

WHEN RECORDED RETURN TO:

City of Casa Grande
Attn: City Clerk
510 East Florence Boulevard
Casa Grande, Arizona 85222

EAST SIDE SEWER LINE EXTENSION AND WATER ASSURANCES AGREEMENT

Between the

CITY OF CASA GRANDE, ARIZONA,
An Arizona municipal corporation

AND

AZ SOURCING, LLC, an Arizona limited liability company

SEWER LINE EXTENSION AGREEMENT

THIS EAST SIDE SEWER LINE EXTENSION AGREEMENT (the "Agreement") is made as of the 1st day of May, 2017, by and between the CITY OF CASA GRANDE, ARIZONA, an Arizona municipal corporation (the "City"); and AZ SOURCING, LLC, an Arizona limited liability company ("Owner"). The City and Owner are sometimes referred to herein collectively as the "Parties" or individually as "Party".

RECITALS

A. Owner and Owner's affiliate Phoenix Mart, LLC own that certain real property located in Casa Grande, Arizona consisting of approximately five hundred eighty five (585) acres, legally described on Exhibit A and depicted on Exhibit B, both attached hereto (the "Property"). Owner's affiliate Phoenix Mart, LLC owns approximately 150 acres of the Property, which is depicted and labeled on Exhibit B as "Lot 1", and Owner owns the balance of the Property.

B. It is the desire and current intention of Owner to develop the Property in several phases. The first phase will consist of approximately 210 acres which is shaded and labeled on Exhibit B as "Phase One" ("Phase One") and which includes, among other things, (i) the Phoenix Mart building of approximately 1.6 million square feet and related infrastructure; (ii) an approximate 297 unit multi-family residential project tentatively called "SOHO" planned for what is labeled on Exhibit B as "Lot 3" and (iii) an approximate 125 room hotel planned for a portion of what is labeled on Exhibit B as Lot 2. For purposes of this agreement, the second phase will consist of all development of the Property other than the Phase One property ("Phase Two") (and nothing in this Agreement shall limit or restrict the development of Phase Two in additional phases). Collectively, the development phases are referred to herein as the "Project."

C. In order to provide sewer and wastewater service to the Property and other properties in the vicinity of the Property, a sewer line connecting to the City's existing sewer infrastructure has been designed, engineered, and must be permitted, constructed and installed from the west side of Interstate 10 to the Property ("Sewer Line").

D. Owner has caused the design and engineering of the Sewer Line, and is willing to obtain permits, construct and install the Sewer Line as depicted in the East Area Sewer Expansion plans prepared by Sunrise Engineering on October 19, 2016 ("East Area"), attached hereto as Exhibit C and incorporated herein by reference, subject to the terms of this Agreement.

E. The Owner has caused the design and engineering of the Sewer Line, and City is willing to obtain permits, construct and install the Sewer Line as depicted in the Kortsens Road Sewer Crossing plans prepared Jacobs Engineering on

October 21, 2016 (“Kortsen Area”), attached hereto as Exhibit D incorporated herein by reference, subject to the terms of this agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and representations and the Mutual promises contained in this Agreement, the Parties agree as follows:

AGREEMENTS

1. DEFINITIONS.

In this Agreement, unless a different meaning clearly appears from the context:

“Agreement” means this Sewer Line Extension Agreement.

“A.R.S.” means the Arizona Revised Statutes.

“City” means the City of Casa Grande.

“East Area” means as defined in Recital D.

“Effective Date” means the date on which all of the following has occurred:
(i) this Agreement has been adopted and approved by the City Council, and
(ii) this Agreement has been executed by the duly authorized representatives of the City and Owner.

“Kortsen Area” means as defined in Recital E.

“Owner” means AZ Sourcing, LLC, an Arizona limited liability company.

“Party/Parties” means City of Casa Grande and/or Owner.

“Project” means as defined in Recital B.

“Property” means as described in Recital A, as described in Exhibit A, and as depicted on Exhibit B.

“Sewer Line” means the off-site sewer line and related facilities adequate to provide sewer and wastewater service to the Project consisting of East Area and Kortsen.

“Term” means the period commencing on the Effective Date and terminating on the date on which the Parties have performed all of their obligations hereunder.

2. PARTIES AND PURPOSE OF THIS AGREEMENT.

2.1 Parties to the Agreement. The Parties to this agreement are the City and the Owner.

a. The City. The City is a municipal corporation and a political subdivision of the State of Arizona, duly organized and validly existing under the laws of the State of Arizona, exercising its governmental functions and powers.

b. The Owner. The Owner is AZ Sourcing, LLC, an Arizona limited liability company, together with its successors in interest and assigns. The City recognizes that Owner may undertake development of the Project and business operations thereafter, in whole or in part, through its affiliate (as described in Recital A) or other affiliates formed for the purpose of such development. Owner may not, however, assign any obligations it may have under this Agreement to any affiliate without the express written consent of the City in the City's discretion.

