within the Cure Period, the non-defaulting Party shall have all rights and remedies that may be available at law or in equity, subject to the limitations set forth herein. The Parties may institute a legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, provided that claims for damages shall be limited to actual damages as of the time of entry of judgment. The Parties hereby waive any right to seek consequential, punitive, multiple, exemplary, or any damages other than actual damages.

11. NOTICE.

11.1 Manner of Service. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally, or sent by registered or certified United States Mail, postage prepaid, to their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph, or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid:

Town: Town Manager
Town of Wickenburg
155 N Tegner St,
Wickenburg, AZ 85390

With a copy to: Trish Stuhan
Pierce Coleman PLLC
7730 E. Greenway, Suite 105
Scottsdale, AZ 85260

District: Board Chair
Wickenburg Rural Fire District
PO Box 804
Wickenburg, AZ 85390

With a copy to: Maricopa County Attorney's Office
225 W. Madison Street
Phoenix, AZ 85003

If either Party changes address, they must give written notice to the other Party. Notice of change of address is deemed effective five (5) days after mailing by the Party changing address.

11.2 Delivery Effective. All such notices, demands or other communications will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee, and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer (in each case regardless of whether such notice, demand or other communication is received by any other person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this paragraph). Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service.

12. ATTORNEY'S FEES AND COSTS. In the event of commencement of a legal action or proceeding in an appropriate forum by a Party to enforce any covenant, term, provision or

requirement of this Agreement, or any of such Party's rights or remedies under this Agreement, or in the event of commencement of any action or proceeding seeking a declaration of the rights of any Party or equitable or injunctive relief against any Party, the prevailing Party or Parties in any such action or proceeding shall be entitled to recovery of its reasonable attorneys' fees, court costs and expenses, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the Parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental expenses associated with such dispute. The award shall be made by the Court and not by a jury.

13. ENTIRE AGREEMENT. This document constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are superseded and merged herein. This Agreement may be modified, amended, altered or extended only by a signed written amendment.

14. COUNTERPARTS. This Agreement may be executed in one or more counterparts, and each executed duplicate counterpart of this Agreement shall be deemed to possess the full force and effect of the original.


In Witness Whereof, the Parties have caused this Intergovernmental Agreement to be executed as of the dates set forth below.

Town
THE TOWN OF WICKENBURG,

By: 
Rui Pereira, Mayor

Date: 6-21-21

ATTEST:


Amy Brown, Town Clerk

District:
WICKENBURG RURAL FIRE DISTRICT,

By: 
Board Chairman

Date: 7-7-2021

ATTEST:


Secretary of the Board

Intergovernmental Agreement Determination

The following Intergovernmental Agreement between the Town of Wickenburg and the Wickenburg Rural Fire District has been reviewed pursuant to A.R.S. § 11-952 and A.R.S. § 48-805.01 by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Intergovernmental Agreement represented by the undersigned.



Irish Stahan, Wickenburg Town Attorney
Pierce Coleman, PLLC

County Attorney
Maricopa County