

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF BISBEE AND Naco Sanitary District**

This is a Memorandum of Understanding (“MOU”) between the CITY OF BISBEE, an Arizona municipal corporation (the “City”) and the Naco Sanitary District, an Arizona Title 48 Special Taxing District (“NSD”) for the billing of wastewater connection and service fees for the Camp Naco property. The City and NSD may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the City owns and maintains the building and grounds located at 2118 W. Newell St., Naco, Arizona, Cochise County Parcel Nos. 102-57-305B and 102-57-194C, known as Camp Naco; and,

WHEREAS, NSD provides wastewater utility services for the area in which Camp Naco is located; and,

WHEREAS, NSD does not charge a standard connection or use fee for its wastewater utilities, but assesses a fee for the utility based on a percentage of property value (currently 5.8610%), which amount is assessed and charged on the annual tax assessments for the various properties located within NSD’s service area; and,

WHEREAS, because Camp Naco is owned by the City, which is an Arizona municipality, the property is not subject to property taxes, including the percentage assessments for NSD’s utility services; and,

WHEREAS, NSD has granted the City permission to connect Camp Naco to NSD’s wastewater pipes and system and to allow the City’s engineers to plan and connect sewer lines as needed for Camp Naco, providing the City up to 3,000 gallons per day of wastewater discharge and treatment for Camp Naco; and,

WHEREAS, pursuant to the terms of this MOU, the City and NSD desire to set forth the terms and conditions for the wastewater connection and usage fees to be charged for Camp Naco.

NOW, THEREFORE, for and in consideration of these premises and the mutual covenants herein contained, it is agreed by and between the Parties hereto as follows:

AGREEMENT

1. *Purpose.* The purpose of this MOU is to clearly identify and establish the connection fees and monthly use fees for Camp Naco’s wastewater discharge into NSD.
2. *Sewer Connection and Use Fees.* The City agrees that in lieu of a property tax assessment for NSD’s wastewater services, the City will pay, on a quarterly basis, a percentage of the assessed

value of the Camp Naco property, at the same rate as other NSD customers are assessed through their property taxes. The assessed value of the Camp Naco property will be determined each year by the Cochise County Assessor and any adjustments will be made to the percentage of assessment within 30 days of an increase or decrease in the assessed value of the Camp Naco property.

3. Term. The term of this MOU shall be for five (5) years and shall commence upon approval of the City Council, the NSD Board and the execution of this MOU by both Parties. This MOU shall automatically renew for successive five (5) year periods.

4. Reporting and Records. All books, accounts, reports, files, and other records relating to this MOU shall be kept by the Parties for five (5) years after termination of this MOU. The Parties recognize and acknowledge that records may be subject to Arizona Public Records laws.

5. Indemnification. Each Party is an independent entity, responsible for its acts and the acts of its officers, agents and employees. Consequently, each Party agrees to indemnify, defend and hold harmless the other Party, its officers, agents and employees from any and all loss, injury, liability, damages, claims, demands, suits, or judgments arising from the acts or omissions of its officers, agents, and employees in connection with the performance of this MOU.

6. No Partnership. Except as otherwise provided by law, in the performance of this MOU, all Parties will be acting in their individual governmental, corporate or agency capacities and not as agents, employees, partners, joint venturers, or associates of each other. The employees, agents, or subcontractors of one Party shall not be deemed or construed to be the employees or agents of the other Party.

7. Severability. The Parties agree that should any part of this MOU be held invalid or void, the remainder of the MOU shall remain in full force and effect.

8. Conflicting Provisions. Nothing in this MOU is intended to conflict with existing laws and/or regulations, with any contractual responsibilities and obligations imposed by third-party contracts or agreements, or with any agency directive of the City. If a term of this MOU is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect.

9. Governing Law. This MOU 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 MOU shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Cochise (or, as may be appropriate, in the Justice Courts of Cochise 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.

10. Non-Discrimination Laws. The Parties shall comply with Title VII of the Civil Rights Act

of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order No. 99-4 and 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. The Agencies shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, and the Americans with Disabilities Act.

11. Dispute Resolution. If there is a dispute, the Parties agree to negotiate in good faith to resolve the matter.

12. A.R.S. § 38-511. The Parties acknowledge that this MOU is subject to cancellation pursuant to A.R.S. § 38-511.

13. Immigration Laws. The Parties warrant, and represent to each other, that they are in compliance with A.R.S. §§ 41-4401 and 23-214, the Federal Immigration and Nationality Act, and all other federal immigration laws and regulations.

14. Notices. All notices, demands or other communications relative to this MOU must be in writing and are deemed duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, registered or certified, return receipt requested, 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 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 as follows:

CITY: City of Bisbee
Attn: City Manager
76 Erie Street
Bisbee, Arizona 85603

NSD: Naco Sanitary District
Attn: Chairman
P.O. Box 755
Naco, Arizona 85620-0755

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.

15. Amendments/Modifications. This MOU can be revised or modified only by written amendment signed by both Parties.

16. Headings and Counterparts. The headings of this MOU are for purposes of reference only and shall not limit or define the meaning of any provision of this MOU. This MOU may be executed in any number of counterparts, and when each Party has executed a copy thereof, such copies, taken together, shall be deemed to be a full and complete original contract between the Parties. An electronic transmission or other facsimile of this MOU shall be effective and binding upon the Parties as if such signatures were originals and shall be admissible as evidence of the document.

17. Authority and Execution. Each person executing this MOU on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it

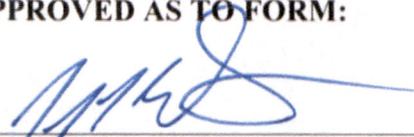
purports to bind and if such Party is a partnership, corporation or trustee that such partnership, corporation or trustee has the full right and authority to enter into this MOU and perform all of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have entered into this Memorandum of Understanding on the date first written above.

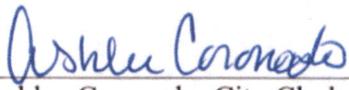
CITY OF BISBEE

By: 
Ken Budge, Mayor

APPROVED AS TO FORM:


Joseph D. Estes, City Attorney

ATTEST:


Ashlee Coronado, City Clerk

NACO SANITARY DISTRICT

By: 
Stephen T. Dey, Chairman

APPROVED AS TO FORM:


Jon M. Paladini, NSD Attorney

ATTEST:


NSD Secretary
Charles A. Behney
Vice Chair