2.2 Purpose. The Purpose of this agreement is to provide for the design, engineering and installation of the Sewer Line, and to allocate the design, engineering and installation of the sewer line extension between the Parties and to identify the rights and responsibilities of the Parties and to provide for infrastructure and other improvements to be designed and constructed by the Owner. The purposes of this agreement are more fully described in the Recitals hereto.

2.3 Cancelation of original Sewer Extension Agreement. The Parties previously entered into that certain Sewer Line Extension Agreement dated the 19th day of May, 2014 (City Contract No.514-13) and recorded as Fee Number 2014-045937 in the official records of the Pinal County Recorder (the "Original Sewer Agreement." The Parties agree that upon the Effective Date of this Agreement, the Original Sewer Agreement shall be deemed terminated and neither party shall have any further obligation or rights under the Original Sewer Agreement. The Parties agree to each execute such further documentation as reasonably required to record the cancelation of the Original Sewer Agreement with the Pinal County Recorder.

3. SEWER LINE.

3.1 Design and Engineering of East Area. Owner warrants that it has contracted for and paid for all of the costs associated with the design and engineering of the East Area. In no event will the City be responsible for any design or engineering costs associated with the East Area. Owner further agrees to provide

property for right-of-way owned or controlled by Owner for the Sewer Line as follows:

a. Owner agrees to and shall, without cost to the City, donate to the City any right-of-way, easements, temporary easements, or other rights of entry reasonably needed for the construction and eventual maintenance of the Sewer Line (Right-of-Way) on or over any of the Property owned or controlled by Owner or any affiliate which Owner controls or is controlled by or is under common control with Owner. Owner voluntarily waives any right to compensation for such Right-Of-Way and agrees to reimburse City for any compensation sought and obtained against City by any other person or entity for any such Right-Of-Way over any area of the Property. City agrees to accept all Right-Of-Way on or over any of the property not owned or controlled by Owner. In the event that any Right-Of-Way must be condemned to timely complete the Sewer Line, the City will cause for the process to be initiated with the Pinal County Superior Court. Each party will be responsible for any costs associated with the condemnation within their respective segment of the Sewer Line construction and Owner agrees to reimburse City for any such charges and post any required bonds with the Court or reimburse City for the costs of such posting within 10 (ten) business days.

b. City agrees to waive any plan review and permit fees charged by the City related to the design, engineering, and construction of the East Area.

3.2 Design and Engineering of Kortsen Area. The Owner warrants that it has contracted for and paid for all of the costs associated with the design and engineering of the Kortsen Area sewer line. In no event will the City be responsible for any design or engineering costs associated with the Kortsen Area.

3.3 Development Impact Fee Offset. City agrees Owner's construction costs may be considered offsets to development impact fees for those sewer and wastewater elements that are eligible for reimbursement, credit or offset as and if allowed pursuant to the City's development impact fee ordinance. Such offsets may be credited against such impact fees at the time permits are issued for the construction within the Project. The Parties agreed to a development impact fee of \$531,348, as detailed in the Impact Fee Deferral Agreement between the Parties dated June 15, 2016. The City has requested and Owner has agreed to upgrade the manholes in the East Area to a polymer manhole as referenced in Exhibit C.. The Parties agree that the marginal cost difference between the cost of the standard epoxy-lined manholes and the requested polymer manholes for the East Area is \$338,500. Provided Owner installs such upgraded manholes, City shall grant to Owner a \$338,500 credit against the \$531,348 impact fees referenced above reducing the referenced impact fee obligation to \$192,848.

3.4 Cooperation in the Sewer Line Components. City and Owner understand and agree coordination between all parties (including the Parties to this agreement and third-party contractors utilized in the design, engineering,

permitting, construction and installation of the Sewer Line) is essential to timely complete the Sewer Line construction component concurrently with all other components of Phase One of the Project. Owner and the City shall work together using reasonable best efforts throughout the Sewer Line design engineering, construction and installation to resolve any issues that arise in connection with the design, engineering, construction, and installation of the Sewer Line.

3.5 Kortsen Completion Date. City Agrees, subject to force majeure delay from matters outside City's control, including delays in acquiring right-of-way or permits issued by third parties, to have that segment of sewer line in the Kortsen Area crossing I-10 as reflected in the construction plans completed by Jacobs Engineering completed within eighteen (18) months of the Effective Date.

3.6 Eastside Sewer Completion Date. Owner agrees, subject to force majeure delay from matters outside Owner's control, including delays in acquiring right-of-way or permits issued by third parties, to have the East Area sewer line, in accordance with Exhibit C, completed and dedicated to City within twenty-four (24) months of the Effective Date. Failure of the owner to meet this date may result in the City utilizing the financial assurances to complete the construction, or if the financial assurances remaining are insufficient to complete the construction, the City may utilize the financial assurances to complete such portions of the East Area sewer line and owner connections set forth in Section 4.4 of this Agreement as deemed reasonable and appropriate by the City in its sole discretion.

3.7 Sewer Plant. Owner shall have no obligation to expand, design, construct, pay for, operate, maintain, or repair a treatment plant for wastewater generated on the Property, with the exception of sewer development impact fees specifically for the treatment component referenced in the Impact Fee Deferral Agreement dated June 15, 2016

3.8 Sewer Service. Upon completion of the East Area, City commits to provide municipal sewer service to the Property with like service related fees as are imposed on other similarly situated City wastewater customers.

4. CONSTRUCTION OF SEWER LINE.

4.1 Construction of Line. Owner will construct and install the East Area sewer line in accordance with Exhibit C and upon completion dedicate the line to the City. City will construct the Kortsen Area sewer line in accordance with Exhibit D.

4.2 Workmanship, Materials, Equipment and Machinery. The Parties agree to the bid specifications for the materials as provided in Exhibit C. All materials used in construction shall be new and both workmanship and materials shall be of good quality and meet the specifications and standards, as detailed in

Exhibit C and D. Owner shall warrant, for a period of at least 1 year from the acceptance date of the East Area sewer line, all facilities built pursuant to this Agreement. City agrees that Owner may meet this obligation by assigning to the City the warranties of its contractor(s) for such work, provided City is named as an intended beneficiary of such.

4.3 Inspections. Owner and City agree that the Owner will hire and pay, at Owner's sole expense, a third-party inspector agreeable to City to serve as construction inspectors for the East Area. At the time the East Area sewer line is dedicated to City, Owner will provide a construction inspection report prepared by the third-party inspector detailing the inspections that were performed. The parties agree and approve Sunrise Engineering as the initial third-party inspector. If for some reason Sunrise Engineering is unwilling or unable to perform the third-party inspection work referenced in this section, the Parties mutually agree to select an alternate third-party inspector to perform the services at Owner's sole expense. The City will not unreasonably withhold its approval. The City reserves the right to perform any and all inspections it deems necessary on the East Area at City's expense; provided, however, that if no third party inspector is performing the inspections then all City inspections shall be conducted at City's direction and Owner shall be responsible for all such inspection fees and costs

4.4 Sewer Connections to Property Owners. Owner, at its sole expense, agrees to construct sewer line connection stubs to property owners in the alignment corridor as designed in the plans and shown in Exhibit C in conjunction with the construction of the East Side sewer main. Individual property owners will be responsible for eventual connection to any stub provided for their use. Owner shall not be entitled to reimbursement from property owners for providing the stubs, nor shall Owner have any obligation for any stub connections to the property owner under this Agreement.

4.5 Water Infrastructure and Connections to Property Owners. Subsequent to the Effective Date of this Agreement, Owner shall enter into a master water facilities agreement with the Arizona Water Company providing for the construction of certain water infrastructure. Owner shall construct or cause to be constructed certain water line connections to certain third parties providing right of way for that purpose. The connections shall be as designed in the plans approved by or to be approved by Arizona Water Company. Owner agrees to use its best efforts to ensure such contract substantially provides for these water connections, which are set forth in Exhibit E, and that the contract requires completion of the connections not later than twenty four (24) months after the Effective Date. Owner shall not be entitled to reimbursement from property owners for providing the water connection points, nor shall Owner have any obligation for any connections from the water main connection points to the property owner under this Agreement.

4.6 Other Agencies. City agrees to coordinate and lead on any interactions with Arizona Department of Environmental Quality, Arizona Department of Health Services, and all local regulatory agencies having jurisdiction over the construction of sewer facilities. Owner shall be responsible for obtaining all permits from and payment of fees or other charges or costs, including the cost to provide any necessary insurance required by such agencies, to Hohokam Irrigation Drainage District, the Bureau of Reclamation, Kinder Morgan, or their agents.

4.7 Financial Assurances for East Area Sewer Line. Owner shall, at the time of issuance of construction permit, secure the estimated costs to construct the sewer line, as described in exhibit C, by the posting of a financial security such as a surety bond, irrevocable letter of credit, or other means acceptable to the City. The amount of initial security shall be in an amount estimated and required by the City Engineer, but shall not exceed the amount of an executed agreement by Owner if the agreement covers the entire scope of construction for the East Area. City agrees to allow for partial release and reduction to the security upon completion of various discrete phases of the sewer line; provided, however that at all times the security shall be in at least an amount necessary to complete the remaining portions of the East Area if a new construction contract had to be issued by the City to complete the remaining portions of the East Area. The owner agrees to maintain a maintenance bond in the amount of ten percent (10%) of the construction cost for a period of 1 year following acceptance of the infrastructure by the City for the purposes of meeting its obligations under Section 4.2.

4.8 Financial Assurances for East Area Water Line. Owner shall, at the time of issuance of construction permit related to the construction of the water line connections described in Section 4.5, secure the estimated costs to construct a water line and connections thereto, as approved by Arizona Water Company and as described in Section 4.5., by posting of a financial security such as a surety bond, irrevocable letter of credit, or other means acceptable to the City; provided, however, that Owner can comply with this Section without additional financial assurance if it can show that proper financial assurance and/or contractual obligation has been posted with Arizona Water Company and that Arizona Water Company has agreed to construct said water line and connections in the event that Owner does not complete said construction.

5. MISCELLANEOUS PROVISIONS.

5.1 Governing Law: Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Pinal (or, as may be appropriate, in the Justice Courts of Pinal County, Arizona, or in the United States

District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 5.1.

5.2 Limited Severability. The City and Owner 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 the City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City code or City charter), 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. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

5.3 Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

5.4 Notices.

a. Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given (i) by personal delivery, or (ii) by deposit in the United States mail certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or (iii) by any nationally recognized express or overnight delivery service (e.g. Federal express or UPS), delivery charges prepaid:

If to the City:

City of Casa Grande

Attn: City Manager
510 East Florence Boulevard
Casa Grande, Arizona 85122
Telephone: (520) 421-8600
Facsimile: (520) 421-8604

With a required copy to: City of Casa Grande
Attn: City Attorney
510 East Florence Boulevard
Casa Grande, Arizona 85122
Telephone: (520) 421-8600
Facsimile: (520) 421-8602

If to Owner: AZ Sourcing, LLC
14500 N. Northsight Blvd., Suite 116
Scottsdale, Arizona 85260
Attention: Jason Cupo, General Council
Telephone: (480) 525-8138
Facsimile: (602) 457-6779

b. Effective Date of Notices. Any notice sent by United Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. Any Party may designate a different person or entity or change the place to which any notice shall be given as herein provided.

c. Payments. Payments shall be made and delivered in the same manner as Notices; provided, however, that the payments shall be deemed made only upon actual receipt, in good and available funds, by the intended recipient.

5.5 Time of Essence. Time is of the essence of this Agreement and each provision hereof.

5.6 Section Headings. The Section headings contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

5.7 Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the

prevailing Party in any such dispute shall be entitled to reimbursement of its reasonable attorney's fees and court costs, 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 costs of such dispute.

5.8 Waiver. The Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

5.9 Third-Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement.

5.10 Exhibits. Without limiting the provisions of Section 1 of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

5.11 Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation, or representation regarding the subject matters covered by this Agreement.

5.12 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

5.13 Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

5.14 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.

5.15 Recordation of Memorandum. Within ten (10) business days after the Effective Date, either party may prepare, cause to be executed by both Parties, and record in the Official Records of Pinal County, Arizona, a Memorandum of this Agreement containing the title of the Agreement, the names of the Parties, a statement of the general purpose of the Agreement, the legal description of the Property, the City Contract Number assigned to the Agreement by the City Clerk, and a statement that a copy of the Agreement is on file with the City Clerk and copies of the Agreement may be obtained from the City Clerk.

5.16 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by the City and Owner. When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.

5.17 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

5.18 Non-liability of City Officials, Etc., and of Employees, Members, and Partners, Etc., of Owner. No City Council member, official, representative, agent, attorney or employee of the City shall be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Non-Performance or breach by the City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of the City under the terms of this agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Owner under this Agreement shall be limited solely to the assets of Owner and shall not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers, constituent partners, officers or directors of the general partners or members of Owner; (ii) the shareholders, members or managers or constituent partners of Owner; or (iii) officers of Owner.

5.19 Conflict of Interest Statute. This Agreement is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. § 38-511.

5.20 Compliance with A.R.S. 35-393 and 35-393.01. Owner acknowledges and agrees that it is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel and, furthermore, Owner acknowledges that is has signed a written certification, which is attached hereto as Exhibit F and incorporated herein, to that effect.

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

OWNER
AZ SOURCING, LLC, an Arizona limited liability
company

By: _____

Its: _____

CITY
CITY OF CASA GRANDE, ARIZONA, an Arizona
municipal corporation

By: _____

Its: _____

ATTEST:

By: _____

Gloria Leija, MMC, City Clerk

APPROVED AS TO FORM:

By: _____

Brett D. Wallace, City Attorney

